



Appeal Decision

Site visit made on 28 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: 10 September 2019

Appeal Ref: APP/R0660/C/19/3220046

Land at Gaw End Lane, Lyme Green, Macclesfield, Cheshire, SK10 0LB

- 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 Cyril Henshaw against an enforcement notice issued by Cheshire East Council.
 - The enforcement notice was issued on 12 December 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the land from agricultural use to a mixed use comprising agricultural and the parking and storage of vehicles and skips not associated with the agricultural use of the land, the formation of an area of hardstanding, the erection of fencing, a gate and the formation of earth bunds.
 - The requirements of the notice are: a) cease the use of the land for parking and storage of vehicles and skips not associated with the agricultural use of the land; b) remove all vehicles and skips not associated with the agricultural use of the land from the land; c) remove the hardstanding shown in the approximate position marked in green on the attached plan marked 'Plan B'; d) remove the earth bunds shown in the approximate position marked in orange on the attached plan marked 'Plan B'; e) remove all fencing and the gate from the site shown in the approximate position marked by a dashed black line on the attached plan marked 'Plan B'; f) remove all resultant materials arising from compliance with c), d) and e) from the land edged red on the plan marked 'Plan A'; g) reinstate the areas of land arising from compliance with c) and d) in topsoil and reseed with grass seed.
 - The period for compliance with the requirements is 3 months for steps a) to f) and 4 months for step g).
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) & (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matter

2. The Council has noticed that pallets of building materials are now being stored on site and have asked whether the notice could be varied to require their removal. Additionally, the Canal & River Trust has suggested an additional requirement be placed to protect the canal from accidental pollution or contamination during remediation. However, I am unable to agree to either suggested variation as it would cause injustice to the appellant, in that he has had no opportunity to respond.

The appeal on ground (a) and the deemed application

3. The appeal site forms part of a larger area which was allocated for the development of 300 homes, plus associated infrastructure, in Policy LPS17 of the Cheshire East Local Plan Strategy (CELP). On the adoption of the CELP in July 2017, the site was removed from the Green Belt. In December 2018, the Council resolved to grant outline planning permission for up to 330 homes, plus associated infrastructure, subject to the completion of a S106 Agreement.
4. The appeal site is extensive in area and largely comprises grassland in agricultural use. The development to which the notice is addressed lies within a roughly triangular area at the western end of the site and is bounded by Gaw End Lane to the south, by the Macclesfield Canal to the north and by open fields to the east. It contains a single storey breeze block barn adjacent to the vehicular access from Gaw End Lane.
5. The canal forms the Macclesfield Canal Conservation Area and the canal bridge (no.46) adjacent to the western tip of the appeal site is Grade II Listed. The canal is now part of the Macclesfield Canal, Gawsorth and Sutton Local Wildlife Site.
6. The main issues in this case are the impact of the development i. on the character and appearance of the area; and ii. on the ecological importance of the area.

Character and Appearance

7. Both the CELP and the saved policies of the Macclesfield Borough Local Plan (MBLP) contain policies which seek to protect the landscape and the setting of designated heritage assets, including Listed Buildings and conservation areas. There is a statutory duty to pay special regard to the desirability of preserving a Listed Building or its setting.
8. The 2010 aerial photograph provided by the Council shows that the developed part of the site was formerly grassland. It is now surfaced with hardcore, enclosed by high, metal fencing and contains in the region of a hundred vehicles, including refuse vehicles, plus a number of skips. The topsoil has been scraped off an area between the hard surface and the canal and earth bunds have been formed to the east and south of the hard surfaced area.
9. The Macclesfield Canal Conservation Area Appraisal and Management Proposals document identifies the stretch of the canal to the north of the appeal site as having important views, which should be respected by any development. It also points to the general importance of green open spaces adjoining the canal. I note that there is an industrial area to the north of the canal along this section but this is well screened by a hedgerow and other vegetation.
10. By way of contrast, I saw that the stored vehicles and the metal fencing on the appeal site are clearly visible and form a harsh and discordant intrusion into the views of the Listed bridge from various points along the canal towpath. They also intrude into the views from the Listed bridge and from within the conservation area, which would previously have been open and agricultural in character. The area of scraped topsoil alongside the canal, although open, appears unnatural and obtrusive.

