

Appeal Decision

Site visit made on 21 January 2020

by John Whalley

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

Decision date: 10th February 2020

Appeal ref: APP/N1920/C/19/3232056

The Yard Area within Lyndhurst Farm, Green Street, Borehamwood, Hertfordshire WD6 5NF

- The appeal is made by Hayes Gate Plant Hire Limited under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Hertsmere Borough Council.
- The notice was issued on 29 May 2019; reference 17/0257/UCU.
- The breach of planning control was: Without planning permission, the material change of use of land from agricultural to a mix of commercial, light industrial and storage as well as the erection of sheds and other structures to facilitate such (the unauthorised development).
- The requirements of the notice are:
 - Permanently cease the use of the land for commercial purposes.
 - Permanently cease all light industrial activities on the land.
 - Remove from the land all the sheds and other structures associated with the commercial use of the land and/not reasonably necessary for the agricultural use of land.
 - Remove from the land all containers, caravans, vehicles and machinery stored on the land.
 - Reinstate the topsoil and vegetative cover of the land where these have been removed.
 - Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the land and its environs.
- The period for compliance with the requirements is 4 months.
- The appeal was made on grounds (a), (b) and (g) as set out in the amended Act. 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.

Summary of decision: The enforcement notice is varied and upheld

Appeal site

1. The appeal site of about 1ha lies within an area of mainly open countryside to the west of Green Street B5378 at the northern edge of Borehamwood. It is in the Green Belt (Watling Chase Community Forest) and within a Landscape Conservation Area.
2. A rough stone and mud track runs some 100m from Green Street through an overgrown field leading to the security fenced and gated appeal site yard area. The appeal land is currently occupied, according to the Appellants, by about 17 commercial users. They consist of a mix of businesses, such as readymix concrete suppliers, car repairers and breakers, HGV tractor parking, private coach parking, HGV maintenance. There were several structures built on site to afford some basic shelter to their occupiers. The stone surfaced shared yard area was muddy and poorly drained.
3. The uses of the appeal site, as the Appellants accept, consist of a mix of what may be categorised as B1 Business - Light Industry appropriate in a residential area; B2 General industrial - Use for industrial process other than one falling within class B1, (excluding incineration purposes, chemical treatment or landfill or hazardous waste), and B8 Storage or distribution, including open air storage, (*ref: The Town and Country Planning (Use Classes) Order 1985 (as amended)*).

Relevant policies

4. Hertsmere Core Strategy 2013 policies SP1, CS12, CS13, CS14 and CS22 were said by the Council to be applicable to the retention of the commercial uses of the appeal yard. Policies SADM20, SADM22 and SADM26 to the Hertsmere Site Allocations Development and Management Policies Plan (2016) were also relevant.
5. The Appellants provided a Environmental Impact Assessment, (EIA), screening opinion. That declared there would be no significant environmental effects such that the uses should constitute EIA development.

The appeal on ground (b)

6. An appeal on ground (b) says that those matters, (the matters in the notice said to be a breach of planning control), have not occurred.
7. This ground of appeal was introduced to deal with the somewhat unusual situation whereby what the Council said has happened has not in fact happened. In this case, the appeal on ground (b) was not fittingly addressed. The Appellants said the enforcement notice lacked precision. It did not accurately identify the Yard or the sheds and structures on the notice plan. I look at that in paras. 9 and 10 below.
8. The Appellants accepted the appeal land outlined in red on the enforcement notice plan was used for the purposes set out in the notice allegation. Indeed, in their ground (a) appeal they asked that planning permission be granted for the change of use of the land from agriculture to a mix of commercial, light industrial and storage use, a mix of B1(c), B2 and B8 uses in the Use Classes Order – Part B. It cannot therefore be credibly said that the use described in the notice's allegation has not, as a matter of fact, occurred. The appeal on ground (b) must fail.

The enforcement notice plan

9. The plan attached to the enforcement notice shows an area outlined in blue within a larger area outlined in red. The Appellants said the plan did not accurately identify the Yard or the sheds and structures. The Council's response was that the blue outline was drawn around the Yard, the red line around the wider planning unit.
10. I consider it was sufficient for the enforcement notice plan to show the planning unit outlined in red. It is not necessary for a notice plan to show every detail of the alleged unlawful use or uses or to show the exact location of any structures on the land. In my view, there is no error on the notice plan that misleads or requires correction.

The appeal on ground (a)

11. The appeal on ground (a) asks that planning permission is granted for the continuation of the uses enforced against. The notice describes the breach of planning control at Lyndhurst Farm as the material change of use of land from agricultural to a mix of commercial, light industrial and storage as well as the erection of sheds and other structures.
12. The Council's objections to the retention of the B1, B2 and B8 commercial uses at Lyndhurst Farm were based upon their concern that this was a visually obtrusive form of development that failed to respect the predominantly residential character of the area or the openness of the Green Belt. That was contrary to the National Planning Policy Framework (2019) guidance, (NPPF); policies SP1, CS12, CS13, CS14 and CS22 of the Core Strategy (2013) and policies SADM20, SADM22 and SADM26 of the Site Allocations Development Management Policies Plan (2016). According to the Council, the south eastern corner of the site adjoins a Site of Special Scientific Interest, (SSSI). The Appellants said the Officer's report was wrong on that point. The nearest SSSI was at Redwell Wood, 4km to the north-east.
13. Appeals are to be determined in accordance with the development plan unless other material considerations indicate otherwise, (*s.38(6) Planning and Compulsory Purchase Act 2004 as amended*). As the appeal site lies within the Metropolitan Green Belt, the revised NPPF is a material consideration; (*Section 13 – Protecting Green Belt land; Annex 1, Implementation, para. 212*).
14. The decision turns on whether or not the proposal would be inappropriate development in the Green Belt having regard to the revised Framework and relevant development plan policies. If the development enforced against is inappropriate in the Green Belt, 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?
15. NPPF, Section 13, paras. 145, 146 in particular, list types of development that are not inappropriate in the Green Belt. The sheds and structures and the commercial uses on the appeal site at Lyndhurst Farm are not so listed. In my view, all the activities and structures here are inappropriate in the Green Belt. That was not contested. Para. 143 to the NPPF says that inappropriate development is, by definition, harmful to the Green Belt and should not be

approved except in very special circumstances. Para. 144 says that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

16. 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, (NPPF, para. 133). Para. 134 of the NPPF says the Green Belt serves five purposes. They are:
to check the unrestricted sprawl of large built-up areas;
to prevent neighbouring towns merging into one another;
to assist in safeguarding the countryside from encroachment;
to preserve the setting and special character of historic towns;
to assist in urban regeneration by encouraging the recycling of derelict and other urban land.
17. Inappropriate development harms the Green Belt. In the case of *Doncaster MBC v SSETR [2002] JPL 1509*, at para. 70, Sullivan J. (as he then was), said: "*Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the Green Belt was clearly outweighed by the benefit to the appellant's family and particularly to the children so as to amount to very special circumstances justifying an exception to Green Belt policy.*".
18. That approach was endorsed by Carnwath LJ in the case of *Wychavon v SSCLG & Butler, Court of Appeal EWCA Civ 692 June 2008*. The facts in *Doncaster* were obviously different to the present case. But the application of Green Belt policy is similar. In *Redhill Aerodrome Limited and SofS for CLG and Tandridge DC and Reigate and Banstead BC, [2014] EWHC 2476 (Admin)*, it was effectively confirmed what was said in *Doncaster* that "any other harm" is to mean specific harm to the purposes of the Green Belt, but not to include other areas of possible concern, such as highways objections and noise, which are to be considered separately to see whether or not they amount to non-Green Belt reasons to refuse a planning application. There is a balancing of the benefits of the appeal development to be done against the greenbelt and any other objections.
19. The Appellants submitted an Employment Land Assessment document in support of the retention of the commercial uses of the Lyndhurst Farm appeal site. It was pointed out that some 17 businesses were using the yard. Most were in construction, haulage and automotive related activities. Those businesses were said to support 75 full time equivalent staff, mostly drivers of machinery and equipment. A further 67 indirect jobs in the supply chains were supported by the activities on the appeal land. It was a valuable employment site, adding some £7.8 million to the local economy, (£4.1 million directly and £3.7 million indirectly). Closing the site was not just a matter of straightforward re-location. Several operators of businesses based at Lyndhurst Farm said they knew of no alternative or viable sites in the locality. There had been a loss of employment space in Hertfordshire. The Assessment said there was a shortage of commercial sites in the area, described as a

severe lack of available supply that was constraining the market, sufficient to require the release of some Green Belt land.

20. A number of people living nearby complained of what they described as serious adverse effects caused by the commercial uses of the site near their homes. They referred to excessive and intrusive noise, disruption, dust, mud brought on to the fronting road, burning of waste, no application of operating hours, air pollution from vehicles and fires, harm to the appearance of the Green Belt land.
21. It appears that appeal site activity has had some adverse effect on the living conditions of those living nearby, particularly for those opposite the site entrance. There is also concern about the use of the site entrance by heavy goods vehicles on this section of the narrow fronting B5378 road where large vehicles and heavy goods vehicles turning in and out may have to cross onto the opposite lane while manoeuvring in or out. However, much of the local objections could be addressed by the implementation of, and adherence to, suitable planning conditions.
22. Overall, I consider that the para. 143 NPPF guidance weighs heavily against retention of the commercial uses of the appeal site. There is also considerable harm caused to the openness of this part of the Metropolitan Green Belt, conflicting with the guidance in para. 133 of the NPPF that: *"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"*.
23. The development enforced against is also harmful to the attractive rural nature of the immediate area, unhappily encroaching into otherwise mainly open countryside. The uses enforced against are more suited to an urban location than in this mainly rural setting. The development is clearly contrary to those local Green Belt protection policies policies SP1, CS12, CS13, CS14 and CS22 of the Core Strategy (2013) and policies SADM20, SADM22 and SADM26 of the Site Allocations Development Management Policies Plan (2016). Those development plan policies are consistent with the NPPF guidance in seeking to protect the Green Belt from inappropriate development. The local policy background seeks the protection of the environment from unsuitable development. In particular, policy CS12 (The Enhancement of the Natural Environment) requires that development proposals must conserve and enhance the natural environment of the Borough. I agree with the Council that the commercial uses as carried out on the appeal site harm its landscape value.
24. In my view, none of matters put forward in support of the retention of the commercial uses and their associated buildings and sheds demonstrate that there is such a specific site need for the development enforced against sufficient to clearly overcome the Green Belt harm caused by inappropriateness and the harm caused to the otherwise mostly open rural nature of this part of the countryside.
25. The present commercial uses on the appeal site have created some local economic benefit by supporting small business and their associated jobs. The Appellants said closing them down at Lyndhurst Farm would present difficulties for all those currently based there. They said there was a shortage of land for businesses such as those here, perhaps particularly of sites for small family

businesses. In view of a lack of supply of suitable employment land, there was a pressing need for a release of Green Belt land. However, I consider that whatever the pressure in Hertsmere to consider release of Green Belt land may be, that should be more appropriately a matter for development plan consideration rather than by an improvident grant of planning permission here. It was not shown that the businesses on the appeal site have a particular need to be located either on this or any other part of the Green Belt.

26. I conclude that the harm to the Green Belt by inappropriateness, the harm to the openness of the Green Belt and the additional intrusion into this part of the countryside overwhelmingly determine that planning permission should not be granted for the retention of the commercial, light industrial and storage uses and the sheds and other structures at Lyndhurst Farm as set out the enforcement notice's allegation. The harm caused to the openness of the Green Belt is considerable, the informal scatter of parked heavy goods vehicles and coaches, vehicular repairs and haulage businesses, some with their somewhat dilapidated sheds and structures set within steel security fencing is unsightly, the visual intrusion emphasised by the otherwise pleasant rural setting to the south of the B5378 road.
27. I come to that view, having regard to the substantial improvements that could be made to the site's appearance and its adverse effects on the immediate locality by means of the application of conditions to a planning permission. The yard area and access road could be properly surfaced, the access manoeuvring and visibility splays on to Green Street could be readily improved. Existing unsightly buildings could be replaced and the informal site layout re-arranged and tidied. Operating hours could be controlled by means of conditions, although a number of those businesses currently on the appeal site may depend upon early morning starts. But the serious Green Belt and countryside intrusion harm would remain, as would that to the mainly rural character and appearance of the area. I find that the other economic and convenience benefits to present occupiers of the appeal yard in this case do not clearly outweigh the harm I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
28. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. I uphold the enforcement notice and refuse to grant planning permission on the deemed application for the material change of use of land from agricultural to a mix of commercial, light industrial and storage as well as the erection of sheds and other structures to facilitate such at Lyndhurst Farm.

The appeal on ground (g)

29. The appeal on ground (g) asks that more time is given than the 4 months allowed for compliance with the enforcement notice's requirements. That limit was said to be inadequate. It should be increased, not just for a few months more, but to the point of issuing a temporary planning permission to allow the commercial uses of the appeal site to continue until such time as the Council identify suitable alternative land in the locality.
30. The Council did not contradict the Appellants' assertion that relocation of the the small business enterprises currently based upon the appeal site could be difficult. Those businesses are of benefit to their owners, operators and employees as well as to the local economy. Whilst the physical clearance of the yard at Lyndhurst Farm could be achieved quickly, I consider it fitting to

increase the period for compliance to 10 months. A longer period would be tantamount to the misplaced grant of a temporary planning permission. It would provide a poor precedent. I come to that view, in particular bearing in mind the understandable suggestion made by the Appellants that enforcement should be held in abeyance until the Council find and allocate land suitable for the type of businesses based at Lyndhurst Farm.

31. The appeal on ground (g) succeeds to the extent of allowing a reasonable increase of the compliance period.

FORMAL DECISION

32. It is directed that the enforcement notice is varied by the deletion of the words "4 Months" in line 2 of para. 6 on page 2 of the notice and the substitution therefor of the words "Ten months". Subject to that, the appeal is dismissed and the varied 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.

John Whalley

INSPECTOR