
Appeal Decisions

Site visit made on 3 July 2018

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 22 August 2018

Appeal A: Appeal Ref: APP/N1920/W/17/3181947;

Land at Wyevale Garden Centre, Dancers Hill Road, Bentley Heath, Barnet, EN5 4RR.

- 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 GFL Management & Wyevale GC against an enforcement notice issued by Hertsmere Borough Council.
- The notice was issued on 17 July 2017.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use to a mixed use as Garden Centre and car wash facility, including the erection of associated buildings and structures, canopy, fencing and wash screens, the siting of a shipping container and the installation of hardstanding ('the unauthorised change of use and development').
- The requirements of the notice are 1. Cease the use of the land as a car wash facility; 2. Permanently remove from land, the shipping container; 3. Permanently remove from the land the canopy structure associated with the unauthorised car wash facility; 4. Permanently remove from the land, the structures and buildings associated with the unauthorised car wash facility; 5. Permanently remove from the land the fencing associated with the unauthorised car wash facility; 6. Permanently remove from the land the wash screens associated with the unauthorised car wash facility; 7. Remove the unauthorised hardstanding shown cross-hatched black on the plan attached to the notice; 8. Permanently remove all associated advertising material and all paraphernalia associated with the unauthorised use.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out in the Formal Decision.

Appeal B Ref : APP/N1920/W/17/3185956

Land at Wyevale Garden Centre, Dancers Hill Road, Bentley Heath, Barnet, EN5 4RR.

- 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 GFL Management & Wyevale GC against the decision of Hertsmere District Council.
- The application Ref 17/1392/FUL, dated 9 September 2017, was refused by notice dated

22 September 2017.

- The development proposed is the change of use of part of overflow car park to hand car wash to include double canopy, wash screens, 1.6m high fence, a timber customer waiting cabin, a chemical container, an office/rest room and associated hardstanding for a temporary period of 2 years.

Summary of Decision: the appeal is dismissed

Application for costs

1. The Council has made an application for a partial award of costs against the Appellant. This is the subject of a separate decision.

Preliminary Matters

2. Late evidence was submitted by the Appellant concerning the date the container was brought onto the site and moved to its current position. But as there is no ground (d) appeal before me and no representations from the Council on this issue I shall not consider this matter as within the remit of this appeal.
3. The Council issued the enforcement notice before the time to determine the planning application had expired. Accordingly, there is no enforcement notice ground (a) appeal.
4. Since the issue of the notice on 24 July 2018 the revised National Planning Policy Framework (the Framework) came into force. I shall take into account the revised Framework as a material planning consideration in the determination of these appeals, including the representations on the Framework received from the Appellant.

Appeal B

Main Issues

5. The appeal site is within the Green Belt and so the main issues are;
 - Whether the development amounts to inappropriate development in the Green Belt for the purposes of the Framework and development plan policy;
 - Its effect on the openness of the Green Belt; and
 - If the scheme is inappropriate development whether the harm caused 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.

Inappropriateness

6. The appeal site is a large commercial garden centre located within the Metropolitan Green Belt. The application is for development already carried out, namely the change of use of part of overflow car park to hand car wash to include double canopy, wash screens, 1.6m high fence, a timber customer waiting cabin, a chemical container, an office/rest room and associated hardstanding. The car wash facility is located on a section of the garden centre car park to the northeast of the main car park. The surrounding area is semi-

- rural in character with a mix of retail, agriculture, residential and public house uses.
7. The car wash facility occupies a distinct area of land formerly an overflow car parking area of the garden centre. It is not physically separated from the remainder of the parking area. It is accessed via the entrance into the main garden centre.
 8. Great importance is attached to Green Belts. The fundamental aim of Green belt policy is to prevent urban sprawl by keeping land permanently open. The Framework sets out the purposes of Green Belts and measures for their protection. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, which 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.
 9. The development plan (including the Hertsmere Local Plan, Core Strategy and Site Allocations and Development Management Policies (the DMP)) reaffirms the presumption against inappropriate development within the Green Belt. Policy CS13 of the Core Strategy mirrors the Framework and provides that inappropriate development will not be permitted in the Green Belt unless very special circumstances exist. Policy SADM26 of the DMP provides that the scale, height and bulk of development should be sympathetic to, and compatible with, its landscape setting and not be harmful to the openness of the Green Belt.
 10. The appeal concerns a change of use. Paragraph 146 of the Framework provides that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land in it. One such form of development is material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). Another is engineering operations. I shall therefore apply the test of openness to the change of use and hardstanding the subject of this appeal.
 11. The Framework establishes that the construction of new buildings are inappropriate in the Green Belt unless they fall within exceptions detailed in paragraph 145 of the Framework. The Appellant argues that the operational development the subject of the appeal falls within this paragraph and is therefore not inappropriate development. But the exception in paragraph (g) of paragraph 145 concerning 'limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land) whether redundant or in continuing use (excluding temporary buildings)' is subject to a restriction that it would not have a greater impact on the openness of the Green Belt than the existing development. I shall therefore apply the test of openness to the buildings that facilitate the change of use.

Openness

12. Openness is an essential characteristic of the Green Belt. I find that the parking of vehicles for washing has no greater impact on openness than its former use as an overspill car park and ancillary storage. But the operational development facilitating the car wash operation is multiple and various and although the boundary contains mature trees and vegetation the associated structures and buildings are partially visible from public viewpoints and highly

visible from within the site. The bright green double canopy, wash screens, fence, timber customer waiting cabin, chemical container, office/rest room and associated hardstanding are significant additions to the site which reduce openness. They are more significant in scale and number than would be likely from ancillary use of the car park. I find as a matter of fact and degree that they cause detriment to the openness of the Green Belt. The structures associated with the use of the car wash are not sympathetic and not compatible with the semi-rural landscape setting. They visually dominate their setting. I find that the development has a materially greater impact on the openness of the Green Belt than the previous development.

13. These factors lead me to the view that the development comprises inappropriate development and causes substantial harm to the openness of the Green Belt over and above the existing lawful use of the area contrary to the development plan and the Framework.

Other considerations

14. The development provides employment for additional full time and part time staff and supports the business of the garden centre and the needs of the local semi-rural area. It provides some small scale benefit to the local economy as well as a service for customers. It also has the potential to reduce travel for those customers who would otherwise additionally travel to a car wash at an alternative location, although the benefit is likely to be small in scale.
15. Policy CS22 of the Core Strategy provides that development shall be of a high quality design and appropriate in scale, appearance and function to the local context. The various associated operational development create a visual clutter that detracts from the character and appearance of the surrounding area. The canopies and buildings cover a relatively large area to form a covered space and are bright green in colour. The colour does not in my judgement relate well to the site's setting and causes harm to the character and appearance of the area, although if appropriate I consider that this could be adequately controlled by condition.
16. There are no highway concerns before me. There is no impact on the living conditions of neighbours. Although mentioned in the representations from a third party there is no evidence before me to suggest any drainage or flooding issues.
17. Various appeal decisions have been drawn to my attention. I do not know the particular circumstances of these cases and every application must be considered on its own planning merits. I do not find any of the decisions drawn to my attention to be on all fours with the facts before me in this appeal. My attention is also drawn to various caselaw. But this appeal turns on the application of established caselaw to the facts and there is no dispute concerning the relevant tests to be applied.

Conclusion

18. The development amounts to inappropriate development in the Green Belt. The buildings and structures associated with the change of use create a reduction in openness. In addition there is some harm to the character and appearance of the area. On the other hand the development has some economic benefits. Having considered all of the matters raised in support of the development I

conclude that collectively they do not clearly outweigh the totality of harm that I have identified in relation to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist and development is contrary to the Framework and relevant policies in the development plan, including policy CS22 of the Core Strategy.

19. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the suggested content of conditions proposed by the Appellant. I do not consider that limiting the hours of operation would remedy the identified harm or pass the tests of necessity. I have also considered the grant of planning permission for part of the development but there is no evidence before me that the business would be viable without all of the associated buildings and structures. I note that the Appellant seeks a temporary permission. But as the development is inappropriate the harm to the Green Belt whilst reduced in the case of a temporary permission would still be substantial.
20. Therefore for the reasons given the overall conclusion is that the appeal should be dismissed.