11. Whilst the harm to the designated heritage assets would be less than substantial, in the terms of the Framework, the courts have made it clear that any such harm must be given considerable importance and weight. This leads me to the conclusion that the development unacceptably harms the setting of the Listed bridge and the Conservation Area, contrary to the aims of the development plan and national policy.
12. It is evident that the appeal site will at some point be developed for housing but Policy LPS17 requires the retention of open space at the western end of the site and a buffer zone of semi-natural habitats adjacent to the canal to be incorporated into the development scheme. The present development appears incompatible with this policy.
13. The appellant has suggested that landscaping between the canal and the hardstanding could mitigate the impact of the development, albeit that there is no detailed scheme before me. However, any such scheme would take a number of years to become established and effective and might not in any event be compatible with the master plan for the future development.
14. It is submitted that the present use might be permitted for a temporary period, given the intended residential development of the site. However, aside from the incompatibility of the present use with Policy LPS17, there is no guarantee that the site will be developed within a reasonably short period of time, for a number of reasons. The Section 106 agreement referred to in para.3 above has yet to be signed. A further 3 years would be allowed for the submission of a reserved matters application. There may be infrastructure issues and other matters to be resolved, affecting the lead-in time before development commences. Even then, development appears likely to start from the eastern end of the site and build rates will depend on variable factors, including market conditions. The continuing harm caused by the development leads me to the view that a temporary permission would not be appropriate.

Ecological matters

15. Policies in the CELP and the MBLP are generally compatible with those in the Framework which seek to protect and enhance sites of biodiversity. Policy LPS17 requires a buffer zone of semi-natural habitats to be provided adjacent to the Macclesfield Canal Site of Biological Importance (now Local Wildlife Site). The excavation of the land, the deposit of hardcore and formation of the hardstanding so close to the canal appears to fly in the face of this policy; it has inhibited the formation of a buffer zone and is likely to have harmed whatever ecological importance the land itself once had.
16. Furthermore, there is no reliable and verified indication of the nature of the deposited materials and the use for the storage of vehicles could give rise to oil or fuel spillage. In such close proximity to a Local Wildlife Site, this gives rise to reasonable concern that the water quality and/or biological significance could be adversely affected.
17. The Framework indicates an onus to demonstrate that a development does not adversely affect the integrity of a habitats site and that, if significant harm to biodiversity resulting from a development cannot be avoided or adequately mitigated, then planning permission should be refused. That to me appears to be the case here. I conclude that the development unacceptably harms the

ecological interest of the area, contrary to the aims of the development plan and national policy.

18. The appeal on ground (a) and the deemed application fail.

The appeal on ground (f)

19. The appellant considers the requirement to remove the hardstanding is unnecessary in that the future housing development will require the use of such materials and/or a secure compound for construction. However, in para.14 above, I have pointed to the likelihood of a considerable delay before the housing development approaches this part of the very extensive site. The presence of the hardstanding is clearly unacceptable and I see no good reason why it should remain here any longer than necessary. Even if a site compound is required in this general locality, it would not be appropriate to locate it here, where it affects the setting of designated heritage assets and harms biodiversity.

20. The appellant has also submitted that Plan B attached to the notice is inaccurate, in that a hardstanding was present in the western tip of the site, between Gaw End Lane and the main gates. The onus is on the appellant to substantiate such a claim, on the balance of probability. However, the only evidence I have seen of the former condition of the land is the aerial photograph of 2010, in which the area in question appears to be grassland. I have been provided with no other evidence. Therefore, I am not persuaded that the plan is inaccurate.

21. The appeal on ground (f) fails.

The appeal on ground (g)

22. The appellant submits that a minimum period of 4 months is required for steps (a) and (b) to source alternative sites for the storage of cars, seek planning permission and to complete purchase or rental agreements. However, it appears that the Council has been proactive in contacting the dealerships whose vehicles are on the site and it appears that the search for alternative storage facilities has been under way for some considerable time. Given the harm resulting from the unauthorised development, I see no good reason why the period for compliance should be extended for steps (a) and (b).

23. The appellant seeks a period of 2 months beyond the date from which the vehicles have to be removed to carry out the site remediation works. However, the notice already provides for a greater period than this. The timescale therefore appears reasonable.

24. The appeal on ground (g) fails.

B.S. Rogers

Inspector