
Appeal Decision

Site visit made on 9 January 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 3 February 2017

Appeal Ref: APP/P1805/C/16/3160515

Land at Burcot Garden Centre, 354 Alcester Road, Burcot, Bromsgrove, Worcestershire B60 1PW

- 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 Neil Gow against an enforcement notice issued by Bromsgrove District Council.
- The enforcement notice was issued on 19 September 2016.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of part of the Land, in the approximate position shown hatched blue on the attached plan, from a car park to an area for the storage, parking and display of motor vehicles in connection with the business of motor vehicle sales "the unauthorised development".
- The requirements of the notice are:
 1. Cease the using any part of the Land for the storage, parking or display of motor vehicles in connection with the business of motor vehicle sales.
 2. Remove all motor vehicles stored, parked or displayed on the Land in connection with the business of motor vehicle sales.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation.

The Enforcement Notice

1. Although the Land to which the notice relates is identified in paragraph 2 of the notice and edged red on the accompanying plan; the Council has not alleged a change of the whole of the Land to, say, a mixed use of garden centre and motor vehicle sales. Rather it has alleged a material change of only the small area hatched blue for the parking, storage and display of motor vehicles in connection with a motor vehicle sales business. The requirements of the notice can go no further than remedying the breach alleged. It would therefore be excessive to require the cessation of use of any part of the Land for motor vehicles sales as that is not what has been alleged. I do not consider that there would be injustice to any party in correcting the requirements so that they address only the allegation particularly as both parties refer only to the area of land hatched blue in their submissions. I shall therefore correct the notice accordingly.
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The appeal on ground (a)

Main Issues

2. The appeal site is an area of land which forms part of the car park at Burcot Garden Centre. The site lies within the Green Belt thus, the main issues are:
 - i) Whether or not the development represents inappropriate development in the Green Belt, for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - ii) The effect of the development on the openness of the Green Belt and the character and appearance of the area; and
 - iii) If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate development in the Green Belt

3. Policy DS2 of the Bromsgrove District Local Plan (2004) (Local Plan) seeks to restrict the construction of new buildings or the change of use of existing buildings in the Green Belt except in very special circumstances unless it falls within one of the instances listed. This policy predates the Framework which was introduced in 2012 and is not entirely consistent with it. Accordingly it carries limited weight in the consideration of this appeal.
4. As the appeal development involves the material change of use of land, it cannot be considered as the re-use of a rural building as suggested by the appellant. Consequently, Local Plan Policy C27 which seeks to control the re-use or adaption of existing rural buildings for alternative uses in the Green Belt is not applicable in this particular case.
5. The Council has drawn my attention to Policy BDP4 of the Emerging Bromsgrove District Plan (BDP) which sets out the circumstances in which development in the Green Belt would not be inappropriate. The Council indicate that the BDP is at an advanced stage and should be afforded substantial weight. Although this plan has been subject to examination it has yet to be adopted. Thus, although this policy is a material consideration it does not have full weight.
6. The Framework states that all proposals for development in the Green Belt should be treated as inappropriate, and thus should be approved only if very special circumstances exist, unless they come within one of the categories in the closed list of exceptions in either paragraph 89 or 90 of the Framework. Proposals comprising material changes of use do not come within either of those paragraphs, and thus are inappropriate development. Inappropriate development is, by definition harmful to the Green Belt and paragraph 88 of the Framework indicates that substantial weight is to be given to any harm to the Green Belt.

Openness

7. The Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
8. Openness in a Green Belt context can be taken to mean an absence of visible development or manifestation of use. In relation to the garden centre parking, customers and other visitors park their vehicles for a short period of time whilst visiting the garden centre. The vehicles in connection with the business are there for a different purpose – the purpose of selling cars. A use for car sales is materially different from a use as a car park in connection with the garden centre as it has different consequences in relation to the appearance of the land, the type and amount of activity within it and the amount of traffic generated. Albeit less than 10% of the car parking spaces are used in connection with the motor vehicles sales business, those vehicles which are for sale are likely to remain on the land once the garden centre has closed. Thus, the use of the land for the storage, parking and display of motor vehicles in connection with the business of motor vehicle sales has a greater impact on openness than the use as a garden centre car park. Such a use results in a loss of openness albeit minimal which adds to the harm to the Green Belt found by reason of inappropriateness.
9. Notwithstanding my findings in relation to Local Plan Policy DS2, as set out above, its requirements would nonetheless not have been met because the development does not preserve openness. Similarly the requirements of Policy BDP4.4 of the emerging plan would not be met. This reinforces my conclusion in relation to the first part of the issue, that the material change of use for the storage, parking and display of motor vehicles in connection with the business of motor vehicle sales is inappropriate development.

Character and appearance

10. The appellant argues that the area where the motor vehicle sale business is located was previously used for the storage of “junk and rubbish” and has now been tidied up. Be that as it may, for the reasons above, the vehicles parked, stored and displayed in connection with the motor vehicle sales business alter the character and appearance of the land to a harmful degree. According to the Framework substantial weight has to be given to any harm to the Green Belt.

Other considerations

11. I note the appellant’s comments regarding the perceived loss of the opportunity to apply for planning permission and thus the opportunity to agree planning conditions if necessary. The purpose of an appeal under ground (a) is to look at the planning merits of a case, which I have done here. I consider that the imposition of planning conditions or restrictions imposed by means of an agreement between the appellant and the business operator of the motor vehicle sales business would not overcome the harm caused by virtue of inappropriateness and the resulting loss of openness.
12. The appellant’s submissions refer to sites within the village which cause significant harm to their neighbours and the environment. I have not been provided with the circumstances of these particularly sites and do not know if

they are directly comparable with the appeal before me. In any event, each case falls to be considered on its own merits and harmful uses elsewhere do not provide justification for another at the appeal site. Thus, I afford this matter little weight.

13. I have had regard to the letters of support from a number of local residents. None of these are sufficient to overcome the identified harm. Thus, I afford these letters limited weight.
14. I have identified that the use of the land for the storage, parking and display of motor vehicles in connection with the business of motor vehicle sales is inappropriate development in the Green Belt which is harmful by definition. In addition, there is, albeit limited, a loss of openness. Moreover, the development is harmful to the character and appearance of the area. These matters carry substantial weight.
15. On the other hand the appeal site has been cleaned up and the motor vehicle sales business has some economic benefit. These matters attract moderate weight.
16. Taking into account all considerations weighing in favour of the development, I find nothing, whether looked at individually or cumulatively, sufficient to clearly outweigh the totality of the harm which is the test they have to meet. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.

Conclusion

17. For the above reasons, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

18. Section 173 of the 1990 Act sets out what the contents and effect of an enforcement notice should be. Sub-section 4 explains what purposes the steps specified in an enforcement notice can seek to achieve. In this case the steps specified (as proposed to be corrected) require the use of the hatched land for the storage, parking and display of motor vehicles in connection with the business of motor vehicle sales to cease and all motor vehicles stored, parked or displayed in connection with that business to be removed. The purpose of the notice therefore, is to remedy the breach of planning control that has occurred.
19. In his submissions under ground (f) the appellant makes a number of comments concerning the planning merits of the case. I have addressed these above. I also note the appellant's comments made in relation to the perceived attitude of the Council but this is not a matter that is determinative to the appeal.
20. In order to remedy the breach of planning control, it is not excessive to require the use of the hatched land for the storage, parking and display of motor vehicles in connection with the business of motor vehicle sales to cease and the vehicles to be removed. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

21. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The appellant seeks 6 months in order to relocate the business or failing that to close it down. The Council considers that a month is sufficient time to remove the vehicles.
22. In my view one month is a particularly short time to look for alternative business premises and I consider that six months would be more reasonable. I therefore consider that the period for compliance with the notice should be increased to six months and the appeal on ground (g) should succeed.

Formal Decision

23. It is directed that the enforcement notice be corrected by deleting step 1 and 2 of paragraph 5 and substituting therefor "cease using the area of land in the approximate position shown hatched blue on the attached plan, for the storage, parking and display of motor vehicles in connection with the business of motor vehicle sales and remove all motor vehicles associated with that use".
24. It is directed that the enforcement notice be varied by the deletion of the words "1 month" and the substitution therefor of the words "6 months" as the time for compliance.
25. Subject to the above correction and variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR