
Appeal Decisions

Site visit made on 26 January 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 20 March 2017

Appeal A Ref: APP/P0119/C/16/3158518

Appeal B Ref: APP/P0119/C/16/3157815

Land at The Car Wash, 78 Gloucester Road, Almondsbury

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Christopher Booy (Appeal A) and Mr Mohamed Eid Abu Assad (Appeal B) against an enforcement notice issued by South Gloucestershire Council.
- The enforcement notice, numbered COM/13/0641/OD/6, was issued on 15 August 2016.
- The breach of planning control as alleged in the notice is change of use of land from general industrial use (Use Class B2) to hand car wash use (Sui Generis) without the benefit of planning permission.
- The requirements of the notice are:
 - Permanently cease the use of the land for hand car washing use and associated activities.
 - Permanently remove all structures, chattels and hand car wash paraphernalia associated with the hand car wash including white canopy and large portacabin.
- The period for compliance with the requirements is three month.
- Appeal A 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.
- Appeal B is proceeding on the grounds (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a variation.

Application for costs

1. Appeal A - An application for costs was made by South Gloucestershire Council against Mr Christopher Booy. This application is the subject of a separate Decision.
2. Appeal A - An application for costs was made by Mr Christopher Booy against South Gloucestershire Council. This application is the subject of a separate Decision.

The Site and its Planning History

3. The appeal site lies at the rear of 78 Gloucester Road which is a small industrial estate. The car wash operates outside a building used by a tyre business. The appeal site is located within an area of open countryside within the Bristol and Bath Green Belt.
 4. The building used by the tyre business was granted planning permission Ref: PT06/2473/F for a *"change of use of rear section of building from Class B8*
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(storage and distribution) to Class B2 (general industrial)” dated 27 November 2006. This permission was subject to a number of conditions one of which restricted all permitted activities to take place inside the building only.

5. The planning history of the appeal site includes a planning refusal Ref: PT14/3002/F for a *“change of use of part of the forecourt (Class B2/B8) premises to hand car wash area (Class Sui Generis)”* dated 24 September 2014. A subsequent appeal against this refusal was dismissed in May 2015.¹ An enforcement notice was issued in relation to this operation ref: COM/13/0641/OD/2. The notice was subsequently complied with and the car wash relocated from the front of the industrial estate to the present appeal site.

Appeal A on ground (a)

Main Issues

6. 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;
 - iii) The effect of the development on the living conditions of neighbouring residents having regard to noise and disturbance; and
 - iv) If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development in the Green Belt

7. The statutory development plan includes the adopted South Gloucestershire Local Plan: Core Strategy 2006-2027 (CS) as well as saved policies of the South Gloucestershire Local Plan (2006) (LP). LP Policy E6 states that development for new employment generating uses will only be permitted if it does not have an unacceptable impact on the environment, traffic generation or on residential amenity. Although, this LP policy predates the Framework which was introduced in 2012 it is consistent with it. Accordingly it carries substantial weight in the consideration of this appeal.
8. Policy CS5 of the CS states that development in the Green Belt will need to comply with the provisions in the Framework or relevant local plan policies in the Core Strategy.
9. The Framework states that all proposals for development in the Green Belt should be treated as inappropriate development, 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

¹ APP/P0119/W/15/3003615.

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

10. 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.
11. Openness in a Green Belt context can be taken to mean an absence of visible development or manifestation of use. The use of the land for car washing is materially different from the previous B2/B8 use 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. In addition, the car wash facility includes a canopy structure which forms a covered space and a portacabin for office/welfare use. These are substantial structures on an area of land where none existed previously.
12. The appellant argues that the site has a long standing existing use and is previously developed land. Bullet point 6 of paragraph 89 of the Framework includes, as an exception 'limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.'
13. The glossary to the Framework describes previously developed land as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. Evidence submitted indicates that the area where the car wash facility is located was used in connection with the adjacent unit as Class B2 (general industrial) and occupied by a tyre and exhaust fitting business. As the former use of the appeal site was ancillary to the B2 unit which is a permanent building, I agree with the appellant that the appeal site constitutes previously developed land.
14. The purposes of the Green Belt are set out in paragraph 80 of the Framework. Amongst other things, the Green Belt serves to assist in safeguarding the countryside from encroachment. Whilst the development does not extend the industrial estate further than its existing limits, it intensifies both the use of the site and the amount of built development on it, albeit the canopy is not of a solid building mass. Although to an extent, the development is shielded from public view, compared to the previous use it has a greater impact on the openness of the Green Belt and the purpose of including land within it. Consequently, because of this greater impact the development does not satisfy the exception found at bullet point 6 of paragraph 89 as suggested by the appellant.
15. Such a use results in a loss of openness, albeit minimal which adds harm to the Green Belt found by reason of inappropriateness. Thus, the use as a car wash conflicts with Policies CS5, CS9 and CS34 of the CS and LP Policy E6 which

amongst other things, seek to protect the designated Green Belt from inappropriate development.

