The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 31 January 2017

Appeals A-E Refs: APP/D0121/C/16/3155197, 3155198, 3155199, 3155200 and 3155201
Land north of Newditch Farm, Potters Hill, Felton, Bristol BS40 9XB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Chris Williams, Mr Christopher Vowles, Mr Antony Gibbs, Mrs V Gibbs and Trustee Barrow Trust, respectively, against an enforcement notice issued by North Somerset Council.
- The notice was issued on 1 July 2016.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from agriculture to a mixed use of agriculture and the parking of vehicles unconnected with the agricultural use of the land.
- The requirements of the notice are: (i) cease the use of the land for the parking of vehicles unconnected with the agricultural use; (ii) remove all vehicles from the land; (iii) remove all tracks and resulting materials from the land; and, (iv) reseed with grass.
- The period for compliance with these requirements is 14 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Act.

Appeals A-E: Formal Decision

1. It is directed that the enforcement notice is varied by:
    - numbering the 4 requirements in paragraph 5 of the enforcement notice (i); (ii); (iii) and (iv), respectively [*as set out in the fifth bullet-point*];
    - adding the text "which are unconnected with the agricultural use" to the end of requirement (ii) in paragraph 5 of the enforcement notice; and,
    - the deletion of the phrase "*14 days*" in paragraph 6 of the enforcement notice and its replacement as follows: "In respect of requirements (i) and (ii) 14 days and in respect of requirements (iii) and (iv) 28 days";
2. Subject to these variations the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural matters

3. At paragraph 10 of the Council's appeal statement it refers to the "*Gelding judgement*" [sic]; this has not been queried by the Appellant. However I anticipate that the Council does not wish me to form a sensible opinion about a castrated male horse, but that it is in fact referring to the case of *Timmins & Anor v Gedling Borough Council* [2014] EWHC 654 (Admin) [*my emphasis*].
4. The Appellants' final comments contain what in my opinion comprises new material, which goes beyond responding to the Council's statement. All of the appendices thereto pre-date 22 September 2016, which is the statement date given in The Planning Inspectorate's [PINS] start date letter of 11 August 2016.

Those final comments were initially returned under cover of a letter from PINS dated 30 November 2016 but, following an exchange of emails, that decision was reviewed and the Appellants' final comments were accepted. For the avoidance of doubt I had no input to that decision. However, because of the new information, the Council was then given a further opportunity to comment on what was by this stage a late submission. I have taken account of all of the evidence that has been submitted by all parties in relation to these appeals.

5. Following the site inspection PINS wrote to the main parties to invite comments on the fact that the site had been cleared of vehicles prior to 18 January 2017. I have taken account of the comments received in reaching my decision.

6. An application for an award of costs has been made by North Somerset Council against Mr Chris Williams, Mr Chris Vowles, Mr Antony Gibbs, Mrs V Gibbs and Trustee Barrow Trust. This application is the subject of a separate decision.

Ground (a), planning merits: *Preliminary observations*

7. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 says an enforcement notice issued under section 172 of the Planning Act shall specify…(b) all policies and proposals in the Development Plan [DP] which are relevant to the decision to issue a notice. In this case the Council has referred to 4 DP policies on the face of the notice but then introduced 2 other policies in its appeal statement. However, noting the duty that falls on the decision maker to determine in accordance with the DP unless material considerations indicate otherwise, in this case the additional policies relied upon appear to have been adopted after the date of issue of the notice. For this reason I shall take account of the extra policies referred to.

