The Planning Inspectorate

Appeal Decision

Site visit made on 22 February 2017

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 31 March 2017

Appeal Ref: APP/Q4625/W/16/3163356
Storage yard at rear of Rumbush Farm, Rumbush Lane, Earlswood, Solihull B94 5LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Martin Furey of Furey Haulage against the decision of Solihull Metropolitan Borough Council.
- The application ref: PL/2016/00373/COU, dated 1 February 2016, was refused by notice dated 19 May 2016.
- The development proposed is change of use for part of site to HGV parking.

Decision

1. The appeal is dismissed

Preliminary Matters

2. The Council's appeal statement explains there is an error in the reference to the application plan on the refusal notice. It advises the reference should be 'amended location plan received on 27th April 2016' and a copy of the plan has been provided. For the avoidance of any doubt, I have determined the appeal on the basis of that plan.

3. The appellant already uses the site for parking heavy goods vehicles (HGVs), and has done so since 2011, such that the appeal application is retrospective. A covering letter submitted with the application indicates permission is sought for the parking of five HGVs. I have therefore assessed the development on that basis.

4. An application for costs, made by the appellant against the Council, is the subject of a separate decision.

Reasons

Background

5. The appeal site, in the West Midlands Green Belt, is part of an area which appears to have once been a complex of farm buildings, but the land and buildings now host a mix of uses. Planning permissions have been granted for conversion of barns to holiday accommodation (in 2003) and for light industrial and warehouse units (in 2004).

6. A certificate of lawfulness (LDC) granted in 2008 relates to an existing workshop building within the appeal site and to a relatively modest L-shaped external area around two sides of it. In summary the use which is established as lawful by the LDC is use of the building for small-scale general industrial

activities (within Classes B1 and B2[1]) and use of the defined outdoor area for external storage and vehicle parking incidental to use of the building[2]. The various different works/uses listed in the schedule appended to the LDC includes car repairs and spray painting during the period 1995-2006 and, in 2006, "lorry repairs – body work and mechanical work".

7. It is important to clarify that the appeal site is substantially larger than the site identified on the plan appended to the LDC. The appeal site is wider and, in particular, extends much further south-eastwards (to a south-east boundary roughly in line with the south-east end wall of a row of four Class B1/B8 units along the appeal site's south-west boundary). According to the Council there is no planning history for the area within the appeal site but outside the site to which the LDC relates.

8. It is also relevant to note here firstly that the development description refers to change of use of 'part of site'. Whether that is intended to mean the Rumbush Farm site as a whole, or some unspecified part of the application/appeal site, is not explained. Secondly, the appeal application is made only for the HGV parking, which I therefore take to be the primary use of the site, such that the appeal application seeks permission for a change of use of land.

Main issues

9. The **first main issue** is whether or not the use for HGV parking would be inappropriate development in the Green Belt, for the purposes of development plan policy and the *National Planning Policy Framework*. The **second main issue** is the effect of the HGV parking use on the openness of the Green Belt, to the purposes of including land in Green Belt, and on the character and appearance of the surrounding area. If the proposal is found to be inappropriate development, then the **third main issue** is whether the harm arising from inappropriate development and any other harm is clearly outweighed by other considerations, so as to amount to the very special circumstances needed to justify the development.

Whether or not inappropriate development

10. The development plan is normally the starting point for assessing development proposals but Policy P17 (Countryside and Green Belt) of the Solihull Local Plan (LP) (2013) does not address in detail how proposals for development in the Green Belt should be assessed. It states that inappropriate development in the Green Belt will not be permitted except in very special circumstances, and sets out five provisions that will apply "in addition to the national policy" (in the Framework).

11. A change in use of land to HGV parking does not fall within any of the types of development listed in paragraphs 89 and 90 of the *Framework* which are exceptions to the general principle that development in the Green Belt is inappropriate. This is the basis for the Council's finding that the HGV parking use on the site would be inappropriate development in the Green Belt.

