



Appeal Decisions

Hearing Held on 6 August 2019

Site visit made on 6 August 2019

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 3 September 2019

Appeal 1 Ref: APP/A0665/W/17/3181397

Appeal 2 Ref: APP/A0665/W/17/3181400

Red Ensign Service Station, Parkgate Road, Saughall, Chester, CH1 8JS

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against two refusals to grant planning permission.
- The appeals are made by Euro Garages Limited against the decisions of Cheshire West & Chester Council.
- **Appeal 1:** The application Ref: 17/00657/FUL, dated 7 February 2017, was refused by notice dated 25 April 2017.
- The development proposed is the erection of a single storey extension to side of existing shop and alterations to shop front.
- **Appeal 2:** The application Ref: 17/00885/FUL, dated 23 February 2017, was refused by notice dated 25 April 2017.
- The development proposed is a storage container and link to existing shop and timber fencing.

Both appeals were withdrawn during the hearing.

Appeal 3 Ref: APP/A0665/C/18/3196993

Appeal 4 Ref: APP/A0665/C/18/3196994

Red Ensign Service Station, Parkgate Road, Saughall, Chester, CH1 8JS

- 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 Euro Garages Limited against enforcement notices issued by Cheshire West & Chester Council.
- Both enforcement notices were issued on 30 January 2018.
- **Appeal 3:** The breach of planning control as alleged in the notice is without planning permission the erection of a single storey extension to side of the existing shop and alterations to shop front.
- **Appeal 4:** The breach of planning control as alleged in the notice is without planning permission the erection of a storage container and link to existing shop and timber fencing.
- The requirements of each notice are to fully demolish the unauthorised development, remove all foundations and services, remove all resulting materials away from the land and restore the land to its previous condition.
- In each case, the period for compliance with the requirements is six calendar months.
- Each appeal is proceeding on the grounds set out in section 174(2)(a) & (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) in each case, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decisions: The appeals are allowed and the enforcement notices are quashed.

Preliminary Matters

1. Appeals 1 & 2 were the subject of decisions, in a letter issued on 29 November 2017, which were quashed by order of the High Court dated 11 July 2018¹. The development which has actually been built, and which is the subject of enforcement action in Appeals 3 and 4, is substantially similar in scale and form to that which is proposed in Appeals 1 & 2. However, there are minor, but noticeable, differences. The appellants indicated at the hearing that, were they to be successful in all 4 appeals, they would simply retain what has already been built and not implement the schemes in Appeals 1 & 2. Accordingly, they withdrew Appeals 1 & 2 on the understanding by all parties that the principles set out in the High Court judgement would apply equally to Appeals 3 & 4 and that the previous Inspector's underlying reasoning in the 2017 decision letter that was uncontested would be a material consideration. Accordingly, I shall take no further action on Appeals 1 & 2.
2. In relation to Appeals 3 & 4, the plans attached to the notices are rather unclear and it is common ground between the parties that the plans should be corrected to aid clarity. The Council has also suggested variations to the requirements of the notices, again to improve clarity, with which the appellants are content.

Appeals 3 & 4 on ground (a) and the deemed applications

3. The Appeal site is in a rural location within the Green Belt at the junction of two very busy roads, the A540 and the A494. It comprises a petrol filling station with an associated shop building, together with a separate building containing a Starbucks and a Subway shop, with associated car parking. It is common ground that this is all one planning unit.
4. Policy STRAT9 of the Cheshire West and Chester Local Plan (Part One), adopted in 2015, indicates that within the Green Belt, development should be in line with the National Planning Policy Framework (the Framework), which has been revised since the 2017 decision letter and 2018 High Court judgement. It is common ground that Policy STRAT9 should now apply to the revised Framework of 2019.
5. The Council has no objection to the revised shopfront (Appeal 3). Therefore, the main issues in each case are:- i. whether or not the development would be inappropriate in the Green Belt for the purposes of the development plan and the Framework; ii. The effect of the development on the openness of the Green Belt compared to the existing development; and iii. 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 the very special circumstances necessary to justify it.
6. The Framework indicates in para.145 that the construction of new buildings is inappropriate, subject to a number of exceptions. It is accepted that, cumulatively, the proposals would represent disproportionate additions over and above the size of the original building and, as such, the development would not fall within exception 145 c). However, notwithstanding its view that the development harmed the openness of the Green Belt, the Council accepted that it could potentially fall to be considered under exception 145 g), limited

¹ Euro Garages Limited v SSCLG and Cheshire West and Chester Council [2018] EWHC 1753 (ADMIN)

infilling of previously developed land, or exception 146 c) local transport infrastructure which can demonstrate a requirement for a Green Belt location.