Main issues

8. There are 3 main issues in the deemed planning application. The first is whether the development would be inappropriate in the Green Belt having regard to the National Planning Policy Framework ["the Framework"] and any relevant DP policies which, in this instance, require an assessment of the effect on the openness and purposes of the Green Belt. The second is whether the development would be likely to add to the length and number of vehicle trips to the airport unconnected with public transport options. The third is whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Planning policy

9. The DP includes the North Somerset Replacement Local Plan [LP] and the Sites and Policies Development Plan Document [DPD], which were adopted in 2007 and 19 July 2016, respectively[1]. Relevant LP Policies RD/3, T/10 and T/12 fall to be assessed against paragraph 215 of the Framework. There is no reason to think that LP Policies T/10 and T/12 are inconsistent with the Framework, although the Council's statement does say that they: "…*have been superseded*" by DPD Policies DM24 and DM30. In the circumstances, noting the Appellants have made no claim that LP Policies T/10 and T/12 are inconsistent with the

[1] I understand there was a challenge to certain aspects of the Core Strategy, but not those at issue in this appeal. So whilst the excerpt from CS23 says "adopted April 2012", that date does not appear to apply in relation to other salient policies.

Framework, it is appropriate to attach them significant weight. However, for reasons that I explore below, I have identified an inconsistency between LP Policy RD/3 and the Framework, which means that I attach limited weight to that policy. Applying paragraph 215 of the Framework it is not necessary to attribute weight to relevant DPD Policies because it was not an "*existing*" plan on the date upon which the Framework was published, i.e. March 2012.

Reasons

(i) Inappropriateness

10. Paragraph 89 of the Framework states that the construction of new buildings is inappropriate unless it is for one of six specified exceptions. Paragraph 90 then goes on to say that certain other forms of development are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These "*other forms of development*" are then specified in a closed list of 5 bullet-points. Consequently, any development, including a material change of use of land, which does not fall within the scope of the specific exceptions set out in paragraphs 89 and, of relevance here, 90 is inappropriate development.

11. The Appellants do not appear to have appreciated the fact that paragraph 90 is a closed list and have proceeded to test the development against the concept of openness and the purposes of including land in the Green Belt. That approach is inconsistent with the Framework. However LP Policy RD/3 says development is inappropriate unless for the following purposes: "*vi. … for changes in the use of land which maintain openness and do not conflict with the purposes of including land in the Green Belt*". This is why I consider that LP Policy RD/3 is inconsistent with the Framework. Nevertheless LP Policy RD/3 is a DP Policy and hence I am required to apply the test that it sets out.

12. Dealing initially with openness, the use takes place on an agricultural field that would otherwise be open in the sense of being unencumbered with parked vehicles which, it is admitted, are related to Bristol Airport. Although the Appellants maintain that the land is well screened from the adjacent A38 by mature landscaping that does not in itself mean that there is no impact on the openness of the Green Belt as a result. Openness is a more holistic concept than visual impact. In any event the Appellants' photographs, which appear to have been taken at twilight[2], fail to illustrate the claim. Accordingly the use has detracted from the openness of the Green Belt, which conflicts with the fundamental aim of Green Belt policy identified in paragraph 79 of the Framework. The use is also a form of encroachment into the countryside and on this basis it conflicts with this purpose of including land in the Green Belt, in paragraph 80 of the Framework. Accordingly the use does not fall within the sixth purpose identified in LP Policy RD/3, fails to comply with DPD Policy DM12 and is, therefore, inappropriate development.

13. In any event I disagree with the Appellants' claim in respect of visual impact because cars are visible through the hedgerow in the Council's photograph at Appendix 2 to its appeal statement. This impression was reinforced by what I

[2] The images at Appendix 2 to the grounds of appeal are said to have been sourced from Google Streetview but, as presented, they are of poor quality and it is difficult to decipher anything on them. Given that I find it difficult to make out where the verge ends and the hedge begins it is not surprising that if there are any vehicles on the appeal site that they are not visible in these photographs.

observed during my site inspection, because it was possible to see the whole extent of the land from the A38. Although there were no customer's vehicles parked on the appeal site at the time of my visit I am in no doubt that, if there had been, they would have been clearly visible through the hedgerow that demarcates the frontage of the site with the A38 at any point along its length. The claim that cars parked within the appeal site are not visible from outside was shown to be demonstrably false because I could see the vehicles belonging to representatives of both main parties from the highway verge at the site visit.

14. For these reasons, I conclude that the development is inappropriate, harms the openness of the Green Belt and conflicts with a purpose of its designation. The use is clearly contrary to the Framework and I find a conflict with LP Policy RD/3 and DPD Policy DM12. I attach significant weight to this finding.

(ii) Trip generation and public transport

15. LP Policy T/12 does not permit car parking for the airport except in the "*Green Belt inset at Lulsgate*"[3]. Although I have not been provided with an excerpt from the Policies Map, it is clear that the DP has excluded an area at Bristol Airport from the Green Belt, reflective of the fact that it is a major developed site that is located within the general extent of the Green Belt. On that basis it would appear that the provision of car parking at the airport itself would not be inappropriate development as long as it is within the inset area[4]. In that context the provision of car parking on a site 0.5 miles away from the airport is not only in the Green Belt but also conflicts with other aspects of the DP, including LP Policy T/12. It would not fall within the very limited categories of parking to serve the airport for which provision is expressly made in the DP.

16. DPD Policy DM50 is the equivalent of LP Policy T/12, but it does not materially alter the position in respect of development beyond the inset. The Council has instead referred me to DPD Policy DM30, but that only permits off-airport car parking outside of the Green Belt. As such it does not appear to add a great deal to LP Policy T/12 b), which is not applicable in this case[5]. To the extent that the appeal development is in the Green Belt and, hence, does not fall within the categories of off-airport car parking that are permitted by DPD Policy DM30, it is appropriate to find that there is a conflict with DPD Policy DM30.

17. LP Policy T/10 only permits development that gives rise to a significant number of travel movements if it can readily be integrated with public transport. The Appellants have given me no indication of how many cars can be parked on the site, but the Council's unchallenged claim[6] is that it extends to 2.15 hectares. It is therefore clear that many hundreds of cars could be parked on the site[7]. If so occupied it is likely that there would be a turnover of vehicles every day.

[3] There are 2 other exceptions, but neither apply here.
[4] I acknowledge that the Council's final comments refer to very special circumstances having been demonstrated in respect of the most recent application, which I take to be No 16/P/1486/F. Page 3 of the Committee report for application No 16/P/1455/F confirms that site is within the Green Belt inset and so, whilst the Appellants claim that it omits the public transport travel hub, at face value the proposed development still appears to fall within the policy exception in LP Policy T/12 a). The position in respect of the most recent application appears to be more complicated, but it does appear to be outside of the inset area, albeit on an area that appears to have an extant planning permission for a similar form of development. I consider this application further on page 5 overleaf.
[5] DPD Policy DM30 appears to narrow down the locations identified in LP Policy T/12, but this does not lead me to alter my view that LP Policy T/12 is not inconsistent with the Framework.
[6] Answer to question 6.b. in Part 3 of the Council's questionnaire.
[7] The Council's unchallenged claim is that in excess of 500 cars have been parked on the land at any given time.

Whilst some customers might be on holiday for a fortnight others might just go away for a weekend or a few days on a short haul flight. For these reasons I consider that the development would fall within the ambit of LP Policy T/10; in other words it would give rise to a significant number of travel movements.

18. It is self-evident that car parking on the appeal site cannot be integrated with public transport. Whilst the Appellants might have some justification in making the same complaint about car parking at the airport itself, it would appear that any such proposals that have been permitted have been granted in association with a legal agreement to make contributions towards improvements to public transport. Amongst other things I note that the recommendation in respect of application No 16/P/1486/F refers to a deed of variation to an existing section 106 agreement. Since no equivalent legal agreement has been offered in this appeal this enables me to make a clear distinction with that application, which does not set a precedent, dangerous or otherwise, for car parking in the Green Belt[8]. In the circumstances the appeal development conflicts with LP Policy T/10 and DPD Policy DM24 which, insofar as it is relevant to the circumstances of these appeals, is couched in almost identical terms to LP Policy T/10[9].