12. The appellant relies in part on the fourth of the additional five provisions in LP Policy P17. This states "Where the re-use of buildings or land is proposed, the

[1] Of The Town and Country Planning (Use Classes) Order 1987 (as amended)
[2] In full, the description reads: "The use of the building marked B on the attached plan as a woodworking and engineering shop (including an associated store room, staff tea room and toilet facilities) comprising small-scale general industrial activities (within Classes B1 and B2) in connection with the applicant company's estate needs and as illustrated and described in the schedule appended to this decision notice; ALSO the use of the area marked 'C' on the attached plan for external storage and vehicle parking purposes wholly incidental to the above described use of building 'B'."

new use, and any associated use of land surrounding the building, should not conflict with, nor have a materially greater impact on the openness of the Green Belt and the purposes of including land in it … ". However, even though the Council acknowledges the appeal site is part of a larger area where commercial and industrial uses are established, there is currently no planning permission or LDC in place for a substantial part of the appeal site. Thus there are no clear parameters defining the extent and nature of existing use(s) against which the HGV parking use could be assessed.

13. The appellant cites a High Court judgment (Pertemps[3]) which includes an assessment of LP Policy P17 relative to the *Framework*[4], albeit it focuses mainly on a different provision of Policy P17. The judgment does however find that Policy P17 aligns with national policy in the *Framework* and that its five provisions are not presented as further exceptions in addition to those in *Framework* paragraphs 89 and 90: it could not be consistent with the *Framework* if it expanded the closed lists in those paragraphs. The judge also noted that Policy P17 is not "as clearly drafted as it might have been".

14. The fourth provision of Policy P17 is briefly identified in the Pertemps judgment as relating to "re-use of buildings or land" but (as set out in my paragraph 12 above) it goes on to refer to "any associated use of land surrounding the building". Moreover the explanatory text to LP Policy P17 simply refers to the re-use of permanent and substantial buildings in the Green Belt and to the policy as setting out some additional criteria for re-use of buildings[5]. Moreover the fourth bullet point in paragraph 90 of the *Framework* lists only "the re-use of buildings provided that the buildings are of permanent and substantial construction". I therefore find no sound reason to take this provision of Policy P17 as meaning that re-use of land per se, as proposed in this case, is development which would not be inappropriate in the Green Belt (subject also to the criteria relating to the Green Belt's openness and purposes).

15. I therefore conclude the HGV parking use is inappropriate development in the Green Belt. Such development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Openness and purposes of Green Belt; character and appearance

16. *Openness*: In a Green Belt context openness at its simplest is an absence of built forms and structures. In some circumstances other features of appreciable physical substance can impact on the Green Belt's openness, such as parked vehicles for example, if they are substantial in size and/or number and are permanently or frequently in the same place. As highlighted by the appellant, relatively recent case law[6] confirms there can also be a visual element when assessing openness (albeit it does not follow that a substantial feature will have no impact on openness just because it cannot easily be seen).

17. In this case I understand the appellant uses the site mainly for overnight and weekend parking of HGVs, with the workshop facilitating maintenance. From other information in the appeal documentation and from my site visit it is apparent the appeal site is also used by other parties for the parking of various other vehicles and plant, ranging from private cars, to vans, to large items of plant. At the time of my visit the site's south-eastern boundary was marked by portable mesh fencing and, on the appeal site side, by a row of solid portable

[3] Pertemps Investments Limited v SSCLG & Solihull Metropolitan Borough Council [2015] EWHC 2308 (Admin)
[4] Most notably at paragraphs 27-31 of the judgment
[5] At LP paragraph 11.6.9
[6] John Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

buildings/containers. Beyond the fencing, outside the appeal site, a further surfaced strip of land appears to be a continuation of the parking area for the B1/B8 units 1-4 which sit along the appeal site's south-west boundary.

18. It is a moot point whether just five HGVs parked mainly overnight and at weekends would reduce the Green Belt's openness to any appreciable degree. Bearing in mind also the existing buildings to two sides of the appeal site and a strong tree screen along much of a third side, five HGVs would not have any greater impact on openness than other vehicles and plant which were on the site at the time of my visit. However, from the information before me, it is not clear whether the level of vehicle and plant parking/storage which I saw is lawful or even typical. That applies even though it appears the Council has not investigated any of the other uses or pursued any enforcement actions.

19. The appellant has submitted a series of aerial photographs which are intended to assist in assessing the appeal proposal's impact on the Green Belt's openness against a fallback position of the long-established use of the site. These indicate the existing overall yard area, including the strip along the outer side of the appeal site's south-east boundary, has existed at least since 2005. They are however less helpful in establishing the exact nature and intensity of the various uses of that yard over time. Thus, whilst it appears the yard area has probably been used for, or in connection with, some forms of commercial and/or industrial uses at least since 2005, that continuity of use does not in itself mean the site benefits from an 'unrestricted' mixed commercial use as the appellant maintains.

