

Appeal Decision

Site visit made on 30 May 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 07 June 2017

Appeal Ref: APP/H2265/C/16/3165166

Stubblesdown, London Road, Addington, West Malling ME19 5AL

- 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 L Bowler against an enforcement notice issued by Tonbridge and Malling Borough Council.
 - The enforcement notice was issued on 18 October 2016.
 - The breach of planning control as alleged in the notice is the unauthorised change in use from residential to mixed residential and commercial car sales business.
 - The requirements of the notice are to cease the unauthorised use of the site for commercial car sales and to remove any vehicles for sale from the land.
 - The period for compliance with the requirements is one calendar month.
 - The appeal is proceeding on grounds (a) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed. See formal decision below.

Background information

2. The appeal site is located on the south side of the A20 London Road and slopes down to the road with the dwelling house on the higher ground. The part of the site which is used for car sales is immediately adjacent to the highway and a steep driveway leads past this and up to the house. The site lies within the Metropolitan Green Belt (MGB). At the time of my visit there were three cars advertised for sale on the frontage site. As part of my inspection I drove past the site in both directions and noted that it was more prominent when travelling from west to east along the road.
3. The potential change of use of the site has been investigated in the past and it was then indicated by the owner that the sales were private as opposed to commercial sales. In 2014 a Planning Contravention Notice (PCN) was issued and it was once again indicated that no trade or business operated from the site.
4. Following further inspections and meetings between the Council and the appellant it was established that the appellant had been dealing in second hand goods from the site, including the sale of cars. It was claimed that the use had been occurring for a ten year period. However, the Kent Trading Standards records only showed a business use being registered in 2008. Consequently the mixed use of the site was not immune from enforcement action.

The appeal on ground (a)

5. The main issues in this appeal are as follows:
 - whether the mixed use of the land is inappropriate development in the Metropolitan Green Belt for the purposes of the National Planning Policy Framework (NPPF) and development plan policy;

- the effect of the development on the openness of the Green Belt;
- the effect on the character and appearance of the area and,
- if the proposal does represent 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 the development within the Green Belt.

6. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990).

7. The relevant policies in this case are Policy CP4 of The Tonbridge and Malling Core Strategy (TMBCS) and Policy SQ1 of the Managing Development and the Environment DPD (MDEDPD). The NPPF is a major material consideration and I have had regard to the relevant policies relating to the Green Belt and the conservation and enhancement of the natural environment. I have also taken into account relevant guidance in Planning Practice Guidance (PPG)

Whether the use constitutes inappropriate development in the Green Belt

8. On behalf of the appellant it is contended that the mixed residential and car sales use of the land is not inappropriate development within the MGB. In support of this contention, reference is made to a number of commercial businesses which operate in the immediate locality. During my site visit I was able to view the 'Jungle Café' and the large car dealership a short distance to the west. The low level nature of car sales and the acceptance of restrictive conditions on numbers are also stressed.

9. However, the use of land for car sales is not one of the exceptions set out in paragraph 89 of the NPPF. Nor is it included in the other forms of development set out in paragraph 90 which are not inappropriate. Irrespective of the fact that there are similar uses within this part of the MGB, this new mixed use does not fall within the scope of paragraphs 89 and 90 and must, therefore, be inappropriate.

10. Paragraph 87 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

The effect of the development on the openness of the Green Belt

11. There is no definition of openness in the NPPF but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. The essential characteristics of Green Belt are their openness and their permanence. One of the purposes of the Green Belt is to keep land permanently open.

12. In this case it is argued that any impact on openness through the parking of vehicles for sale is no different to the parking of an unlimited number of cars associated with any single household. It has been suggested that a condition restricting the number of cars for sale to 4 could be imposed and that this will limit the impact on openness.

13. Having inspected the site I can, to a certain extent understand, this argument. However, there is a fundamental difference in how cars for sale and cars associated with the residential use, will impact on the openness of the MGB. The cars for sale, even if restricted to 3 or 4, are likely to be grouped together on the part of the land close to the highway. The whole purpose of their positioning is to make it clear that

there are cars for sale at this location. Given any necessary advertising/pricing of vehicles, (even when restricted to signage on just the vehicles) this area of land is, in my view perceived as a small commercial site in front of the residential property. It definitely has different characteristics to cars parked for residential purposes and, in my view, detracts from the openness of the MGB.

The effect on the character and appearance of the area

14. Having seen the whole of the immediate area from near and distant viewpoints, I acknowledge that there are other commercial uses close by. However, this part of London Road is also characterised by residential properties and stretches of woodland. The introduction of a commercial sales element detracts from the character and appearance of the area. The existing commercial uses clearly relate to historic uses and there is no evidence before me to suggest that recent commercial uses have been granted permission along this part of London Road and within the MGB.

15. The mixed use in this particular location does not, therefore, respect the site and its surroundings and neither does it protect, conserve or enhance the character and local distinctiveness of the area. In my view, it causes noticeable visual harm to this part of Addington. I agree with the Council that it is contrary to Policy CP24 of the TMBCS and to Policy SQ1 of the MDEDPD. It is also contrary to the NPPF policies relating to development within the Green Belt and policies which seek to conserve and enhance the natural environment. It does not, therefore, constitute sustainable development.

Whether there are very special circumstances to justify the development

16. I have concluded above that the development is inappropriate and thus it is harmful in principle to the Green Belt. I have also found harm to openness and to the character and appearance of this part of the MGB. In accordance with paragraph 87 of the NPPF permission can only be granted for this mixed use if the overall harm caused is outweighed by other considerations. If there are such considerations then the very special circumstances necessary to allow development in the MGB would exist.

17. In this case the other considerations put forward on behalf of the appellant relate mainly to the existing uses in the locality (including car sales and the Jungle Café) the fact that there is no external signage or lighting and that the use is hardly different to residential parking. These points in my view do not carry sufficient weight to overcome the harm in principle to the MGB and the other harm which I have identified above. The very special circumstances required to justify development do not therefore exist and the appeal must fail on ground (a). Planning permission is not granted on the deemed application.

The appeal on ground (g)

18. It is contended that one month falls short of what should reasonably be required to comply with the notice. However, I disagree. I acknowledge that car sales can take some time to complete but there is nothing to stop the sale cars from being moved (driven away) from the frontage site. As indicated by the Council all that is required is for the appellant to stop selling cars from any part of the land and to remove any sales cars. A period of one month is adequate in my view and in any case the appellant would not be precluded from storing the vehicles elsewhere until final sales have been completed. The appeal also fails, therefore on ground (g).

Other Matters

19. I acknowledge that a commercial use such as this could benefit the rural economy and that the NPPF seeks to achieve a balance between protecting intrinsic landscape

value and the quality of an area with accommodating development and change. However, in this the case, the harm caused to the environment and the MGB significantly outweighs any other material benefits of the mixed use.

20. In reaching my decision I have taken into account all of the other matters raised by the Council and on behalf of the appellant. These include the planning history; the site and its surroundings; the planning considerations put forward in support of the change of use and all other points covered in the statements and grounds of appeal. However, none of these carries sufficient weight to alter my conclusions on the main points at issue and the grounds of appeal. Nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Formal decision

21. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused for the application deemed to have been made under section 177(5) of the Act as amended.

Anthony J Wharton

Inspector