19. The eleventh core planning principle in the Framework says planning should actively manage patterns of growth to make the fullest possible use of public transport. To that end and, it would appear, in line with DP policies and the Local Transport Plan, both parties have referred to the Bristol Airport Surface Access Strategy 2012 – 2016 [ASAS]. I note from page 5 of the ASAS that it updates the previous strategy that was published with the 2006 Bristol Airport Master Plan. It is that document that is referenced in the supporting text to LP Policy T/12, for example at paragraph 9.103 thereof. So whilst the ASAS is not referenced in the DP, it is appropriate to attach it moderate weight, which is an attribution only tempered by the fact that the ASAS too is now time-expired[10].

20. The Council's unchallenged claim is that there are 5 public transport services that serve Bristol Airport, from: Bristol, Weston-Super-Mare, Bath, Plymouth [and other towns and cities in the south-west] and Cardiff. The Bristol service goes via Temple Meads and so it is clear that linked trips are in prospect via the national rail service. It seems to me that is no different from the coach service that links train services at Reading with Heathrow. Contrary to the grounds of appeal it is quite feasible to access the airport by public transport modes, including both rail and coach, from across the SW and South Wales.

21. In the circumstances I reject the Appellants' claim that it is not practical to gain access to the airport by any other means of transport than the private car. The specialist bus services serving the airport are designed to be fed by the wider public transport network including, where appropriate, public service vehicles

[8] The Committee report was submitted for the first time at final comments stage. However, on its face, it refers to the 2011 planning permission, which permitted a 3,650 space car park on the same site. Accordingly there is no reason for me to doubt the Council's assertion that this application does not result in additional development, but changed around the delivery based on arguments relating to changes in market demand and viability. It must follow that the extant planning permission [outline, hence not 3-years] was a significant material consideration in that application. In making this distinction I express no view on whether the Council's judgement in relation to application No 16/P/1486/F was correct because I am told that the matter is currently before the High Court.
[9] This reinforces my view that LP Policy T/10 is not inconsistent with the Framework.
[10] On its face the ASAS is for the period up to 2016 and we are now in 2017. That is the only reason why I consider that the level of weight to be attached to the ASAS should be reduced to "moderate". Amongst other things paragraph 13 of the Council's statement confirms that an update, based on 2015 figures, is due "shortly".

such as taxis, and are designed to allow customers to carry large luggage etc. Although some of the airport's customers chose to drive their own cars I reject any suggestion they would do so irrespective of any public transport options. Taking demand management to an extreme, if there was no car parking they would have to use public transport if they wanted to fly from Bristol Airport.

22. It follows that the availability of car parking on the appeal site does undermine the ASAS, which sets out a range of measures to reduce car dependency. The appeal development is therefore an unsustainable form of development that not only fails to satisfy relevant DP policies, but undermines the wider strategy agreed between Bristol Airport, the Council and a range of other public services providers that aims: "*…to deliver a low carbon, accessible, integrated, efficient and reliable transport network serving Bristol Airport*"[11]. It is material that Bristol Airport subsidises bus services to and from the airport and, whilst I have few details, it is likely that an element of the subsidy is derived from those car borne passengers who choose to use the parking facilities at the airport itself.

23. For these reasons I conclude that the development would be likely to add to the length and number of vehicle trips to the airport unconnected with public transport options. As such I find a clear conflict with LP Policies T/10 and T/12, DPD Policies DM24 and DM30, and the relevant provisions of the Framework.

(iii) Other considerations

24. Paragraph 87 of the Framework says inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework says that very special circumstances will not exist unless the harm by reason of inappropriateness, together with the additional harm that I have identified in my consideration of the second main issue, is clearly outweighed by other considerations.

25. The Appellants' submissions do not, clearly and unambiguously, identify what they consider to be the other considerations that might constitute the very special circumstances that are required in this case. I have reviewed the totality of the Appellants' submissions to try to ascertain what considerations are being advanced and, hence, the following is my reading of the case put.