20. Nonetheless, provided the appellant's use was limited to the parking of up to five HGVs, on balance I find that such a level of use would not materially reduce the Green Belt's openness.

21. *Purposes of including land in Green Belts*: Only one of the five purposes set out in *Framework* paragraph 80 is potentially applicable in this case: that is, to assist in safeguarding the countryside from encroachment. However the appeal site does not encroach into the undeveloped countryside. It does not even extend as far as the south-east boundary of the overall and long-established yard area. I therefore find the use for parking up to five HGVs neither amounts to encroachment into the countryside nor conflicts with any other purpose of including land in Green Belts.

22. *Character and appearance*: I have already described (notably in paragraphs 18 and 21 above) the existing development and/or features around the appeal site boundaries. The resultant relatively enclosed nature of the appeal site is such that it has little appreciable impact on the character or appearance of the wider countryside. Therefore, irrespective of whether or not other uses on the appeal site land are lawful, I find the use for parking up to five HGVs does not harm the character and appearance of the surrounding area.

23. *Conclusion*: For the reasons set out above, in this particular site context I conclude use of the appeal site for parking up to five HGVs does not materially reduce the Green Belt's openness. It does not conflict with the purposes of including land in Green Belts and does not harm the surrounding area's character and appearance.

Other considerations, very special circumstances and conclusions

24. In terms of other impacts, the Parish Council and local residents raise a wide range of concerns including, most notably, traffic and highway safety implications; noise and other types of pollution; resultant impacts on living

conditions in the locality; implications for use of the adjacent public footpath. Several of those concerns are matters for other legislation/agencies and, even if such complaints were found to be justified, it seems likely there would be scope to require any necessary mitigation or improved working practices.

25. Much local concern relates to impacts of increased lorry traffic on the local road network of mainly minor roads, albeit there are very few residential properties immediately adjacent to the appeal site. The officers' report to the Planning Committee and the appellant's statement both refer to major development sites in the wider locality as the most likely explanation for increases in lorry traffic on local roads. No substantive evidence of the appellant's vehicles causing highway safety problems or harm to living conditions has been submitted. Moreover matters affecting public highways, such as speeding or damage to verges for example, again are for other agencies to address (and I note here that the Highway Authority has not objected to the appeal proposal). I find it very unlikely that just five HGVs, usually leaving in the early morning and returning in the evening, would cause material harm to highway safety or living conditions. I therefore give little weight to any of these matters as considerations weighing against the appeal proposal.

26. A lack of harm in terms of the Green Belt's openness, the purposes of including land in Green Belts, and the surrounding area's character and appearance is not a positive consideration in favour of the appeal proposal. It is simply a neutral factor, which does not weigh for or against the proposal.

27. Turning to considerations in support of the proposal, the appellant relies in part on the fallback position that, even if this appeal is dismissed, other similar uses will continue to operate on the site. However, my paragraph 19 above explains why it is not clear or certain that the site benefits from an 'unrestricted' mixed commercial use. Thus it is not necessarily certain that similar uses will continue to operate, and I therefore give little weight to this consideration.

28. The appellant also highlights the economic and social benefits of supporting a small business which provides employment and an important service to the construction, utility and road surfacing industries by transporting materials and equipment. The *Framework* and LP Policy P3 (Provision of Land for General Business and Premises) also support sustainable economic development, in the right places. However one requirement of LP Policy P3 is, in effect, that a proposal should be compliant with Green Belt policy, and I have found the use for HGV parking to be inappropriate development in the Green Belt. I therefore give only modest weight to the appeal proposal's economic and social benefits in this particular case.

29. The *Framework* establishes that substantial weight should be given to any harm to the Green Belt. Therefore, notwithstanding the lack of harm in terms of the openness and purposes of the Green Belt and the character and appearance of the surrounding area, the appeal proposal causes substantial harm because it is inappropriate development in the Green Belt. Neither the matters set out above nor any other matter raised amount to considerations sufficient to clearly outweigh that substantial harm. Thus the very special circumstances necessary to justify the development do not exist. The proposal would conflict with the development plan and with the *Framework* and I therefore conclude the appeal must fail.

Jane Miles

INSPECTOR