



Appeal Decisions

Site visit made on 10 September 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2019

Appeal A: APP/D2320/C/19/3222158

Land located between and to the rear of 23 and 25 Wigan Lane, Coppull, Chorley PR7 4BN

- 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 Mrs Jane Susan Gaskell against an enforcement notice issued by Chorley Borough Council.
 - The enforcement notice was issued on 11 January 2019.
 - The breach of planning control as alleged in the notice is: The site is being used unlawfully as a storage compound/depot by a civil engineering company with a number of vehicles parked on the land and shipping containers also located there. This amounts to an unauthorised material change in the use of the land.
 - The requirements of the notice are: Cease the use of the site as a compound, vacate the site and restore the Land to its condition before the breach of planning control took place.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/D2320/C/19/3222159

Land located between and to the rear of 23 and 25 Wigan Lane, Coppull, Chorley PR7 4BN

- 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 Philip Henry Gaskell against an enforcement notice issued by Chorley Borough Council.
 - The enforcement notice was issued on 11 January 2019.
 - The breach of planning control as alleged in the notice is: The site is being used unlawfully as a storage compound/depot by a civil engineering company with a number of vehicles parked on the land and shipping containers also located there. This amounts to an unauthorised material change in the use of the land.
 - The requirements of the notice are: Cease the use of the site as a compound, vacate the site and restore the Land to its condition before the breach of planning control took place.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended has lapsed.
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Decisions

APPEALS A and B

1. It is directed that:
 - The enforcement notice be corrected at paragraph 2 by the deletion of the wording of the Land to which this notice relates and substitution with "Land located to the rear of 23 and 25 Wigan Lane, Coppull, Chorley, PR7 4BN as shown cross hatched black on the attached Plan ('the Land')."
 - The enforcement notice be corrected by the deletion of the Plan attached to the notice and its substitution with the Plan attached to this decision.
 - The enforcement notice be corrected at paragraph 3 by the deletion of the wording of the alleged breach of planning control and the substitution of "Without planning permission the material change of use in the Land to use as a storage compound/depot by a civil engineering company, including the parking of vehicles and storage of shipping containers."
 - The enforcement notice be corrected at paragraph 5 by the deletion of the wording "compound, vacate the site" and substituting it with "compound/depot and remove all stored materials, shipping containers, equipment and vehicles"
2. Subject to the corrections above, the appeals are dismissed, and the enforcement notice is upheld.

APPEAL A only

3. Planning permission is refused on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Procedural Matters

4. Appeals A and B seek to proceed on ground (c), where the issue is that those matters stated in the notice which give rise to the alleged breach of planning control, if they occurred, did not constitute a breach of planning control. However, taking into account the evidence submitted by the appellant, it seems to me that the case being argued is that the Land has been used as a storage compound for a continuous period well in excess of 10 years and therefore no enforcement action may be taken. That argument is more relevant to ground (d), where the issue is that at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice). I am satisfied that there would be no injustice to the local planning authority or the appellant if I confine my considerations to ground (d) rather than ground (c), and it is on that basis that I have made my decision.

The Enforcement Notice

5. In the interests of clarity and to be concise, my decision will correct the alleged breach of planning control by deleting the wording in paragraph 3 and substituting it with "The alleged breach of planning control is: Without planning

permission the material change of use in the Land to use as a storage compound/depot by a civil engineering company, including the parking of vehicles and storage of shipping containers.” I am satisfied that this correction does not alter the nature or substance of the alleged breach and would not cause any injustice to either the local planning authority or the appellants.