26. The first consideration appears to be that there has been a threefold increase in passenger numbers at Bristol Airport between 2000 and 2014. The latest data[12] suggests that the increase has continued since 2014, but actually when one compares 2014 with, for example, 2008, the increase is marginal. Over a similar length of time the proportion of customers using public transport has roughly doubled to 13 %[13]. However the CAA Passenger Survey Report 2012 might actually suggest the proportion using public transport is even higher[14].

27. In the circumstances the Appellants' claim: "*that the increasing numbers of passengers are consistently using a private mode of transport as their preferred means of travelling to the airport*", is not made out. To the contrary, the LP, which has been in place since 2007, together with the Local Transport

[11] Source of quote: paragraph 7, page 5, ASAS.
[12] Figure 4.1 of Appendix 10 to the Appellants' final comments.
[13] 6-year period 2009 – 2015: the proportion using public transport has increased from 6.5 % to 13 %, based on the unchallenged evidence that is before me [figures for 2008-2014 are not explicit in the Council's statement].
[14] See Table 9.2 which, in the most statistically significant regions of the SW and South Wales, shows that the proportion of airport customers using public transport was 18.5 % and 17.2 % respectively.

Plan and the ASAS, appears to be delivering a noticeable modal shift away from the private car. This impression appears to be reinforced by the Council's claim that the 13 % figure is "*significantly higher*" than the initial trajectory and that the Staff Travel Plan has increased public transport use from 10 % to 16 %.

28. I have no reason to doubt the Appellants' claim that the most popular mode of transport for Bristol Airport passengers is the private car and, of those, the vast majority of parties are one or two person in size. In the context of the Framework that does not mean that the demand for car parking should be met on the green fields of North Somerset. It is inevitable that a joined-up strategy that seeks to maximise sustainable transport modes should involve a mixture of carrots and sticks. The link between the supply of parking and traffic levels is explicitly recognised in the Local Transport Plan, paragraph 6.6.1 of which says that the availability of car parking is a key part of demand management.

29. I accept that there are a number of locations away from the airport that offer airport parking but, on the limited information before me, it is unclear whether this has been expressly permitted by the Council or is lawful for other reasons. Amongst other things it appears to be agreed that local enterprises exploit the 28-day temporary use rights that applies to open land to the full. However the claim that: "…*all are operating at their maximum capacity*", is not supported by evidence. Irrespective of this, the mere fact that there might be a demand for parking does not equate to very special circumstances, as has been claimed. I therefore attach the demand argument very limited weight in these appeals.

30. The second consideration is that Bristol Airport has, and will retain, a monopoly over the parking of airport vehicles. This, it is claimed, is contrary to sections 1, 3 and 9 of the Framework, which aim to support business growth, a range of consumer choice, allow for development and diversification of rural businesses and permit development in the Green Belt where very special circumstances exist. However the basis of this claim is contradicted by the grounds of appeal, which refers to: "…*a large number of operators providing parking…in the area*", for Bristol Airport passengers[15]. In the context that there is no existing monopoly, the exceptions set out in the DP, including LP Policy T/12 and DPD Policy DM30, ensure that other car park providers can enter the market. I attach the monopolistic argument very limited weight in these appeals.

31. The third consideration is the Appellants' claim that their business is restricted and unable to grow. There are 5 Appellants in this case and so I shall assume that this argument relates to the operator of the parking business, as opposed to the freeholder or leaseholder. By way of example there is no information before me about the farming enterprise and the options that might be available to it to diversify in line with the policy in paragraph 28 of the Framework.

32. The first point is that, given the use on this site was only established in April 2016 and that as at the date of my site visit there were no cars parked on the land, the operator of the business plainly has other land under his control. Thus what are said to be 5 full-time and 3 part-time jobs do not appear to be under threat as a result of this enforcement action. It has not been claimed that the business would cease trading if the notice was upheld and whilst I have noted the claim that all the jobs: "…*will be at threat if the business is compromised*", I find no evidence that the business will be compromised. The claim that there

[15] Source of quote: paragraph 4.16 of the grounds of appeal.

are staff employed in connection with the parking operation at the appeal site and that there would be redundancies if the notice was upheld is inconsistent with the complete absence of customer cars at the time of my site inspection.

