
Appeal Decisions

Hearing Held on 17 March 2020

Site visit made on 17 March 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2020

Appeal A Ref: APP/Z3635/W/19/3233509

Land rear of 37-51 Hithermoor Road, Stanwell, Staines-Upon-Thames, Surrey, TW19 6AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Heathrow Fencing Limited against the decision of Spelthorne Borough Council.
 - The application Ref 19/00518/FUL, dated 10 April 2019, was refused by notice dated 20 June 2019.
 - The development proposed is change of use of site from former nursery site to fencing manufacture and supply business, construction of a workshop and erection of a 3 metre high acoustic fence.
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Appeal B Ref: APP/Z3635/W/19/3241856

Land rear of 37-51 Hithermoor Road, Stanwell, Staines-Upon-Thames, Surrey, TW19 6AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Heathrow Fencing Limited against the decision of Spelthorne Borough Council.
 - The application Ref 19/00788/FUL, dated 31 May 2019, was refused by notice dated 25 July 2019.
 - The development proposed is change of use from former nursery site to a fencing supply business and erection of a 3 metre high acoustic fence.
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Decisions

1. Appeal A: the appeal is dismissed.

Appeal B: the appeal is dismissed.

Preliminary matters

2. The descriptions of development in both appeals are taken from the planning application forms but with the erection of a 3 metre high acoustic fence added, as agreed at the Hearing. There are minor operational works ancillary to the change of use in both appeals.
 3. A copy of the site plan 17_860B_002 was submitted at the Hearing. This plan is expressly referred to in the refusal of the application at Appeal B. Other site plans with suffix letters are included with the appeal documents but differ from plan 17_860B_002 in the portrayal of existing development at the site.
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4. The appellant company presently operates from a site at Gleneagles Close in Stanwell which is subject to enforcement proceedings following recent appeal decisions¹ but indicates that all or parts of that operation would relocate to the present appeal site depending on the outcome of the current appeals.
5. A planning application refused for change of use to a fencing manufacture and supply business at the current appeal site was the subject of an appeal in 2019². This was ultimately withdrawn to enable a workshop and acoustic fence as elements of operational development to be considered in a revised proposal. Since that time, the appellant has submitted information to address the Council's objections to that proposal relating to noise and highway issues.

Main Issues

6. The main issues now therefore in both appeals are:
 - (a) whether the proposals would constitute inappropriate development in the Green Belt,
 - (b) the impact of the proposals on the openness of the Green Belt,
 - (c) whether the proposals would conflict with the purposes of including land within the Green Belt,
 - (d) the effect of the proposals on the character and appearance of the area,
 - (e) if either proposal 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, and
 - (f) the planning balances.

Reasons

Whether inappropriate development

7. The site is rectangular in shape and has an access in its south-western corner linking to Hithermoor Road. It is bound to the west by the rear of dwellings at 37-51 Hithermoor Road, to the north by fields and to the south and east by open ground leading to a bund around a waste recycling facility. There are several dilapidated structures on site including, glass houses, polytunnels and small buildings relating to a former horticultural use of the site. One building had a temporary two year permission for a storage use in 2003, but the site would appear to have had little use since that time. The site lies within the Green Belt.
8. Appeal A includes provision of a single storey detached building to be used as a workshop, store and sales office. This would be about 30m long, 8m wide and 3.6m high to the top of a mono-pitch roof. In Appeal B there would not be any manufacturing, but a small building would be converted to a sales office. Other aspects of the proposals would be common to both appeals including a car park in the western part of the site, a 3m high fence across the width of the site and

¹ Ref.s APP/Z3635/W/18/3174752 and APP/Z3635/W/18/3174753

² Planning application 18/00019/COU and appeal APP/Z3635/W/18/3200540

- a centrally located area for storage of fence panels and building materials beyond this. The easternmost part of the site would be undeveloped.
9. The National Planning Policy Framework (the Framework) at Paragraph 145 confirms that subject to stated exceptions the construction of new buildings should be regarded as inappropriate in the Green Belt. Paragraph 143 states *"Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances"*. Exceptions to inappropriate development at Paragraph 146 include (d) the re-use of buildings provided that the buildings are of permanent and substantial construction, and at (e) material changes in the use of land. These are subject to the provisions that developments *"preserve its openness and do not conflict with the purposes of including land within it"*.
 10. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise³. The most important development plan policy in respect of both appeals is Saved Policy GB1 of the Spelthorne Borough Local Plan (2007) (SBLP). Paragraph 213 of the Framework states that existing policies should not be considered out of date simply because they were adopted prior to publication of the Framework, but due weight should be given to them, according to their consistency with the Framework.
 11. Policy GB1 seeks to restrict development to that appropriate to the Green Belt. Its list of exceptions to inappropriate development is not as comprehensive as those in the Framework, but in relation to the current appeals, the policy includes at (b) *"essential facilities for outdoor sport and recreation, for cemeteries, and for other uses of land which preserve the openness of the Green Belt and which do not conflict with the purposes of including land in it"* and at (d) *"appropriate re-use of buildings"*. References to *"other uses"* at (b) and to the openness and purposes of the Green Belt reflect provisions in the Framework. Whilst Policy GB1 was prepared prior to publication of the Framework, and the policy itself does not expressly refer to the possibility of very special circumstances to outweigh harm to the Green Belt, this possibility is covered in its supporting text. The policy is otherwise broadly consistent with the Framework in respect of clauses most applicable to the appeal proposals. It should not therefore be regarded as out of date but afforded significant weight. The decision notices for both appeal applications also refer to Section 13 of the Framework (Protecting Green Belt land).
 12. In Appeal A, the single storey workshop would be a substantial new building in the Green Belt. However, the appellant contends that its area and volume would be more than offset by the removal of existing structures relating to the former horticultural use of the site. Moreover, that building would not be inappropriate development as it would be related operational development ancillary to the material change of use permitted by Paragraph 146(e) of the Framework. It would nonetheless be a substantial structure and there would be other ancillary operational development in both appeal proposals. But to conclude on the question of whether either proposal is inappropriate development it is necessary to consider the effect of these proposals on the openness of the Green Belt and its purposes as set out in the Framework.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

Openness

13. Paragraph 133 of the Framework confirms that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that "*the essential characteristics of Green Belts are their openness and their permanence*". I have taken account of the Turner⁴ and Samuel Smith⁵ cases drawn to my attention by the parties. The former confirms that both spatial and visual considerations can be relevant to the concept of openness and the latter that these are factors to which the decision-maker may have regard depending on the facts of the particular case and in the exercise of judgment and discretion. The Turner case also examined the difficulty of comparing the volume of moveable chattels to that of a permanent structure. In my judgement, both the spatial and visual dimensions to openness are pertinent to the current appeals, and it is also relevant to consider the impact of moveable chattels such as fence panels and building materials.
14. In respect of the spatial dimension, the dilapidated polytunnels and glass houses from the former horticultural use would be removed. In Appeal A, the appellant proposes that their area and volume are 'traded in' against the area and volume of the workshop building. There is disagreement between the parties on baseline area and volume figures for the buildings to be removed and indeed errors on the plans in their depiction were identified at the Hearing and site visit that followed. The structures remaining on site are mostly in very poor physical condition and are now overgrown, making difficult precise measurement of their areas but particularly of their volumes. I am sceptical of the high volume figures suggested by the appellant for existing structures in relation to declared floor areas given the low lying nature of most of these buildings. Nonetheless, given their extensive site coverage, I am satisfied in respect of Appeal A that the area and volume of the workshop building would be less than that of the buildings to be removed.
15. In Appeal B, the net reductions would be even greater. There would not be a new building but one of the buildings that would be demolished in Appeal A would be retained, refurbished and used as a sales office. This building is modest in size by comparison with the new workshop in Appeal A. It is mostly of permanent and substantial construction, as required by Paragraph 146 (d) of the Framework, but the upper part of its annexe would need to be reconstructed.
16. The 3m high acoustic fence, common to both appeals, would have low area and volume figures, but in respect to the visual dimension of openness, this would be a substantial structure extending for some 65m across the entire width of the site. As its alignment would be parallel to Hithermoor Road, the fence would be a conspicuous feature when viewed from the upper floors of houses backing on to the site. Existing buildings on site are predominantly much lower than 3m in height. The workshop building in Appeal A would be located beyond the fence and therefore would be substantially screened by it in views from Hithermoor Road, but with a maximum height indicated to be 3.6m on the plans, the long axis of its roof would be visible over the fence.

⁴ Turner v SSCLG & East Dorset [2016] EWCA Civ 446

⁵ R(Samuel Smith Old Brewery) v North Yorkshire CC and Anrs [2017] EWHC 442 (Admin)

17. Common to both appeals would be a car park to the western side of the fence. This would be the closest feature to the houses in Hithermoor Road but would be located on land where there is a polytunnel and other dilapidated features. To the north of the car park would be a cleared area that potentially could be subject to landscape measures. In Appeal B, the fence would be positioned behind the small building to be refurbished and retained as a sales office; the building would therefore remain visible from dwellings to the west. Overall, I consider that the net changes to the western side of the fence would have a neutral impact in relation to the visual aspect of openness of this part of the Green Belt, but that the fence itself would have an adverse impact.
18. Also common to both appeals to the east of the fence would be an area for storage of building materials and an area of irregular hardstanding to the south of this. The appellant has recently laid hardcore across much of the proposed hardstanding area but claims that this has covered uneven historic hard surfaces. The Google Earth Aerial Image from 2002 shows tracks and a scattering of small structures across this part of the site but greenery in peripheral areas around these. It seems likely that some hard surfacing would have existed here at the time of the former horticultural use, but the area of hardstanding now proposed would be more extensive in area and more solid in nature than that which has historically existed on this part of the site. It would need to be so for the purposes now envisaged in moving packs of fence panels by forklift trucks. The hardstanding areas would amount to operational development, albeit ancillary to the change of use, but would result in a more intensive and harsher visual impact than would have been likely with the former horticultural use. There would also be the visual impact of a second fence across the width of the site to separate the proposed hardstanding and storage areas from the undeveloped land to the east.
19. There is some uncertainty on the impact of the storage of fencing panels and other items on openness in both spatial and visual dimensions. The appellant contends that open storage would be compensated for by the loss of existing structures, but neither appeal proposal provides clear information on the quantum of storage. At the Hearing permutations on the height of storage racks were discussed and it was agreed that this is a matter that could be controlled by a planning condition. Storage racks could be either 1.4m, 2.8m or 4.2m high depending on whether 1, 2 or 3 packs of fencing panels would be stored on the racks. The appellant has racks 4.2m high at the Gleneagles Close site. This would be the most conspicuous arrangement, but the appellant indicated that this would not be essential at the Hithermoor Road site given its size. However, it was confirmed that stacking single packs of fence panels to just 1.4m would be a severe limitation on business. Stacking packs to a height of 2.8m would allow some flexibility and room for growth; this would also equate approximately to the height of the acoustic fence.
20. The amount of fence panels stored and their location within the site could vary as these would be moveable items. The position of storage racks could also be changed over time, but this would be less likely to occur. It was explained at the Hearing that the optimum arrangement for the racks would be back to back to allow adequate room for fork-lift trucks to load and unload packs of fence panels and to circulate around the site. Even if stocks of fence panels on site were low, which would not be good for business, there would still be a spatial and visual impact on openness arising from just the storage racks.