Living conditions

16. The washing of cars takes place adjacent to the common boundary with No 76 Gloucester Road, a residential dwelling set in a generous plot which has a studio building in close proximity to the rear boundary of the appeal site. Whilst residents living next to an industrial estate can reasonably expect noisier living conditions than in a wholly residential area, the representations indicate that their living conditions are unduly harmed by noise and disturbance. The neighbouring resident describes noise from a variety of sources including jet washer, vacuum cleaner, music being played and cars which is intrusive and spoils the enjoyment of the studio. In addition, concerns include disturbance from excessive lighting and chemical and water spray. A seven day a week operation is described with hours that vary from early in the morning to late at night. This includes Sundays when the car wash is likely to be busy and when residents could reasonably expect a quieter environment.
17. I note the appellant's comments that when it was operating at the front of the site, the car wash was closer to the neighbouring dwelling. However, in its current location, due to its close proximity the development has the potential to generate a level of noise which is harmful to the residents' enjoyment of their rear garden and studio outbuilding. This is despite the foam backed boarding and plastic sheeting and intervening vegetation which separates the appeal site from No 76. Moreover, I have been provided with no technical evidence or acoustic data to show that these measures (including the wooden box housing the hoover) are sufficient such that acceptable noise thresholds are not exceeded at specific locations. Thus I cannot be satisfied that the imposition of conditions as suggested could overcome the identified harm to the neighbours' living conditions.
18. I conclude that the development causes considerable harm to the living conditions of neighbouring residents with particular regard to noise and disturbance. It is contrary to LP Policy E6 and one of the core principles of the Framework which seeks to ensure a good standard of amenity for all occupiers of land and buildings.

Other Considerations

19. The appellant's submissions refer to other sites within the Green Belt. I do not know the full circumstances regarding the archery club site and thus do not know if it is directly comparable with the appeal before me. I note from my site visit that the car wash at 94 Gloucester Road is in a prominent location. From all I have seen and read, this site differs from the appeal site in that the nearest residential property is on the opposite side of the road and according to the Council the development involved no new buildings. Moreover, I note that this site is the subject of an enforcement investigation by the Council. In any event, each case falls to be considered on its own merits and uses elsewhere do not provide justification for a car wash at the appeal site. Whether it was expedient to issue the notice is a matter for the Council and is not relevant to the s174 grounds of appeal. Thus, I afford these matters little weight.
20. I have identified that the use of the land for a car wash is inappropriate development in the Green Belt which is harmful by definition. In addition,

there is, albeit limited, a loss of openness. Also, the development is considerably harmful to the living conditions of neighbouring residents having regard to noise and disturbance. These matters carry substantial weight.

21. On the other hand, the Framework at chapter 3 seeks to support economic growth in rural areas. The car wash business provides employment for three or four people and I note from the petition it provides a local service to motorists. These matters attract moderate weight.
22. Taking into account all considerations weighing in favour of the development, I find these other considerations insufficient 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.

Conclusions

23. 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.

Appeals A and B on ground (f)

24. The appeals on ground (f) are that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in Section 173(4)(a) of the Act and are to remedy the breach of planning control (s173(4) (a)) or to remedy injury to amenity (s173(4) (b)). Since the notice requires the hand car washing use and associated activities to cease and the removal of all structures, chattels and hand car wash paraphernalia associated with the car wash use including the white canopy and portacabin, the purpose of the notice is clearly to remedy the breach.
25. The appellants' submissions under ground (f) refer to inappropriateness, the effect on openness and residential amenity. For the reasons above, I have found that the unauthorised use is inappropriate development which results in a loss of openness, and is harmful to the living conditions of neighbouring residents having regard to noise and disturbance.
26. The appellant considers that it is unnecessary to remove the portacabin and canopy because they are not a change of use in their own right and are not visible to the public. That the term 'other paraphernalia' is vague. However, it has been held that it is not excessive to require the removal of all items introduced to facilitate the unauthorised use (whether or not they amounted to development in their own right or whether or not they could have been permitted development) as part of the requirements of the notice. The portacabin, canopy and other paraphernalia were all sited on the land in order to facilitate the unauthorised use. Leaving any of these items would not achieve the purpose of the notice.
27. In order to remedy the breach of planning control, the appellant is best placed to know what 'other paraphernalia' associated with the unauthorised use exists and it is not excessive to require the removal of the portacabin and canopy. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

Appeals A and B on ground (g)

28. The appeals on ground (g) are that the time given to comply with the requirements of the notice is too short. The appellants seek one year to comply with the notice, on the grounds that an alternative site will have to be found. In their submissions the Council refer to one month as being sufficient time to relocate the business. The notice gives a compliance period of three months.
29. Given the harm it is causing the development should not be allowed to continue for any longer than is necessary. I consider that a compliance period of a year would be unnecessarily long. Having regard to the submissions from both parties, I consider a period of six months would represent a more reasonable length of time which would strike the appropriate balance between legitimate interests of enforcing planning control and the interests of the appellants. To that extent, the appeals on ground (g) succeed.

Formal Decision

30. It is directed that the enforcement notice be varied by the deletion of the words "3 month" from paragraph 6 (Time for Compliance) of the notice and the substitution therefor of the words "6 months".
31. **Appeal A** – Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.
32. **Appeal B** – Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR