The Planning Inspectorate

Appeal Decision

Hearing held on 9 November 2016

Site visit made on 9 November 2016

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 November 2016

Appeal Ref: APP/P4225/C/16/3142552
Birch House, Doctor Fold Lane, Heywood, OL10 2QE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Shaun O'Brian of OB Trucks Ltd against an enforcement notice issued by Rochdale Metropolitan Borough Council.
- The enforcement notice was issued on 8 December 2015.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of part of a commercial building to residential accommodation together with the change of use of part of the land to form a parking/storage area for use by a commercial vehicle recovery service, and for the storage of commercial vans, HGVs, pick-up trucks, wagons, skips, containers, trailers, cars and other similar vehicles.
- The requirements of the notice are i. cease the unauthorised residential use of Birch House; ii. cease the use of the land for the storage of commercial vehicles, vans, HGVs, pick-up trucks, wagons, skips, containers, trailers, cars and other similar vehicles, and for the operation of the commercial vehicle recovery service; iii. within the site edged red, remove all commercial vehicles, vans, HGVs, pick-up trucks, wagons, skips, containers, trailers, and cars and remove from the site all hard surfaced material, including the concrete kerb edging; iv. following compliance with steps ii. and iii., restore the land to a grassed field, comprising the importation and spreading of 10cm of top soil and the growing of a wild flower grass mix. The land shall be retained as such thereafter.
- The period for compliance with the requirements is six months for steps i. and iii, three months for step ii. and, for step iv. within the first planting season following the completion of step iii.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is allowed in part and the notice is upheld, subject to corrections and variations.

Preliminary matter

1. The appeal on ground (d) was withdrawn by the appellant on the understanding that the Council was not seeking the removal of the historic hard surfaced material remaining from the time that the site was used as a compound for the construction of the adjacent M62 motorway until around 1971. The Council has confirmed that this is indeed the case and has suggested a variation to step iii. to reflect this.

The Enforcement Notice

2. The alleged breach of planning control omits reference to the office use of the building on site as part of a mixed residential and office use. It was agreed that I could correct the notice to include this without injustice to the appellant. As the use is a mixed use, the relevant period for the breach would be 10 years and not 4, as stated in the notice.

The appeal on ground (a) and the deemed application

3. The appellant confirmed that his appeal on this ground related only to the use of the building and a suitable curtilage as a mixed residential and office use. Given that the appellant had complied with step ii. and part of step iii. in that the use for the storage of vehicles and the operation of the vehicle recovery service had ceased and all vehicles had been removed from the site, the Council now considered the office/residential use to be acceptable. The appellant accepted that the curtilage should be limited to the extent suggested by the Council and illustrated in the plan contained within the Council's supplementary statement.

4. The appeal site is within the Green Belt, whose objectives are set out in saved Policy G/D/2 of the Rochdale Unitary Development Plan (UDP) and which are consistent with those of the National Planning Policy Framework (the Framework). Para.90 of the Framework indicates that, so long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land in the Green Belt *"the re-use of buildings provided that the buildings are of permanent and substantial construction"* is not inappropriate in the Green Belt.

5. It is not in dispute that the appeal building meets the above criteria and that the change of use of the building itself would have no impact on the openness of the Green Belt. The agreed curtilage would have very little impact on the openness of the Green Belt due to its small size and its proposed landscaping would enhance the appearance of the area. I am satisfied that the mixed residential and office use of the building is not inappropriate development in the Green Belt.

6. Now that the use of the site for the storage of vehicles and the operation of a vehicle recovery service has ceased, the Council accepts that there would be no undue loss of amenity to the occupants of the dwelling. There is some background noise from the nearby M62 but this does not make this an unacceptable living environment. The appellant indicated that he had complied with the Building Regulations in terms of installing sound insulation between the living accommodation and the integral office and also between the living accommodation and the adjacent commercial premises to the SE. There is a separate parking area serving the office and its use should not give rise to undue disturbance to occupants of the living accommodation.

7. In conclusion, the mixed residential and office use of the building is not inappropriate development in the Green Belt and does not give rise to any other undue harm. Accordingly, it accords with the development plan and the Framework. The appeal on ground (a) and the deemed application therefore succeed.

8. The Council suggested a number of conditions in the event that the deemed application was successful. However, there is no need for a time limit condition as the use has already commenced. There is also no need for a condition removing permitted development rights as this is a mixed use and such rights only apply to development within the curtilage of a dwellinghouse. As the appellant appears to have undertaken works in compliance with the Building Regulations, there appears to be no need for the conditions requiring details of noise insulation and drainage to be submitted. I regard the conditions requiring the curtilage to be fenced off and landscaped to be necessary to maintain an attractive rural character. I also regard it necessary to submit and implement a parking scheme so that suitable off-street facilities can be provided for the office and residential uses.

The appeal on ground (f)

9. The Council is now supportive of the re-use of the building and would therefore wish to see the notice varied by the deletion of step i. The Council would also seek to vary step iii. by splitting it into 2 steps. The first of these would be the requirement to remove all the vehicles etc from the land. This is agreed by the appellant. The second of these would recognise the long-standing concrete areas and would require the removal of all hard surfaced material except for any such material located beneath the surface of the land ie the historic fill material. This is not agreed by the appellant.

10. Therefore, the only issue between the parties is whether there should be a requirement to remove the road planings, which cover a significant part of the site, prior to soiling and seeding the land. The main reason the Council seeks this course of action is to ensure the land is unsuitable for the re-use for the storage of vehicles or other undesirable activity. However, I am not convinced that this would be effective, because the land would still be reinforced by the remaining presence of the historic fill material. In any event, any breach of the requirements of the notice would be an offence and any other unauthorised use would be readily seen by nearby residents and could be the subject of enforcement action.

11. The appellant pointed to the practical difficulty of separating the planings from the hardcore below and to the noise and disturbance that would be caused by the removal of the planings from site. It is clear that the site had become 'greened over', prior to the deposit of the planings some 4 years ago, and there were already indications on site that this process was occurring again. The required soiling and seeding would appear likely to be effective in returning the site to a grassed field. Accordingly, I see no benefit in requiring the removal of the road planings and the appeal on ground (f) succeeds to that extent.

Formal Decision

12. The enforcement notice is corrected by:

    i. deleting from part 2 (the Land) the wording "shown edged red" and replacing it with "shown edged in a bold black line";

    ii. deleting from part 3 (the Breach) the wording "part of a commercial building to residential accommodation" and replacing it with "a commercial building to a mixed use of offices and residential accommodation";

iii. substituting the following text for the first paragraph of part 4 (the Reasons): "It appears to the Council that the above breaches of planning control have occurred within the last ten years."

13. The enforcement notice is varied by:

i. substituting the plan attached to this letter for the plan attached to the notice;

ii. substituting the following text for part 5 (the Requirements):

"(i) Cease the use of the Land within the site edged in a bold black line for the storage of commercial vehicles, vans, HGVs, pick-up trucks, wagons, skips, containers, trailers, cars and other similar vehicles, and for the operation of a commercial vehicle recovery service.

(ii) Within the site edged in a bold black line, remove all commercial vehicles, vans, HGVs, pick-up trucks, wagons, skips, containers, trailers, and cars.

(iii) Following compliance with steps (i) and (ii), restore the Land to a grassed field, comprising the importation and spreading of 10cm of top soil and the sowing of a wild meadow grass mix. The Land shall be retained as such thereafter."

iii. substituting the following text for part 6 (Time for Compliance)

"The periods for compliance with the steps set out in paragraph 5 are:

(i) and (ii) within three months from the date this notice takes effect.

(iii) within the first planting season (1st of March to 30th April) following the date of this decision letter."

14. Subject to the above corrections and variations, the appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use to a mixed use of offices and residential development on land at Birch House, Doctor Fold Lane, Heywood, OL10 2QE, shown cross-hatched on the plan attached to this letter and referred to in the notice, subject to the following conditions:

(1) Within 3 months of the date of this decision, a timber post and rail or post and wire fence shall be erected along the boundaries of the curtilage to the rear and NW side of the office/residential building, in accordance with details that have first been submitted to and approved in writing by the local planning authority. The fencing shall be retained in accordance with the approved details at all times thereafter.

(2) Within the next planting season following the date of this decision, a native hedgerow shall be planted adjacent to the fencing required by condition (1) in accordance with details that have first been submitted to and approved in writing by the local planning authority. The hedgerow shall be retained in accordance with the approved details at all times thereafter. Any plants, trees or shrubs removed, dying, becoming severely damaged or becoming severely diseased within 3 years of

planting shall be replaced by plants, trees or shrubs of similar size and species to those originally required to be planted.

(3) Within 3 months of the date of this permission, a scheme for the provision of car parking for the residential accommodation and the office space, including details of the size, siting and surfacing of parking spaces, shall be submitted to and approved in writing by the local planning authority. The car parking spaces shall be provided in accordance with the approved scheme and made available within six months of this permission and retained thereafter for their intended purpose.

15. Subject to the corrections, variations and deemed planning permission set out above, the enforcement notice is upheld.

B.S.Rogers

Inspector

Appearances

For the Appellant:

Mr G.Luxton	- GL Consultancy
Mr S O'Brian	- The appellant

For the Council:

Mrs A.Truman	- Assistant Development Manager, Rochdale BC
Mr J.Holmes	- Planning Solicitor, Rochdale BC

Interested Persons:

Mr K.Brown	- Resident of Doctor Fold Lane
Mr G.Belfield	- Resident of Doctor Fold Lane

Documents

1. Letter of representation from a neighbouring resident.
2. List of suggested conditions produced by the Council.
3. Draft varied enforcement notice produced by the Council.
4. Draft varied enforcement notice plan, indicating areas of concrete hardstanding.
5. Draft varied monochrome enforcement notice plan.

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated:18 November 2016

by B.S.Rogers BA(Hons) DipTP MRTPI

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Scale: nts