
Appeal Decision

Site visit made on 21 January 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2020

Appeal Ref: APP/P4225/C/19/3236457

Land North of Bury New Road, Heywood, Rochdale OL10 4RJ

- 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 Georgie Porgies Diner against an enforcement notice issued by Rochdale Metropolitan Borough Council.
 - The enforcement notice was issued on 8 August 2019.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission the material change of use of the Land from agriculture to the use as a hot food takeaway with an ancillary café, facilitated by the siting of a cabin/container, the construction of decking, a seating area, and the formation of hard surfacing.
 - The requirements of the notice are:
 - (a) Cease the use of the Land as a hot food takeaway and ancillary café;
 - (b) Remove the cabin/container from the Land;
 - (c) Remove the ancillary seating area from the Land;
 - (d) Remove the decking from the Land;
 - (e) Dig up the hardsurfaced areas and remove the materials from the Land;
 - (f) Seed the Land to grass, and
 - (g) Remove all other accessories, plant and apparatus associated with the use as a hot food takeaway with ancillary seating area from the Land;
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (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 as amended.
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Decision

1. It is directed that:
 - 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 varied at paragraph 6 by the deletion of the wording "four months" and substitution with "nine months".
2. Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

3. The Land to which the notice relates is shown edged red on the attached Plan. However, it was clear from my own observations on my site visit that the Land comprises two separate planning units, including a substantial part of the Land still in agricultural use. This agricultural use is physically and functionally separate from the area where the alleged breach of planning control has taken place.
4. In view of the above, I shall correct the notice by correcting the Plan attached to the notice so that it only identifies the area of Land to which the alleged breach refers. This is a smaller area of Land than that identified on the original Plan and I am satisfied that this correction would not result in any injustice to the appellant. 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. The Council have supplied the amended plan and confirmed that the correction would not cause any injustice to them.

Appeal on ground (a), deemed planning permission

Main Issues

5. The main issues in this case are:
 - Whether or not the development would be inappropriate development in the Green Belt;
 - The effect on the character and appearance of the area; 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 development.

Reasons

Inappropriate development

6. Saved Policy G/D/2 (Part One) of the Rochdale Unitary Development Plan, adopted 2006 (UDP), defines the Green Belt Boundary in the Borough. Policy G4 of the Rochdale Core Strategy, adopted 2016 (CS), seeks to protect the areas of Green Belt and to restrict development in them to those limited types of development which are deemed not to be inappropriate by national policies unless very special circumstances can be demonstrated.
7. The appellant recognises that a change of use of the Land has occurred and that the Land is designated as Green Belt. The appellant has also acknowledged that the diner is inappropriate development in the Green Belt. That acknowledgement is made with reference to the meaning ascribed by paragraph 145 of the National Planning Policy Framework (the Framework) which relates to the construction of new buildings in the Green Belt. However, in this case the breach of planning control alleged in the notice is a material change of use of the Land.
8. Paragraph 146 of the NPPF advises that certain forms of development, including material changes in the use of land, are also not inappropriate in the

Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

9. The Land in this case was formerly in use as agriculture characterised by open pasture. The change of use has been facilitated by the siting of a single storey cabin/container, attached to which is an area of decking and some fencing which encloses a refuse and plant storage area. The siting of these structures to facilitate the use has resulted in substantial objects and structures on the Land where there were previously none. The site forms part of a swathe of otherwise open countryside on the north side of Bury New Road. There is no doubt in my mind that the change of use that has occurred has resulted in at the very least a moderate loss of openness of the Green Belt. In addition, the development has a harmful effect on the Green Belt purpose of safeguarding the land from encroachment.
10. I therefore conclude that the material change of use of the Land from agriculture to the use as a hot food takeaway with an ancillary café, facilitated by the siting of a cabin/container, the construction of decking, a seating area, and the formation of hard surfacing does not preserve openness and conflicts with the purposes of the Green Belt. It therefore conflicts with paragraph 146 of the Framework and is inappropriate development in the Green Belt.

Character and appearance

11. The development is situated adjacent to and to the north of Bury New Road (A58), which in this location is otherwise characterised by open fields. Although the container has been painted dark green and the site is partially screened from the road by a hedgerow, the box form and materials of the container, taken together with the hardstanding, decking, fencing, refuse storage area and associated plant, has an urbanising effect on the landscape. In addition, the development is clearly visible to views from the houses on the southern side of the Bury New Road, which are elevated and have views over the site. The overall appearance of the site detracts from the visual qualities of the area.
12. I conclude that the development has a harmful effect on the character and appearance of the area. It conflicts with the development plan, and in particular with Policies SD1, P1 and P3 of the CS which seek to ensure, amongst other things, that new development improves the image and quality of the borough, includes high quality design and protects the borough's character, including the qualities of its landscape and countryside.

Other matters and considerations

13. I understand that the appellant did not seek to evade the planning application process when he initially carried out the development, and I appreciate that the circumstances he now finds himself in are unfortunate. In particular, given that he has obtained a licence from the Council to serve food and drinks, which he has been paying for, for many years. However, these are not matters which are for my consideration in this appeal.
14. The business has been operating on the site for almost nine years and I understand from the appellant that the local community and neighbouring residents are supportive of it. In addition, the appellant states that there has been no loss of amenity to neighbouring residents and that he takes care to

ensure that the site is maintained in a clean and tidy condition. That may well be the case. However, the absence of harm to neighbouring amenity does not carry any positive weight in the planning balance.

15. I have taken into consideration the appellant's willingness to implement a landscaping scheme which could help to provide further screening of the development. However, additional landscaping would not mitigate the harm I have identified to the openness or purposes of the Green Belt. I have also considered the appellant's offer to accept a personal permission. Planning Practice Guidance¹ (PPG) makes it clear that planning permission usually runs with the land and it is therefore rarely appropriate to provide otherwise unless there were to be an exceptional need. Furthermore, a temporary permission would not be appropriate in this instance, given that the effects of the development are already known and there is no evidence before me that would suggest that the planning circumstances will change in a particular way at the end of that period.² Even though the structures situated on the Land maybe temporary in their nature and easily removed, the deemed application is for a change of use which would be permanent. Furthermore, there is no substantive evidence to suggest that the development is required for a temporary period only. I therefore give these considerations little weight.
16. The development does however provide an income/employment for the appellant and also provides full-time jobs for two additional employees and three part-time jobs. It therefore supports the local economy, and this is a consideration which weighs in favour of the development.

Planning Balance and Conclusion

17. 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, harm to the character and appearance of the area and to the Green Belt purpose of safeguarding the countryside from encroachment. Substantial weight should be given to the harm to the Green Belt. The other considerations cited in support of the development only carry limited weight and taken together do not outweigh the identified harm to the Green Belt. There are therefore no very special circumstances to justify the development which conflicts with saved Policy G/D/2 of the UDP, Policy G4 of the CS and the Framework, the aims of which are set out above.
18. For the reasons given above and taking into account all other matters raised, the appeal on ground (a) fails.

Appeal on ground (g)

19. The issue is whether the compliance period of four months is reasonable. The appellant suggests that to prevent hardship to the business and its employees a period of 12 months would be more reasonable. The extended period would allow time for an alternative viable trading location to be secured.
20. I have some sympathy for the appellant given the length of time he has been operating at the site, although I appreciate that he was well aware during the later years that the development was unauthorised. However, it will take some

¹ PPG Reference ID:21a-015-20140306

² PPG Reference ID:21a-014-20140306

time for a new and suitable site to be found to relocate the business to, and if necessary for new employment to be found for existing employees. This is bound to be unsettling. The conclusion that I have reached is that a period of nine months would be a more reasonable time period for compliance, given the nature of the development and circumstances in this case. To this extent the appeal on ground (g) succeeds.

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by Elizabeth Pleasant DipTP MRTPI

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Reference: APP/P4225/C/19/3236457

Scale: Not to Scale

