
Appeal Decision

Site visit made on 24 September 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2019

Appeal Ref: APP/Q4625/W/19/3230932

Depot adjacent to Mayfield, Clock Lane, Bickenhill, Solihull B92 0DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr T Smyth against Solihull Metropolitan Borough Council.
 - The application Ref PL/2019/00395/PPFL, is dated 13 February 2019.
 - The development proposed is the change of use from an extant haulage contracting business and storage of vehicles (including the maintenance and repair of vehicles) to private car parking.
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Decision

1. The appeal is dismissed and planning permission for the change of use from an extant haulage contracting business and storage of vehicles (including the maintenance and repair of vehicles) to private car parking is refused.

Main Issues

2. The Council submitted a statement of case which sets out what would have constituted the reasons for refusal had they been in a position to determine the application.
3. On this basis the main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt, including its effect upon openness, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - Whether the proposal is in a suitable location to provide car parking having regard to local policy;
 - The effect of the proposal in terms of transportation;
 - The effect of the proposal on the living conditions of residents in Clock Lane;
 - The effect of the proposal on the character and appearance of the area, and;
 - If inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

4. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
5. Development within the Green Belt is inappropriate with the exceptions of the types of development listed in Paragraphs 145 and 146 of the Framework. It is the appellant's view that the proposal is not inappropriate by virtue of the exceptions contained in sub paragraph g) of paragraph 145. This allows for new buildings that constitute the limited infilling or the partial or complete redevelopment of previously developed land subject to specified criteria.
6. However, the appeal proposal primarily relates to a change of use of the land and it is not part of the appellant's case that new buildings are proposed. Paragraph 145 of the Framework is prefaced by the explicit reference to the construction of new buildings, and consequently, the sub-paragraphs a-g that follow are exceptions that pertain only to the construction of new buildings and therefore, I cannot agree with the appellant's wider interpretation. As such, the appeal proposal would not fall within the remit of paragraph 145 g).
7. Nevertheless, other specified forms of development are covered by paragraph 146 of the Framework, including paragraph 146 e) which allows for the material change in the use of land. However, the caveat to paragraph 146 e) is that the material change in the use of land should preserve openness and not conflict with the purposes of the Green Belt. This is similar to provisions contained within policy P17 of the Solihull Local Plan, Shaping a Sustainable Future, December 2013 (LP). Planning Practice Guidance confirms that openness is capable of having both spatial and visual aspects.
8. The appeal site comprises a significant area of land to the rear of a residential property known as Mayfield, upon which there is a commercial building and extensive hardstanding surrounded by boundary hedgerows. The hardstanding is generally unlit and does not currently have parking spaces or specific areas marked out. Save for the presence of the commercial building, built form is notably absent and therefore, the appeal site is generally open in character.
9. The Council have provided historic aerial photographs dated between 2002-2013¹ that show few vehicles parked at the site, thereby keeping the majority of the site open which is consistent with my observations when I visited. Notwithstanding the absence of conditions to limit the number of vehicles under the extant permission for the haulage contracting business and storage of vehicles, based on the evidence provided there is little to suggest that the use has been particularly intensive in the past, nor to support that it would be likely to be more intensively used in the future.
10. The proposed development would introduce up to 156 car parking spaces for members of the public who are likely to be using facilities at the nearby Birmingham Airport (Airport) and National Exhibition Centre (NEC). The parties do not agree as to whether the proposed site area would remain similar, as the Council suggest the proposed site area is larger than the authorised use as a

¹ Annex 9 Council statement of case

haulage yard². Based on the limited evidence provided I am not assured that the proposed area is not larger than is authorised. In addition, in the absence of evidence to indicate the current level of vehicles routinely using the site, up to 156 parked cars would be a significant increase in the number of vehicles present at the site at any one time, as would the associated degree of movement and activity.

11. Moreover, the submitted plan³ indicates that parking would be provided close to the northern, southern and western perimeters of the site. This would make the presence of parked vehicles more prominent, with clear views of the site possible from the cycle and pedestrian route close to the western boundary. In addition, given that the intention is that the car park should be used by the general public, this is likely to require a level of lighting that would be significantly greater than the present position, which would add to the prominence of the appeal proposal.
12. Taking these factors together, the development would have an obvious physical and visual impact upon the openness of the site. Therefore, the proposal would not preserve the openness of the Green Belt. Consequently, the proposal would not fall within any of the exceptions listed in the Framework and would constitute inappropriate development in the Green Belt to which I must attach substantial weight.

Location

13. Policy P1 of the LP seeks to support the continued development of the NEC and the Airport as key economic assets within the borough. The policy is supportive of ancillary and complementary facilities, including car parks, so long as they are appropriately located within the boundary of either site as defined in the LP. The approach is reiterated in the Solihull Local Development Framework, Vehicle Parking Standards and Green Travel Plans, Supplementary Planning Document, 2006 (SPD) which refers to a wider strategy towards the provision of car parking for the Airport and NEC in order to encourage an increasing share of visitors using sustainable travel modes. It further states that the proliferation of off-site urban and rural parking sites in the vicinity should be avoided.
14. The evidence does not show that the appeal site falls within the defined boundary of either the Airport or NEC, and therefore, I find that the appeal proposal conflicts with adopted policy P1 of the LP and would undermine the strategy towards the provision of car parking for these facilities contrary to advice in the SPD.

Transportation

15. Paragraph 111 of the Framework states that all development that will generate significant amounts of movement should be required to provide a travel plan, and that applications should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed. Little substantive evidence has been provided to demonstrate the appellants assertion that the proposal would have less impact than the extant land use as no details are provided in relation to the present traffic generated by the site, nor in relation to that likely to result from the proposed use. This

² Annex 7 Council statement of case

³ Parking Feasibility Phase 1 18096 002 Aug.18

inhibits an assessment of the likely transportation impact arising from the proposal and conflicts with the Framework policy.

16. It is proposed that the car park would serve the general public, who are likely to require access to the NEC, commercial development or the Airport that are located relatively close to the north of the appeal site. However, significant road infrastructure associated with the A45 lies in between and the evidence does not show how the public would safely and conveniently access those facilities. Although the appellant generally refers to linking users of the site to the Airport and the NEC using sustainable modes of travel⁴, no specific evidence is provided to substantiate how this would be achieved, nor to show that the site has direct access to regular public transport as is asserted⁵.
17. Neither is it explained how users of the car park, once on foot, would exit or access the appeal site. Therefore, it seems likely that they would need to share the existing access used by vehicles which includes a narrower section adjacent to the side boundary wall for Mayfield. Due to the restricted width, this is likely to lead to unacceptable conflict between pedestrians and vehicles when entering and accessing the site.
18. Furthermore, in the absence of evidence regarding the numbers or timing of vehicular movements I am not assured that the development would not have a significant impact upon the surrounding road network.
19. In combination these factors would conflict with paragraph 108 of the Framework which states that it should be ensured that appropriate opportunities to promote sustainable transport modes can be taken up, that development can achieve safe and suitable access to the site for all users, and that any significant impacts from the development on the transport network (in terms of capacity or congestion) or on highway safety can be cost effectively mitigated to an acceptable degree.
20. Accordingly, based on the evidence before me I do not consider that it is shown that there are transport links between the appeal site and the facilities to the north that are of good quality, direct and attractive to use. Nor is it demonstrated that the proposal would provide suitable access to the site and would avoid significant impacts on the transport network or highway safety. Therefore, I find that the proposal would conflict with policies P7 and P8 of the LP. Policy P7 requires new development to be focused in the most accessible locations and seeks to enhance existing accessibility levels and promote ease of access. Policy P8 requires development proposals to have regard to transport efficiency and highway safety. It supports off-site parking provision for economically important sites only where this accords with other plan policies and sustainable transport links between those sites and the parking provision are of a good quality, direct and attractive to use.

Living conditions

21. The southern section of the site lies adjacent to Melbourne, a semi-detached dwelling adjoining Mayfield and fronting onto Clock Lane. From my observations there did seem to be some commercial activity associated with Melbourne, nevertheless, it has a boundary abutting the appeal site which serves a long rear garden area. Given the proximity of the existing access and

⁴ Paragraph 3.40 of appellant's appeal statement

⁵ Paragraph 4.2 of appellant's appeal statement

- the extensive degree of proposed parking on the southern perimeter directly abutting the garden boundary with Melbourne, the likely increase in the number of vehicle movements would increase noise experienced from vehicle engines, car doors and people, to the occupiers of Melbourne.
22. In addition, the likely nature of traffic movements associated with the public attending the Airport or NEC, could take place early in the morning, late into the evening and possibly during the night. As a result, this would be likely to cause unacceptable disturbance to the residents both within the property and when using their garden.
23. The established very tall evergreen hedgerow along the boundary currently provides significant screening between the appeal site and the adjacent property. However, given the proximity of the significant number of parking spaces to the southern boundary of the appeal site, it is likely that some cutting back would be necessary to provide the spaces. Therefore, it is not clearly shown that the existing hedgerow will be retained at its present height. The upper floor rear windows of Melbourne face westwards towards the appeal site. As such, the lighting likely to be associated with a large area of public parking and moving car lights is likely to cause additional visual disturbance to the occupants of those rooms in the evening and overnight.
24. In support of the proposal the appellant highlights that there are few conditions controlling the hours of operation of the current use and that it has operated in a manner that has not resulted in complaints regarding disturbance⁶, and I have not seen evidence to the contrary. Nevertheless, the evidence suggests that the proposed development is likely to increase the number of vehicles at the site in comparison to the historic position⁷. For the reasons already outlined and in the absence of evidence to show otherwise, I consider that the concerns raised by the Council's Public Protection Officers⁸ are well founded.
25. Accordingly, I find that the appeal proposal would result in unacceptable harm to the living conditions of nearby residents as a result of disturbance from noise and light. Therefore, the proposal would be contrary to policy P14 of the LP, that, amongst other matters, only permits development if it respects the amenity of existing occupiers and would be a good neighbour.

Character and appearance

26. There is large scale commercial development and significant road and air travel infrastructure predominantly to the north and west of the appeal site. Nevertheless, it is sufficiently separate from these so as to have a different character with the A45 marking this change. The presence of nearby fields and grass land with sporadic clusters of built form results in a more rural character. Notwithstanding the existing commercial use at the appeal site, the established boundary planting, limited built form and lighting within the site preserve the open semi-rural character of the area.
27. For similar reasons to those considered in relation to openness, the appeal proposal is likely to lead to a significant increase in the number of vehicles present at the site at any one time, and the associated degree of movement and activity. The concentration of parked vehicles across the site and in close

⁶ Paragraph 3.44 of appellant's appeal statement

⁷ Annex 9 Council statement of case

⁸ Paragraphs 110-112 Council statement of case

proximity to the boundaries together with the likely increased levels of lighting, fencing and activity would diminish the open nature of the site and introduce urban characteristics to a degree that would harmfully erode the semi-rural character of the area.

28. In addition, notwithstanding the screening provided by the existing hedgerows principally along the northern and southern boundaries of the appeal site, views of the parked vehicles would be readily apparent from the cycle and pedestrian route close to the western boundary with glimpses possible along the northern boundary. Lighting of the relatively large area of the car park would also result in a more pronounced adverse visual impact at odds with the surroundings.
29. Accordingly, I find that the appeal proposal would be harmful to the semi-rural character and appearance of the area and would conflict with some of the key principles in policy P15 of the LP which include the requirement for development to conserve and enhance local character, distinctiveness and streetscape quality with development that respects the surrounding natural, built and historic environment.

Other Considerations

30. The appeal site comprises previously developed land as defined in the Framework. Paragraph 117 requires strategic policies to make as much use as possible of previously developed land. However, the footnote to the policy indicates that this is not the case where it would conflict with other policies in the Framework. I have found that the proposal would constitute inappropriate development in the Green Belt in conflict with Framework policies. It follows that, in these circumstances, the re-use of brownfield land would attract limited weight.
31. As already outlined, given that the proposal conflicts with the approach to growth of key economic assets in the borough outlined in policy P1 of the LP, little weight is given to the economic benefits the proposal may have in serving the needs of air travellers, users of the NEC and nearby commercial businesses.
32. The appellant points out that it would be possible to achieve suitable surface water drainage arrangements. However, achieving suitable drainage would be a requirement of other development plan policies and therefore, this is a neutral factor in the overall Green Belt balance.
33. I am generally referred⁹ to other development being undertaken in Solihull in proximity to the Airport. However, no specific details are given and so I am unable to make a comparison with the appeal proposal. As such, this reference does not affect the overall Green Belt balance.

Green Belt balancing exercise

34. Paragraph 144 of the Framework advises that substantial weight should be given to any harm to the Green Belt. Moreover, very special circumstances to allow inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In this case, the

⁹ Paragraph 4.4 appellant's appeal statement

proposal amounts to inappropriate development, and harm would be caused to the openness of the Green Belt. In addition, the location of the proposal would conflict with the development plan policy and SPD approach to the provision of car parking for the Airport and NEC. Moreover, I have found harm arising from the transportation impacts of the proposal, to the character and appearance of the area and to the living conditions of residents at an adjacent property. These factors attract substantial weight.

35. The other considerations in this case do not clearly outweigh the harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.
36. Therefore, the proposal would be contrary to the Framework and to policy P17 of the LP which, amongst other matters, seeks to protect the Green Belt from inappropriate development.

Conclusion

37. For the reasons given above I conclude that the appeal should be dismissed, and planning permission refused.

Helen O'Connor

Inspector