



Appeal Decisions

Site visit made on 19 November 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 20 March 2020

Appeal A: APP/N0410/C/18/3216186

Land adjoining Tiger Cubs, 74 Oxford Road, New Denham, Denham, Bucks UB9 4DN

- 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 Rob Clark against an enforcement notice issued by South Bucks District Council.
 - The enforcement notice was issued on 4 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land to the sale and display for sale of motor vehicles (a sui generis use) ("the Unauthorised Development").
 - The requirements of the notice are:
 - (i) Cease the use of the Land for the sale and display of motor vehicles; and
 - (ii) Remove from the land all motor vehicles being displayed for sale and cease all use of the Land for the parking or storage of vehicles not related to any lawful use of the Land.
 - The period for compliance with the requirements is five (5) weeks from the date on which this notice takes effect.
 - The appeal is proceeding on the ground set out in sections 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: APP/N0410/C/18/3211955

Tiger Cubs, 74 Oxford Road, New Denham, Denham, Bucks UB9 4DN

- 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 Sayful Islam against an enforcement notice issued by South Bucks District Council.
- The enforcement notice was issued on 24 August 2018.
- The breach of planning control as alleged in the notice is: Without planning permission,
 - the material change of use of the Land to the sale and display for sale of motor vehicles (a sui generis use) and;
 - the siting on the Land of two portable cabins, one used as an office (in the approximate position shown edged in blue and marked "A" on the Plan) and one used as a staff restroom (in the approximate position shown edged in blue and marked "B" on the Plan) in conjunction with the unauthorised change of use of the Land; and
 - incidental operational development, facilitating the unauthorised change of use, comprising:
 1. The erection of an unauthorised timber structure (in the approximate position shown for identification purposes edged in blue and marked "C" on the Plan) which is used to valet cars in conjunction with the unauthorised use of the Land;

2. The erection of five CCTV cameras (in the approximate positions shown for identification purposes marked "D" on the Plan);
 3. The erection of an advertising hoarding (in the approximate position shown for identification purposes marked "E" on the Plan); and
 4. The erection of a boundary security fence and gates (approximately situated along the line shown in blue and between the points marked "F" and "G" on the Plan) ("the Unauthorised Development").
- The requirements of the notice are:
 - (i) Cease the use of the Land for the sale and display for sale of motor vehicles;
 - (ii) Remove from the Land all motor vehicles being displayed for sale and cease all use of the Land for the parking or storage of vehicles not related to any lawful use of the Land;
 - (iii) Remove the two portable cabins (shown edged in blue and marked "A" and "B" on the Plan) from the Land;
 - (iv) Demolish or dismantle the unauthorised timber structure (shown edged in blue and marked "C" on the Plan) and remove all resulting materials and debris from the Land;
 - (v) Remove the unauthorised CCTV cameras (shown marked "D" on the Plan) and associated poles and fittings from the Land;
 - (vi) Remove the unauthorised advertisement hoarding (shown marked "E" on the Plan) from the Land; and
 - (vii) Remove the fence and gates (approximately located along the line shown in blue between the points marked "F" and "G" on the Plan), including all fixtures, fittings and waste materials, from the Land.
 - The period for compliance with the requirements is, for (i) and (ii), five (5) weeks from the date on which this notice takes effect; and, for (iii), (iv), (v), (vi) and (vii), four (4) months from the date on which this notice takes effect.
 - The appeal is proceeding on the ground set out in sections 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to made under section 177(5) of the Act as amended falls to be considered.
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Formal Decisions

Appeal A

1. 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.

Appeal B

2. 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. The appeals relate only to the appellants' collective view that planning permission should be granted for the use of the land for car sales and storage, and also the various associated facilitative buildings, fixtures and fittings. Given that the appellants advanced no additional grounds of appeal I am unable to assess and weigh up the various periods for compliance stipulated.
4. The 1990 Act enables an enforcement notice directed at a material change of use to require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from

enforcement, so that the land is restored to its condition prior to the material change of use taking place.

The Notices

5. The enforcement notices relate to two separate, but adjacent, pieces of land. The grounds of appeal and representations made by the respective appellants are identical.

Background

6. In July 2017 retrospective planning permission was refused for the change of use of land from agricultural to car sales identical to that area of land relating to appeal B, as evident from the plan attached to the corresponding enforcement notice. The refusal reason related to the Council's consideration that the use represented inappropriate development in the Green Belt, adversely impacting on its openness.
7. Despite the above decision it is understood that the use continued unabated and subsequently the Council felt it expedient to issue the enforcement notices now at appeal.

The Appeals on Ground (a) and the Deemed Planning Applications

Main Issues

8. The site lies within the Metropolitan Green Belt. As such, the main issues in this appeal are:
 - 1) whether the building constitutes inappropriate development in the Green Belt and, if so, the effect on the Green Belt's openness; and
 - 2) if it is inappropriate development, 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 necessary to justify the development.

Whether inappropriate development, and the Green Belt's openness

9. The area of land surrounds the former Tiger Cubs public house (PH) and extends to the rear of the residential properties which lie on the opposite side of the entrance to the PH's car park. These dwellings are set back from Oxford Road and have relatively shallow rear gardens. Vehicles relating to the use are parked and stored within the car park area and immediately beyond the common boundary with the residential rear gardens. Although lying within the Green Belt boundary the land is clearly brownfield or previously developed land (PDL). Open agricultural land lies immediately to the north east.
10. All development in the Green Belt, be it uses of land or operational development, is inappropriate for the purposes of the National Planning Policy Framework (the Framework) unless it accords with the exceptions listed in paragraphs 145 and 146 of the document. Policy GB1 of the South Bucks District Local Plan (LP) says that planning permission will not be granted for development other than the change of use of land or existing buildings consistent with the Green Belt. Also, any such development should not compromise the purposes of including land in the Green Belt.

11. The use of land for sale and display of motor vehicles is not such an exception, nor are the associated site buildings and the development is clearly inappropriate development within the Green Belt. Indeed, the appellants' representations do not dispute this.
12. The Framework states that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land within them permanently open.
13. As regards openness, in the judgement of *John Turner v Secretary of State for Communities and Local Government*, heard in the Court of Appeal, it was said that the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if development occurs and also factors relevant to the visual impact on the aspect of openness which the Green Belt presents. A recent 2020 judgement (*Samuel Smith Old Brewery and others v North Yorkshire CC*) concluded that matters relevant to openness in any particular case are a matter of planning assessment, so whilst visual impact can be relevant to openness it is not necessarily relevant in all cases.
14. In this particular instance, the land is on the cusp of the Green Belt's limits and is positioned as a transition to that of a suburban/urban location to the south and west and the busy Oxford Road. I also accept that it is PDL. However, a vehicle sale and display use along with its attendant ancillary activity is difficult to regulate in terms of an ordered arrangement. Such an operation represents an intensive use of the land, with the open storage being visually intrusive, uncharacteristic and contrary to the purposes of the Green Belt. No proposals in this regard are before me as regards the potential for effective mitigation.
15. As it stands the cessation of the use and the removal of the related buildings etc would allow for a marked difference in the character of the land, irrespective of other commercial operations in the locality. In essence, such a use is much more suited to an urban location, and the proposed landscape buffer behind the common boundary with the residential properties would not satisfactorily mitigate the deleterious impact of the use.
16. I therefore conclude that the use, its associated buildings fixtures and fittings, constitute inappropriate development in the Green Belt. Further, it cannot be seen as preserving the openness of the Green Belt. Accordingly, I find the development to be in material conflict with the Framework's objectives and harmful to the openness of the Green Belt. It is also contrary to both LP policies GB1 and EP3; the latter requiring that development is compatible with, amongst other things, the character and amenities of adjoining land.

Planning balance

17. Given my findings on the first main issue I must assess whether the appellants have demonstrated the very special circumstances necessary in order to outweigh the presumption against inappropriate development in the Green Belt, which is by definition harmful thereto.
18. The appellants say that the use causes no negative impact on the neighbouring properties and surrounding area, and consider that it enhances appearance and

security. I disagree with this view, and the claims that the site has previously been subject to fly-tipping and trespass are insufficient reasons to set aside restrictive Green Belt policy. No very special circumstances have, therefore, been demonstrated in support of the appeals.

Conclusion

19. In the absence of very special circumstances to outweigh the inappropriateness the development is in material conflict with relevant advice in the Framework and also the LP policies cited. Accordingly, for the reasons given, and having had regard to all matters raised, the appeals on Ground (a) fail and planning permission is refused. The enforcement notices are therefore upheld.

Timothy C King

INSPECTOR