



Appeal Decision

Site visit made on 1 October 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 07 November 2019

Appeal Ref: APP/R4408/C/18/3203071

Land adjacent to A637 Huddersfield Road, Haigh, Barnsley S75 4DE

- 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 by Shane O'Keefe against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice, ref. 345132, was issued on 20 April 2018.
 - The breach of planning control alleged in the notice is without planning permission the change of use of vacant land from agricultural to use of land for a highway contractor, maintenance and road surface laying depot.
 - The requirements of the notice are to:
 - i) Cease the unauthorised use of the land and remove all material, plant and equipment located on the site associated with the unauthorised use.
 - ii) Remove the hardcore surface ancillary to the unauthorised change of use as shown hatched on the attached plan
 - iii) Cultivate the area shown hatched on the attached plan and seed the area with agricultural grass seed.
 - The periods for compliance with the requirements are:
 - i) Requirement (i) - one month
 - ii) Requirement (ii) - two months.
 - iii) Requirement (iii) - within the next available planting season following the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, and 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 fall to be considered.
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Decision

1. I direct that the enforcement notice be varied by:

OMISSION of the words '*the change of use of vacant land from agricultural to use of land for a highway contractor, maintenance and road surface laying depot*' from the allegation in paragraph 3 of the notice; and,

SUBSTITUTION of the words '*the change of use of the land to use for a highway contractor, maintenance and road surface laying depot*'

OMISSION of the word '*site*' from Requirement (i) in paragraph 5 of the notice; and,

SUBSTITUTION of the word '*land*'.

OMISSION of Requirements (ii) and (iii) from paragraph 5 of the notice.

OMISSION of the periods for compliance with Requirements (ii) and (iii) set out in paragraph 6 (ii) and (iii) of the notice.

2. Furthermore, I direct that the appeal is allowed on ground (g), and that the enforcement notice be varied by:

DELETION of 1 month: and,

SUBSTITUTION of 6 months as the period for compliance.

Subject to these variations 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 matters

3. This case was originally to be determined by way of an Inquiry – principally because it included appeals on the 'legal grounds' (b) and (d). However, following discussion between the parties prior to that event, it was agreed that the enforcement notice allegation might be varied by:

Omission of the words '*the change of use of vacant land from agricultural to use of land for a highway contractor, maintenance and road surface laying depot*' from the alleged breach of planning control, and substitution of the words '*the change of use of the land to use for a highway contractor, maintenance and road surface laying depot*'.

Regarding the requirements, Requirement (i) might be varied to substitute the word '*land*' for the word '*site*', and Requirements (ii) and (iii) might be omitted altogether.

Lastly, the Compliance Periods relating to Requirements (ii) and (iii) might be omitted, and that relating to Requirement (i) retained.

4. On the basis that the enforcement notice would be varied accordingly the appellant agreed that grounds (b), (d) and (f) should be withdrawn, and both parties agreed that the case could be determined by way of written representations.
5. Having reviewed the papers I was satisfied that the proposed variations and withdrawal of the 'legal grounds' and ground (f) made the case suitable for determination by written representations, and that those variations would not cause substantial prejudice to any party. I am therefore making the proposed variations accordingly and determining the appeal on grounds (a) and (g).

Background matters

6. The appeal site lies about 7 kilometres to the north-west of Barnsley centre, just within the Metropolitan Borough boundary. It is bounded by the A637 Huddersfield Road to the west, the exit slip-road for Junction 38 on the north-bound carriageway of the M1 motorway to the east, and to the north is the roundabout at the junction of these two main roads. To the south is the access road off the A637, which also serves The Old Post Office public house. Access to the site itself is at the southern end where the access road turns towards the public house.

7. There is a compound at the southern end of the site with a chain-link fence, entrance gates, and floodlighting poles around the perimeter. The remainder of the site mostly has post-and rail fencing along the boundaries, a few trees and rough hedging.
8. There are enforcement notices in force on the site from 1992 and 1995¹. The first in connection with use of the site for car boot/jumble sales, and the second for a commercial use of the site for the deposit, collection, storage, sale and repair of pallets. A stop notice was also served against the latter use².