33. The second point in relation to the third consideration is that the DP does allow parking businesses to grow, for example criterion c) of LP Policy T/12 permits airport parking within the settlement boundary of Weston-Super-Mare or within the Weston Regeneration Area. The Appellants have not explained why these would not be suitable locations in which to expand. For these reasons I attach the business argument very limited weight in these appeals. This view is corroborated by the Appellants' concession that these arguments: "…*may not constitute the very special circumstances referred to in the Framework*"[16].

34. The fourth consideration is that the Appellants provide a minibus transfer service which is claimed to: "…*minimise*[~~s~~] *the use of the private car between the parking provision and airport and contributes to the reduction of vehicles in the immediate vicinity of the airport*". I simply do not accept this claim. First all of the cars that attend the appeal site have to travel along the A38 to get to the site from one direction or the other. Second those cars are likely to arrive and depart at different times and hence the minibus is likely to go back and forth to the airport with low levels of occupancy. The minibus itself cannot be compared to public transport. It follows that vehicle movements in the vicinity of the airfield are potentially increased by this operation, e.g. a car coming from the south passes the vicinity of the airport along the A38 and then the minibus brings the occupants to the airport, thereby doubling the number of traffic movements through, by way of example, the roundabout on the A38. I attach the vehicle movement argument very limited weight in these appeals.

35. The fifth consideration, albeit advanced for the first time at paragraph 4.4 of the conclusion of the Appellants' final comments, is that there is some form of collusion between Bristol Airport, the Council and the Parish Council and Airport Association [PCAA]. It is claimed that Bristol Airport provides funds to the PCAA and those funds have been used to fund an Enforcement Officer whose role is to target the operations of competitors. I note that the Council has made no observations on this assertion, but equally there is no evidence to support it. Even if there might be some substance to the factual basis for the claim, I have already given reasons for rejecting that a monopoly exists. The assertion that there is a form of collusion between Bristol Airport and the PCAA is undermined by the fact that the latter has expressed concerns about the 2016 planning applications, which have then been supported by individual Parish Councils[17]. I therefore attach the collusion argument very limited weight in these appeals.

36. The penultimate point is that the grounds of appeal indicate that the Appellants only seek planning permission for a hatched area, but no plan is appended that is marked in this manner. The deemed application relates to the land edged red on the plan attached to the notice and whilst that must be my starting point I have considered the possibility that planning conditions, including one to restrict the area of parking to a smaller area, could address the harm and policy conflict. However, particularly given my finding on the first main issue, such an outcome would not address the harm by reason of inappropriateness. I therefore attach the condition argument very limited weight in these appeals.

[16] Source of quote: paragraph 4.18 of the grounds of appeal.
[17] See pages 6 and 7 of both of the Committee reports on application Nos 16/P/1455/F and 16/P/1486/F.

37. Finally, whilst the Appellants say that the Council has cited previous appeal decisions, in fact no appeal decisions have been produced. There is some analysis of the outcome of previous appeal decisions, but that is not the same thing. It is not my role to go searching for any of the decisions that have been alluded to. On this basis I attach extremely limited weight to the partial and unsupported analysis of those decisions in the overall balancing exercise.

Balancing exercise and overall conclusion on the deemed application

38. I conclude that no considerations of sufficient weight exist that amount, either individually or cumulatively, to the very special circumstances that are required to clearly outweigh the harm by reason of inappropriateness, to which, in accordance with paragraph 88 of the Framework, substantial weight should be given, and the other identified harm. For these reasons, having regard to all other matters raised, I conclude that there are no considerations sufficient to clearly outweigh the policy harm and the identified conflict with DP Policies. In these circumstances, for the reasons given above and having regard to all other matters raised in the representations I conclude overall that the ground (a) appeal, the deemed planning application, should fail.