7. Turning first to para.145 g), it is common ground that the site should be treated as previously developed land. The extension to the shop has a floor area of some 60m² and would be located on the side of the shop closest to the Starbucks building. The container and link extend from the other side of the shop, up to a fenced compound area formerly used for the LPG storage tanks but now used for bin storage. Given their location and size, it is not in dispute that the developments represent limited infilling.
8. Although this criterion is now omitted from the 2019 Framework in relation to limited infill, I note that the previous Inspector was satisfied that the development would not conflict with any of the purposes of including land within the Green Belt and I have seen no reason to disagree with this view.
9. The appropriateness therefore hinges on whether the development has a greater impact on the openness of the Green Belt than the existing development. Planning Practice Guidance indicates that openness is capable of having both spatial and visual aspects.
10. The parties are agreed that the development would result in an overall site increase of 9.8% in floorspace or 5.19% in volume, very similar figures to those which led the previous Inspector to conclude that, although it could properly be regarded as limited infill, the development had a greater impact on the openness of the Green Belt. Clearly, any infill (however limited) must have a spatial impact on openness. However, the Inspector's approach was criticised by the Court in that she treated any change as having a greater impact on the openness of the Green Belt, rather than considering the impact or harm, if any, wrought by the change. Furthermore, assessing the visual impact must amount to more than whether the development is visible. Overall, it is necessary to consider the impact on the openness of the Green Belt and not just on the site itself.
11. The openness of the Green Belt has already been considerably diminished by the presence of the authorised development on the site, which is very substantial in scale. Neither the shop extension nor the container is large in scale, particularly in relation to the canopies and signage at the site, and neither extends the built form beyond the core of the site into the peripheral areas. In spatial terms, there would inevitably be a slightly greater impact on the openness of the site itself but, given the scale and nature of the structures on site, the impact on the openness of the Green Belt is not in my view harmful.
12. The development is visible from the adjoining highways but in my view not prominent. It is set towards the rear of the site, behind the forecourt of what appears to be a very busy service station, operating 24/7 and with facilities for HGVs as well as cars, vans etc., which often obscure views into the site. The development is dwarfed by the two canopies and the freestanding signage. I accept the Council's point that the canopies are not solid structures and that the shop extension closes to some extent the gap between the two main buildings on site. However, this gap is of limited significance for two reasons. First, it is diminished by the substantial screen fence enclosing the Starbucks outdoor dining area to the rear. Second, the very substantial hedgerow that extends along almost all of the NE and SE boundaries of the site forms a strong visual backstop. It also screens the appeal site from the open fields beyond.

13. Given the above findings, I agree with the previous Inspector that the development would not adversely affect the character and appearance of the site or this part of the Green Belt.
14. Taking all the above factors into account, I conclude that the development does not have a greater impact on the openness of the Green Belt, spatially or visually, compared to the existing development and is therefore not an inappropriate form of development. There is therefore no need to go on to consider the appropriateness of the development under para.146 c) of the Framework.
15. The Council accepted that, should I find the development to be not inappropriate, there was no further harm to be taken into account. There is also no need to take account of any other considerations in support of the development.
16. The presence of the boundary hedgerow is a factor which led to my conclusion and I have considered whether a condition requiring its retention should be imposed. However, it is within the appellants' control and I see no reason why they would wish to remove it or substantially reduce its scale. I therefore find such a condition to be unnecessary.
17. In conclusion, I find the development in both cases accords with Green Belt policy, as set out in the development plan and the Framework. For the reasons given above, I conclude that the appeals on ground (a) should succeed and planning permission will be granted.

Appeals 3 & 4 on ground (f)

18. In the light of my conclusions above, there is no need to go on to consider this ground.

Formal Decisions

Appeal 3

19. It is directed that the enforcement notice be:-

- i. corrected in Part 2 by the deletion of the words "marked with a cross" and the insertion of the words "cross hatched" and by the substitution of Plan 3, attached to this letter, for the plan attached to the notice.
- ii. Varied by the deletion of section 5 and the insertion of "Fully demolish the single storey extension to the side of the shop, remove all foundations and services and remove all resulting materials away from the land."

Subject to the above correction and variation, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single storey extension to the side of the existing shop and alterations to the shop front.

Appeal 4

20. It is directed that the enforcement notice be:-

- iii. corrected in Part 2 by the deletion of the words "marked with a cross" and the insertion of the words "cross hatched" and by the substitution of Plan 4, attached to this letter, for the plan attached to the notice.
- iv. Varied by the deletion of section 5 and the insertion of "Fully demolish the unauthorised development, remove all foundations and services and remove all resulting materials away from the land."

Subject to the above correction and variation, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a storage container and link to existing shop and timber fencing.