The appeal on ground (a) and the deemed planning application

9. Ground (a) is that planning permission should be granted for the matters stated in the notice.
10. From my inspection of the appeal site and surroundings, and all that I have read I consider the main issues to be:
 - Whether the development is appropriate within the Green Belt, and its effect on Green Belt interests in the light of prevailing national and local policy.
 - The effect of the development on the character and appearance of the area in the vicinity of the appeal site.
 - Whether any harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations amounting to the very special circumstances necessary to justify the development.
11. The use of the site as a highway contractor's maintenance and road surface laying depot does not entail construction of any new building and does not therefore fall for consideration under NPPF paragraph 145, nor is it one of forms of development regarded as not inappropriate set out in paragraph 146 of the National Planning Policy Framework (NPPF). It follows that it amounts to inappropriate development in the Green Belt, unless it preserves openness and does not conflict with the purposes of including land within it.
12. Although adjacent to the motorway, the site otherwise lies within open rolling countryside – mainly large agricultural fields bounded by trees fences and hedges, areas of woodland, and with occasional isolated farmhouses and other buildings. The roundabout itself is well planted with trees, and beyond the site, looking to the east are distant views of hills.
13. The site itself is essentially level, and at the northern end it is roughly at the same level as the roundabout. The A637 rises from the roundabout so that there is an embankment along the western side of the site, increasing in height towards the south. A similar situation exists along the eastern side, where there is an embankment to the slip-road.
14. Within the fenced compound at the southern end I saw there are numerous stacks of temporary road warning signs – with messages such as 'Advance Warning' and 'Skid Risk' – sand bags, and a heap of rubble. On the area to the north are several large mounds of granite aggregate occupying a

¹ Enforcement notices ref. SRM/KLT/DP.25/3/1/416, dated 18 May 1992 & DWH/SP/PG/249/00001, dated 27 November 1995.

² Stop notice ref. DWH/SP/PG/249/00001, dated 27 November 1995

significant proportion of the site area. I estimated the larger of these to be in the region of 3-4 metres high. I understand there are more than 6000 tonnes of aggregate stored there. Also on this part of the site I saw piles of metal temporary fencing, a container, and a disused mobile advertising hoarding. At the time of my visit there was also a tanker trailer parked on the site.

15. The stored materials and equipment, the fenced compound and floodlight masts, are prominent features some of which are readily seen from the roundabout, and particularly from the A637 where it is raised well above the site. A similar view would be available from the M1 slip-road. In my opinion these elements create a somewhat oppressive industrial character in the general context of open fields and greenery. The activity on the site arising from the coming and going of heavy vehicles and plant, as well as the caravans that I understand are parked there on occasions further contribute to this effect. Furthermore, the appearance of the site is incongruous within this setting in terms of the immediate environment of open fields to the west and south, the attractive stone-built public house, and more distant views towards hills.
16. Paragraph 133 of the NPPF says that the essential characteristics of Green Belts are their openness and their permanence. Overall, I consider the use as a highway contractor's depot causes significant harm to the openness of the Green Belt both in spatial and visual terms. Furthermore, the site is set within the countryside, and the use as a highway contractor's depot does not promote the Green Belt purpose of safeguarding the countryside from encroachment. The development does not accord with the aims of the development plan, in particular with respect to Policies GB1 and GB3 of the Barnsley Local Plan of 2019, which include aims to protect the Green Belt from inappropriate development, and to preserve the openness of the Green Belt³. This policy reflects NPPF guidance on Green Belt matters.
17. The countryside around the appeal site is mainly open fields, areas of woodland, and occasional buildings – such as farmhouses and agricultural buildings. The overall scene is of an attractive rural landscape. As I have already found the appearance of the site is incongruous in this context. Furthermore, the site is a conspicuous feature next to a principal route into Barnsley, and I concur with the view that the depot provides a poor introduction at what is effectively one of the gateways to the Borough.
18. Overall, I consider the development causes significant harm to the character and appearance of the area in the vicinity of the appeal site. In this respect the development does not accord with the development plan with particular regard to Local Plan Policy GB3 which includes aims to ensure changes of use in the Green Belt do not harm the visual amenity of the area.
19. I have found that the development is inappropriate in the Green Belt and causes significant harm to openness. Furthermore, there is significant harm to the character and appearance of the area. I must therefore go on to consider whether any harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations amounting to the very special circumstances necessary to justify the development.

³ Core Strategy policies referred to in the enforcement notice have been superseded by the Barnsley Local Plan of 2019, adopted since issue of the notice.

20. The appellant argues that the site has been in use since the 1960s in connection with construction of the M1, and that it is an ideal location for storage of materials and vehicles needed for works to the road network. It is claimed that proximity to the road network has been the reason for permission being granted for numerous such depots and is sufficient to amount to the very special circumstances necessary to justify Green Belt development of this nature. Furthermore, no other suitable sites exist along this key motorway that would be outside the Green Belt. This is particularly so since a site of area greater than 3 acres (approximately 1.21 hectares) is required, with any necessary permissions, and is otherwise suitable for the operation. Furthermore, there would be considerable expense and time entailed in clearing the site.
21. Although the site may have been used as a tarmac and concrete plant during the construction of the M1, there is no planning history available to show such a change of use. Aerial photographs indicate it may have been vacant for some time, the earlier enforcement notices and the stop notice indicate there have been other uses, and a photograph from 2009 shows a circus taking place on the site. The present occupant, operating under a licence from the appellant, indicates his firm has been using the site for storage of aggregate for over 5 years.
22. While it is claimed that numerous planning permissions have been granted for this type of development, none are before me, and I cannot know the particular circumstances of those cases. Similarly, a potential alternative site has been mentioned that proved to be unsuitable for operational reasons, but this site has not been identified, and I have virtually no information concerning availability of alternative sites. Although I understand the convenience of being immediately adjacent to a motorway junction – many, if not most of which may be within the Green Belt – I am somewhat sceptical about the claimed lack of sites close to the wider major road network, possibly on the edge of conurbations.
23. The Government attaches great importance to Green Belts, and their essential characteristics of openness and permanence. Such policy has been in place for many years and I consider it carries great weight. Furthermore, NPPF paragraph 170(b) advises that planning decisions should contribute to and enhance the natural environment through recognition of the intrinsic character and beauty of the countryside. This development is inappropriate in the Green Belt, causes significant erosion of openness, effectively removes a piece of land from the countryside, and causes harm to the character and appearance of the area.
24. I can understand the convenience of locating a depot next to a motorway junction. However, another site close to the major road network, but not causing harm to Green Belt or countryside interests could be equally suitable. It has not been demonstrated that any adequate search for other sites has been undertaken. Nor have other approved sites been put forward as comparable to the appeal site in terms of location. While there could be a small loss of employment on this site, that does not mean there would necessarily be a net loss in employment, which could well be created elsewhere. Furthermore, the cost and time entailed in clearing an unlawful site does not provide justification for the planning harm caused.

25. The appellant claims there is a bund around the perimeter of the site, and the height of the mounds of aggregate could be limited to be below the bund. However, the views of the site are principally from land at the same level, or from the A637 and M1 slip-road embankments, rather than being concealed behind a bund. Such a limitation on the height of the mounds would not have any significant effect. Furthermore, a limitation on storage of vehicles and plant would not limit the number of vehicles coming to and from the site or use of plant for moving materials.
26. It is claimed that as a fall-back, the site would inevitably become used for storage of clutter on the hardstanding. While the site might lawfully return to some agricultural use, which might include some storage associated with that use, there is nothing before me to indicate that it could lawfully be generally used for storage.
27. It is also suggested that a landscaping scheme could assist in screening the site and reducing the impact on openness, whereas under the situation as it exists trees and vegetation could be removed without any permission. However, in my opinion the extent of screening that would be required is itself likely to impact on openness and would have no effect on activity on the site.
28. Taken together, I conclude that these considerations do not amount to the very special circumstances necessary to justify the development that clearly outweigh the harm to the Green Belt by reason of inappropriateness, and the harm to countryside interests I have identified. The appeal on ground (a) therefore fails, and I intend to refuse planning permission on the deemed planning application.

The appeal on ground (g)

29. The appellant argues that a period of one month is inadequate to remove all materials plant and equipment from the site, and that a period of 6 months should be allowed. The present occupant also says that this would be the necessary period. The Council have made no comments on the ground (g) appeal.
30. I accept that cessation of the use could readily occur within the one-month compliance period. Furthermore, there is little on the site in the way of plant or other equipment, and this could readily be removed within the same period. However, it also appears to me that this would probably be an inadequate time to remove the large quantity of materials on the site. I consider a six-month period would be reasonable for this, and would also allow time for an alternative site to be found. The appeal on ground (g) therefore succeeds.

Conclusions

31. For the reasons given above and having regard to all other matters raised, I consider the appeal succeeds to the limited extent on ground (g), and that a reasonable period for compliance would be 6 months, and I am varying the enforcement notice accordingly, prior to upholding it, and refusing planning permission on the deemed planning application.

Stephen Brown

INSPECTOR