6. The Land to which the notice relates is shown edged on the attached Plan and includes land located between and to the rear of 23 and 25 Wigan Lane. However, it is clear from the evidence before me and from my observations on site that the land between 23 and 25 Wigan Lane is used for parking with garden plots for the occupiers of neighbouring properties on Wigan Lane. At the time of my visit I observed domestic vehicles parked on established garden plots, separated by hedges and with small sheds, play equipment and planting boxes within them. In addition, this land is physically separated from the alleged storage compound/depot which is located to the rear of the dwellings and demarked from them by a fence and gates.
7. It seems to me that the Land to which the notice refers comprises two separate and clearly distinguishable planning units each with a different use. From the evidence before me the breach of planning control alleged in the notice relates to the Land to the rear of 23 and 25 Wigan Lane and not to the Land in between them which is used for residents’ parking and garden plots. Furthermore, it is clear from the appellants’ evidence that it is the Land to the rear of 23 and 25 Wigan Road to which the deemed application relates and not the residents parking/garden plots, which they state has been let to local residents for many decades.
8. In view of the above, I shall correct the notice by correcting the description of the Land to which this notice relates and the Plan attached to the notice so that it includes only the Land to which the alleged breach refers and the means of access to it. This is a smaller area of land than that identified on the original Plan and consequently I am satisfied that this correction would not result in any injustice to the appellants. In addition, the correction does not alter the intended purpose of the notice and the Council’s evidence is clear that the notice is directed at this reduced area. I am therefore satisfied that the correction would not cause any injustice to the Council.
9. An enforcement notice must tell the recipients what they have done wrong and what they must do to remedy the alleged breach. Taking into account the description of the breach (as corrected), I shall correct the requirements of notice in the interests of clarity by deletion of the wording, “compound, vacate the site” at paragraph 5 and substituting it with “compound/depot and remove all stored materials, shipping containers, equipment and vehicles.” This correction is solely for the purposes of clarity and I am satisfied that it would not cause any injustice to the local planning authority or the appellants.

Appeals A and B: ground (d)

10. In relation to a breach of planning control consisting of a change of use of land no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach (s171B(3)).
11. The main issue is whether the material change of use took place before the 11 January 2009, with the storage compound/depot use, including the parking of vehicles and storage of shipping containers continuing for at least ten years

- thereafter. The onus is on the appellants to prove their case on the balance of probability.
12. The appellants rely on the Affidavits of Mrs Gaskell, their agent and that of the previous landowner, Miss Ford. Miss Ford advises that she inherited the land in 1997 prior to which she is aware that it was used for a number of purposes, including a market garden. As at 1997 the land was let for the purposes of a storage compound/depot in connection with a business of creating, servicing and maintaining car parks. Equipment was stored in sheds, containers and a caravan were also placed on the site and used in connection with the business.
 13. In 2009/10 the site was taken over solely by a landscape gardener/ground worker who had been sharing the compound with the car park business operator. The containers/buildings continued to be used and vehicles and equipment/materials were stored on the site. A photograph taken in 2004 and attached to Mrs Ford's Affidavit shows a caravan and container on the site.
 14. The Land was transferred to the appellants in 2012 and at that time it remained in use by the landscape gardener/ground worker to store his materials and equipment. That use ceased in the first quarter of 2016, following a request from the Council for it to do so. The Council noted that there were materials, a trailer and containers present on the Land and considered at that time that the use as a storage compound/depot was unauthorised (1 December 2015). In 2017, following further complaints regarding the condition of the Land, it was cleared of the remaining materials and the caravan removed.
 15. In August 2017 the Land was leased to an agricultural fencing contractor and tree surgeon for a year and subsequently in September 2018 for use as a ground works and civil engineering compound. At the time of my visit, with the exception of a small open wooded shelter, a bonfire and a single contractor's vehicle, there was no sign of any storage or activity on the site.
 16. The probability is that once the farmstead ceased to be farmed in the 1970's following the compulsory purchase of large areas of it by The Coal Board, the Land which was retained by the landowner was put to use for other purposes. The balance of the evidence demonstrates that the site was used between 1997 and early 2016 as a storage compound and that there were some small structures, containers and a caravan on it during that time. However, the evidence does not throw much light on the nature and extent of any use of the appeal site. Indeed, the aerial photographs submitted as part of the Council's evidence illustrate that there were times during the period from 2000 to 2015 when the land appears vacant. In particular, in 2000 the site appears to be predominantly covered in vegetation and there is no evidence of the site being in use as a storage compound.
 17. I have taken into consideration the Thurrock Borough Council case¹ brought to my attention by the appellants, and there is no dispute that the use must have continued throughout a ten-year period to be immune from enforcement action. If the use is interrupted an appropriate question to ask is whether the local planning authority could have taken enforcement action against the use at that time. The appellants' claim the use to have been taking place since at least 1997. However, the absence of action taken by the Council until 2015

¹ Thurrock BC v SSETR & Holding [2002] EWCA Civ 226

casts doubts on whether or not a material change of use had taken place at all during that time and the possibility that the activity was more casual and intermittent, as opposed to a main use of the land. Indeed, it is clear from the aerial photograph dated 2015 that there was some intensification in the use of the land in 2015 and it was only at that time when the Council considered it necessary to consider enforcement action. In addition, whilst lease agreements have been provided for the period between 2017-2019, I have not been provided with any details of lease agreements or other evidence from the said occupiers of the site that would demonstrate a continued use of the Land as a storage compound/depot during the period from 1997 to 2015.

18. It is clear from the evidence provided by both the appellants and the Council, that in 2017 the Council were satisfied that the Land was clear of all storage items and no longer in use as a storage compound. It is therefore necessary for there to be clear evidence that the site had been in use as a storage compound/depot for a continuous period of 10 years before that time. Even though, as noted in paragraph 9 above, the test from the evidence is on the balance of probability, the lack of clarity on the actual use that may have taken place on the land, its character, extent and continuity make it very difficult for me to conclude that it demonstrates that it is more than likely than not that the use in question had been operating continually for that length of time.
19. The circumstances of this case are such that I am not satisfied that the evidence is sufficiently precise and unambiguous to conclude on the basis of the balance of the probability, that the use in question is immune from enforcement action.
20. I conclude that there has been a breach of planning control and the use has not become lawful due to the passage of time. The appeal on ground (d) does not succeed.

Appeal on ground (a), deemed planning application

Main Issues

21. The main issues in this case are:

- Whether the material change of use would be inappropriate development in the Green Belt;
- The effect on highway safety; and
- If it 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 required to justify the proposal.

Reasons

Inappropriate development

22. The Land is located within the Green Belt and the deemed application is for a storage compound/depot, including the parking of vehicles and storage of shipping containers.
23. Paragraph 146 of the National Planning Policy Framework (the Framework) states that certain forms of development, including material changes in the use

- of land, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
24. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. The Council has not referred to any relevant development plan policies on the control of development in the Green Belt and my decision therefore relies on national planning policy.
25. The appeal site relates to a large area of land situated within an area of predominantly open countryside and to the rear of a cluster of cottages which front onto Wigan Lane (A5106). The Land takes its access from Wigan Lane between Nos. 23 and 25. The site is extensively vegetated with mature trees and shrubs. Within the central part of the site there is an area of cleared land and rough hardstanding which extends from its gated access. Except for a small wooden structure, there are no buildings on the site.
26. Shipping containers have a solid form, and albeit they are not permanent buildings, there is no doubt in my mind that when they are stored on the site their physical presence and bulk form would reduce the openness of the site. Similarly, any other bulk materials stored in the compound, including vehicles and equipment, would further reduce the existing open character of the Land. I appreciate that the vehicles may only be parked within the compound in the evening or at weekends, however at those times alone the openness of the site would not be preserved. Overall, I consider the harm to openness would be moderate.
27. The site area is extensive and its use as a storage compound/depot, including use for parking of vehicles and the storage of shipping containers would not only reduce openness, but also conflict with the one of the green belt purposes of safeguarding the countryside from encroachment.
28. I have taken into account the appellant's claim that the Land is previously developed land (PDL). However, whilst I have not been provided with any evidence that would support that claim, the deemed application in this case is for a material change of use of the land and not for new buildings. The provisions within the Framework for the material change of use of land in the Green Belt does not make any reference to PDL and I therefore give this consideration little weight.
29. I conclude that the material change of use to a storage compound/depot, including the parking of vehicles and storage of shipping containers would not preserve openness and would conflict with the purposes of the Green Belt. It would therefore conflict with paragraph 146 of the Framework and would be inappropriate development in the Green Belt.

The effect on highway safety

30. The site takes access from Wigan Lane (A5160). This access also serves the parking areas for neighbouring residents and a small compound to the rear of No 25. At the point of access Wigan Lane is restricted to 40mph with double white lines in the centre of the road to prevent overtaking. At the time of my visit I noted that there was a steady flow of vehicles along the lane which appeared to be adhering to the speed limit.

31. I have not been provided with any details of the requisite visibility splays for this development. However, it was clear from my site visit, that despite a deep pavement at the point of access, visibility to the left when emerging from the site is restricted, both by vegetation, but also by the alignment of Wigan Lane. Whilst I appreciate that there may not have been any recorded accidents in this location, taking into account the vehicle speeds and restricted emerging visibility, I do not consider that it would be in the best interests of highway safety to intensify the use of this substandard access.
32. In addition, the access to the site is only single vehicle width. Any intensification in the use of the access, which includes use by heavy goods vehicles, would only increase the likelihood of vehicles having to wait in the road to enter the site to allow emerging vehicles to exit it. In those circumstances, given vehicle speeds and the alignment of Wigan Lane, vehicles waiting in the centre of the road where visibility is restricted would have an unacceptable impact on highway safety.
33. I conclude that the use of the site as a storage compound/depot, including the parking of vehicles and storage of shipping containers, would have a harmful effect on highway safety. It would conflict the development plan and in particular with Policy BNE1 of Chorley Local Plan, adopted 2015, which seeks to ensure that new development would not prejudice highway safety. I also find conflict with paragraph 109 of the Framework which advises that development should be refused on highway grounds if there would be unacceptable impact on highway safety.

Other considerations

34. The use of the Land for a storage compound/depot would provide some employment opportunities and therefore bring about some economic benefits to the area. This is a benefit of the proposal to which I attached some weight.

Conclusion

35. The Framework indicates that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. In addition, there are adverse effects on openness and the Green belt purpose of safeguarding the countryside from encroachment. Substantial weight should be given to the harm to Green Belt. I have also found harm to highway safety. The other considerations cited in support of the proposal only carry limited weight and would not clearly outweigh the identified harm to Green Belt. There are no very special circumstances to justify the proposed development, which conflicts with the provisions of the Framework.
36. For the reasons given above and taking into account all other matters raised, I conclude that the appeal on ground (a) must fail.

Appeal on ground (g)

37. The issue is whether the compliance period of 28 days is reasonable. The appellants consider that 28 days is totally inappropriate and insufficient for the company occupying the site and operating their business from it to find and relocate to an alternative location. A period of 12 months is suggested as being more reasonable.

38. From my observations on my site visit and evidence from the Council it is clear that the Land currently has no shipping containers or other materials stored on it. However, I accept that the Land may still be in use for the parking of vehicles. Whilst I appreciate that the operator may have to find other Land/premises to store/park those vehicles, I am also mindful that their lease agreement only extends to 24 September 2019. I am therefore satisfied that the appellant has been clearly aware that he may need to find new premises for some time, and I am satisfied that the compliance period of 28 days is reasonable.

39. The appeal on ground (g) fails.

OVERALL CONCLUSION

40. For the reasons given above and having taken into account of all the other matters raised, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Elizabeth Pleasant

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

Land to the rear of 23 and 25 Wigan Lane, Coppull, Chorley PR7 4BN

Reference: APP/D2320/C/19/3222158 & APP/D2320/C/19/3222159

Scale: Not to Scale