Ground (f)

39. Paragraph 5 of the notice sets down 4 requirements but they are not numbered and I consider it would be appropriate to vary the notice so as to number them sequentially. This would allow a variation that is agreed to be necessary and another that I consider to be necessary to be more easily identified.

40. It is common ground between the parties that the second requirement, or (ii) as I intend to number it, should be varied so as to make clear that the vehicles that have to be removed are those unconnected with the agricultural use. Since the second requirement is excessive at the moment and no injustice would be caused to either party I shall vary the notice as sought.

41. The other argument under this head is that the Appellants claim that reseeding with grass is excessive because grass seed would be an unreasonable expense. Given the timing of this decision and the period for compliance, which I deal with below, the final cessation of any use is likely to coincide with the spring when grass is likely to be growing and the actual cost of grass seed is minimal.

42. The Appellants have provided images from Google Earth which suggest that the land was last in agricultural use as a ploughed field. However no certificate of authenticity has been provided to support the claim that the photograph was taken on 9 September 2014. In any event, adopting the balance of probability, I think it less than probable that this was the condition of the land when the use commenced and vehicles unconnected with the agricultural use were first parked on the land. My view that one is not going to park cars of customers who have flown on holiday for a week on a ploughed field is reinforced by the fact that vehicles appear to have been removed recently precisely because of the adverse ground conditions over winter. It stands to reason, as a matter of common sense, that this was not the condition of the land before the breach.

43. My view in this matter is confirmed by the Council's photographs, borne out by what I saw during my site inspection. Away from the main tracks, where grass has been worn away by constant use, the areas on which car parking has taken place retain grass. This is consistent with my view that this was the condition of the field prior to the breach and so the fourth requirement is not excessive.

44. I would add however that the Council's underlying objective is to require the cessation of the parking use. Although the notice is correct in not specifying that the land must positively be used for agriculture I have no doubt that the Council would be very happy to see the land used for a legitimate agricultural use. So, and I reflect this in my consideration of the period for compliance below, if the Appellants want to avoid the cost of grass seed there can be no objection to them ploughing the field and thereafter planting a crop. Such a legitimate agricultural use would necessarily mean that the land could not be used for the parking of vehicles unconnected with agriculture. However the notice does not need to spell out that which is obvious. Resumption of the lawful agricultural use is however positively encouraged at the first opportunity.

45. In the circumstances, subject to the variation that is agreed to be necessary, I conclude that no reason is advanced as to why the requirements of the notice exceed what is necessary to remedy the breach, which is the limited scope of the ground (f) appeal in this case. As such, this ground of appeal must fail.

Ground (g)

46. The Council's email dated 23 January 2017 says the vehicles were removed from the land in December 2016, which is consistent with my observations at the site inspection. The Appellants' argument that additional time is required to rearrange pre-booked vehicles and, potentially, cancel advance bookings have no substance in that context. If, despite the ground conditions and in full knowledge of this impending appeal decision, the Appellants have subsequently brought vehicles onto the land they have nobody to blame but themselves. In any event as I have already noted the Appellants appear to have an alternative site available and so 14 days to move any cars now on this site is adequate.

47. I appreciate that the Appellants seek to make a distinction between the use for car parking and the required remedial works and, in the event that such a use has resumed, an additional period is appropriate. The Appellants suggest that a suitably qualified contractor might be required to carry out the works and that time such be factored in both to ensure that they are available and to allow for any adverse weather that might affect the condition of the land. In my view allowing a further 14-days after the cessation of any use for the required works is a reasonable period that should allow for all eventualities. It might allow for grass to get established before livestock or other agricultural use is resumed.

48. For these reasons the ground (g) will succeed to this limited extent and the notice will be varied to allow an additional 14 days to comply with the third and fourth requirements of the notice, to remove the tracks and reseed with grass.

Conclusion

49. For the reasons given, and having regard to all other matters raised, I conclude that the appeals should be dismissed and I shall uphold the varied enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew

INSPECTOR