B.S.Rogers

Inspector

Appearances

For the Appellants:

Mr K. Leigh of Counsel

Ms S. Jones - Susan Jones Consultancy

Mr T. Jeremiah - Euro Garages Group

For the Council:

Mr S. Holmes - Planning Officer

Ms M. Hewitt - Enforcement Officer

Documents

1. Attendance list
2. Letter dated 6 August 2019 from the appellants, withdrawing Appeals 1 & 2
3. R (oao Matthew Davison) v Elmbridge Borough Council:- HC judgement



Plan: Appeal 3

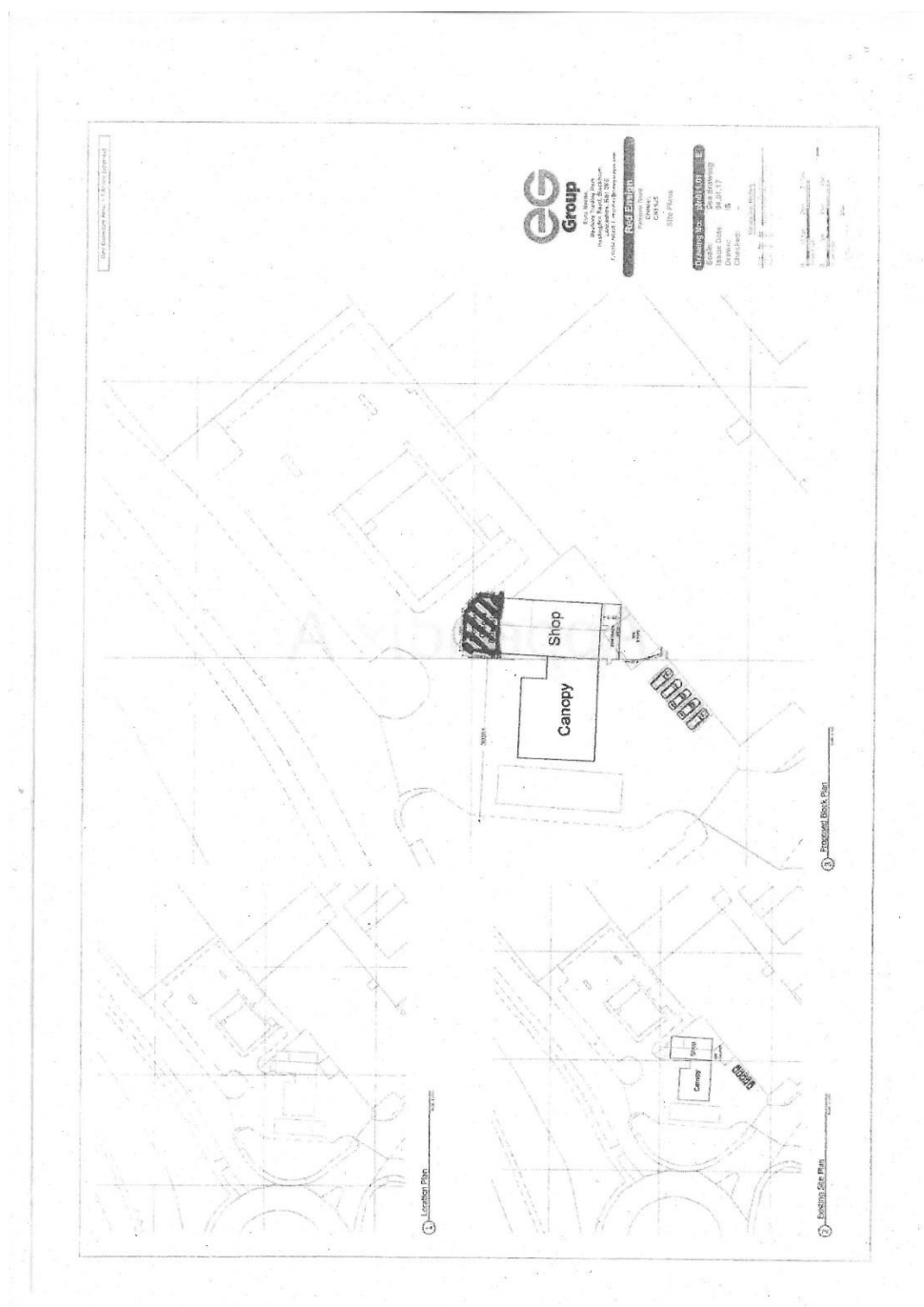
This is the plan referred to in my decision dated: 3 September 2019

by **B.S.Rogers BA(Hons) DipTP MRTPI**

Land at: Red Ensign Service Station, Parkgate Road, Saughall, Chester CH1 8JS

Reference: APP/A0665/C/18/3196993

Scale: nts





Plan: Appeal 4

This is the plan referred to in my decision dated: 3 September 2019

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