Appeal A

Ground (c)

21. This ground of appeal is that there has not been a breach of planning control. A breach of planning control comprises development without planning permission. Development is defined in section 55 of the 1990 Act (as amended) to include the carrying out of a material change in the use of land or buildings. The onus of proof in this ground of appeal rests on the Appellant and the test of evidence is the balance of probability.
22. The issue in dispute between the parties is whether the use of an area of land as a car wash facility, with its associated operational development, within an overflow car parking area, is ancillary to the primary use of the site as a garden centre which has a lawful Class A1 retail use.
23. An application for a certificate of lawful use or development for the use of the car wash, shipping container, wash screens and fences was dismissed on appeal in June 2017. The Inspector in that appeal concluded that the provision of the car wash with fixed structures and equipment was not ordinarily incidental to the primary retail use of the site.
24. The Appellant presents in this appeal additional evidence not before the Inspector in the earlier appeal, including the numbers of Wyevale garden centres with car wash facilities. It is argued that a car wash is part of the customer experience of supplementary services and attractions that support the primary retail use. A comparison is made with a café in a garden centre and it is argued that to find a car wash in a garden centre car park would not be a surprise to customers. I am advised that the location, hours and type of service is normally decided by the retailer in terms of commercial need and not the contractor.
25. In considering whether there has been a material change of use it is necessary first to consider the appropriate planning unit. In this case the car wash is located on an overflow car parking area for the garden centre. It is not physically separate and shares the same access as the main centre. I find as a

matter of fact and degree that the planning unit in this case comprises the garden centre and its car park as shown edged red on the plan attached to the notice. The lawful use of the planning unit is retail use as a garden centre.

26. It is then necessary to consider whether use as a car wash has a functional relationship with the primary use of the site as a garden centre and moreover whether such a relationship is one that is normally found. I agree with the Inspector in the previous appeal that use as a car wash is not ordinarily incidental to a primary retail use. Whilst it may be part of the Appellant's business model to introduce such services and numbers may be increasing the incidence of car wash services at garden centres is not so widespread as to be an expected service. It may be a convenient use of car parking and convenient for some customers but it is not a use that is normally expected to be found at a garden centre. It is different to the provision of a café which has a functional relationship with the primary retail use in providing refreshment to customers and is a use normally found in a garden centre.
27. I conclude for the reasons given above that the use attacked by the enforcement notice is not ancillary to the primary lawful use of the appeal site. Consequently, the ground (c) appeal does not succeed.

Appeal A

Ground (f) appeal

28. This ground of appeal is whether having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
29. There are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control that has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case the notice provides for the cessation of use and removal of associated development. It therefore seeks to remedy the breach of planning control and no lesser steps would achieve that purpose.
30. The Appellant argues that the notice was served prematurely and that had it not been issued an acceptable proposal might have been found through negotiation. Amendments agreed with other local planning authorities are cited but there is nothing before me to suggest that had there been discussion the results would have been any different in this case.
31. Moreover, no lesser steps are before me and I find no obvious alternative to the steps required by the notice.
32. I conclude that the steps required by the notice are reasonable and uphold the notice. Accordingly the ground (f) appeal does not succeed.

Ground (g) appeal

33. This ground of appeal is that the period for compliance is too short. The notice provides for a three month compliance period. The period for compliance does not commence until the determination of the enforcement notice appeal.
34. I have balanced the competing private and public interests – the public interest in bringing the identified harm to an end without unnecessary delay and the private interest of the Appellant in running the garden centre business. I recognise that some time is needed for the Appellant to reorganise the

business in order to remove the car wash. I consider that five months would strike an appropriate balance and enable the Appellant to take necessary steps to remove the unauthorised development and notify customers.

35. For the reasons given above I conclude that a reasonable period for compliance would be five months and I am varying the notice accordingly before upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

Appeal A Ref: APP/N1920/W/17/3181947

36. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by substitution of five months for the period of compliance. Subject to this variation the enforcement is upheld.

Appeal B: Ref APP/N1902/W/17/3185956

37. The appeal is dismissed.

S. Prail

Inspector