21. It is likely that associated building materials would also need to be stored in the open as part of the change of use. Such items would be moveable, and their quantum and location would be likely to change over time. The appellant pointed out similarities here to the former horticultural use with the storage on site of railway sleepers and rocks.
22. The high bund to the recycling centre to the south and east of the site would screen the site in views from these directions. The easternmost part of the site would be left undeveloped and there are open fields to the north of the site. As such, the changes proposed within the site would not be conspicuous from public viewpoints. Elements may be glimpsed along the access from Hithermoor Road, but there would be private views from the upper floors of houses backing on to the site. The operational parts of the site would also be visible for users of the open fields to the north and from visitors to the site itself. Whilst the limited opportunities to view the site from public areas would constrain to a degree the visual impact of the proposals on openness, there would nonetheless still be an impact, and this is a material consideration.
23. Having regard to all relevant considerations, my findings are that the proposal in both appeals would not have an impact on openness in relation to its spatial dimension, due to the extensive spread of former horticultural buildings across the site that would be removed, but that there would be a visual impact on openness. In Appeal A, the new workshop building would be a noticeable feature in respect of its length and height. It would be higher than any structure currently on site and its roof would be seen over the fence that would screen the main operational area. In relation to both appeals, the fences and the extensive hardstanding areas would also have a visual impact on openness, as would the storage racks. Even if the storage racks were limited in height and number, there would still be some impact. Neither proposal would thereby preserve the openness of the Green Belt.

Purposes of the Green Belt

24. Paragraph 134 of the Framework sets out five purposes for the Green Belt. The Council contends that the proposals conflict with two of these: (b) to prevent neighbouring towns merging into one another and (c) to assist in safeguarding the countryside from encroachment. In relation to (b), the site is located next to the eastern edge of Stanwell Moor, a small settlement within the Green Belt. To the east of this is the larger settlement of Stanwell which merges with Ashford to the south. The site is in the gap between the two settlements. However, a significant part of this gap is dominated by the Oakleaf Farm Waste Recycling Facility. The appeal site abuts the bunds that encompass the waste site to its southern and eastern sides. Between the eastern edge of the waste site and Stanwell is a larger mainly wooded tract of Green Belt. At a strategic level this part of the Green Belt has a role in separating the built up edge of London from towns to the west such as Slough.
25. The appellant has referred to findings of the Spelthorne Green Belt Assessment (2018) (SGBA) which points out that Local Area 2a, where the site is located, performs moderately overall against Green Belt purpose (b), meaning, “A ‘wider gap’ between non-Green Belt settlements where there may be scope for some development, but where the overall openness and the scale of the gap is important to restricting merging”. Whilst Local Area 2a therefore fulfils a moderate role, the site is located within sub-area AC-10 which the SGBA

concludes "*plays little or no role in maintaining this gap at the strategic scale (Purpose 2)*". The appellant has queried the value of maintaining sub-area AC-10 within the Green Belt, but this is primarily a matter for the Council to consider in reviewing its Green Belt boundaries.

26. The site nonetheless currently retains Green Belt status. The SGBA comment on sub-area AC-10 notes that "*the gap between Stanwell Moor and Ashford / Stanwell / Sunbury-on-Thames is recognised as being small in scale and vulnerable to change*". The proposals would both result in some erosion of this small gap. There would thereby be limited conflict with purpose (b) to prevent neighbouring towns merging into one another.
27. In relation to safeguarding the countryside from encroachment, purpose (c), the SGBA again rates Local Area 2a as moderately performing, meaning "*Contains less than 10% built form and/or possesses a largely rural character*". However, it comments that sub-area AC-10 "*is heavily influenced by the urban fringe of Stanwell Moor and contains significant built form (Purpose 3)*". The fields to the north of the appeal site are enveloped by a ribbon of development extending from the main body of Stanwell Moor, and the waste recycling facility is a significant built form that covers an extensive area. These factors constrain linkages between the appeal site and the wider Green Belt and act as a constraint on the site's contribution towards the wider countryside. The '*significant built form*' of the waste recycling facility is a dominating local feature, but it is masked by the greenery along the bund. Furthermore, notwithstanding the presence of glass houses and polytunnels, the appeal site is largely undeveloped, largely open in form and green in appearance. Having regard to all relevant considerations, my finding is that the proposals would result in limited conflict with purpose (c) in safeguarding the countryside from encroachment.
28. Neither appeal proposal would preserve the openness of the Green Belt and both would conflict with the purposes of including land within it. They would both amount to inappropriate development as neither would satisfy the requirements for exemption at Paragraph 146 of the Framework. Paragraph 143 states "*Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances*".

Character and appearance

29. The site has an urban fringe character being close to housing and to the waste recycling facility. It has an unkempt appearance due to neglect over several years. The glass houses and polytunnels are numerous but low lying and after many years without use have now been colonised by brambles and other natural planting, softening their appearance. But much of the site retains a largely open undeveloped character free from structures and hardstanding areas and in this respect is similar in character and appearance to neighbouring open land to the north. The former horticultural use of the site would have been akin to an agricultural use and therefore appropriate to a rural or countryside location. As such the site cannot be regarded as previously developed land.
30. The appellant asserts that as a fencing manufacture and supply business is a timber based activity that it would be appropriate to a countryside location; the existence of similar enterprises in rural locations around England was referred to at the Hearing. Nevertheless, I do not consider that a rural location is a

pre-requisite for such a business. Raw materials for the present enterprise are brought in by lorry over long distances and the business base would include customers within the nearby urban and suburban areas.

31. The character of the site would also be informed to a degree by activity including deliveries to the site by lorries, distribution from the site by other vehicles and movement of fence panels around the site between these times by fork-lift trucks. The former horticultural use of the site would have involved some vehicular activity, but it is unlikely that this would have been as intensive or as noisy as the use now proposed. That a high fence across the site has been considered necessary as an acoustic measure to shield the nearest residents from noise within the site indicates that noise would be a significant characteristic of both proposals. The former horticultural use would have been much quieter by comparison.
32. The proposed change of use would result in a harsher, more urban appearance to the site compared with the former horticultural use when in operation and its appearance now. There would be more extensive hard surfaced areas, higher structures in the fence across the site, the workshop (in Appeal A) and racks of fencing panels. It would therefore be harmful to the character and appearance of the area; this is a matter to which I attach significant weight.

Other considerations

33. The appellant contends there are other considerations that would outweigh any harm arising from inappropriate development and any other harm so as to amount to the very special circumstances necessary to justify either proposal in the event that they are judged to amount to inappropriate development. These considerations fall broadly into three categories, enhanced site conditions, various economic factors and an alleged failure of local planning policy.
34. In respect to enhanced site conditions, the appellant claims that both proposals would change the site from its present disused, overgrown and unsightly condition through a decrease in the footprint and volume of buildings on site, an associated reduction in the impact on openness and a regularisation in the appearance of the site. I have already outlined how in my judgement both proposals would not preserve the openness of the Green Belt as a result of new fences, the provision of extensive areas of hardstanding for storage, loading and parking and the new workshop building in Appeal A. Furthermore, the net effect of the envisaged changes to the site would have a negative rather than positive effect on the character and appearance of the area. I therefore attribute no weight to the alleged benefit through changes in site conditions.
35. In respect to economic factors, the appellant's business has been operating for several years and has made a beneficial contribution to the local economy. The witness statements from Matthew Beach and Chloe Beach show that the business which had a small start in 2009 has steadily grown and now employs 14 local people plus 1 self-employed person. Furthermore, that in recent times the business has been busy and aspires to expand. Paragraph 80 to the Framework states, *"Planning policies and decisions should help to create the conditions in which business can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking in account both local business needs and wider opportunities for development"*. The continuation of the business is therefore a matter that attracts significant weight.

36. The business is currently based at Gleneagles Close in Stanwell, but operations here are subject to enforcement action requiring the cessation of business activities on most of the site. However, this action has been held in abeyance at an agreed level of activity pending the outcome of these appeals. Whilst permission has been granted for the business on a small part of the Gleneagles Close site, this would severely constrain the extent of current business activities. There is clear incentive for the business to seek another site.
37. The construction of the workshop building in Appeal A would enable both manufacturing and distribution operations to take place all on one site. The entire business would be able to relocate from the Gleneagles Close site. In Appeal B, operations at the Hithermoor Road site would be limited to a fencing supply business, so a two site solution would be the default position. There would be business efficiencies and convenience through operation on a single site and fewer vehicle movements overall which would have some community benefit. However, the Council's refusal of both proposals did not include an amenity reason. Moreover, it is not unusual for businesses to operate over more than one site, particularly at times of expansion or change. Furthermore, there may be sites other than the Hithermoor Road site that would enable single site operational efficiencies. The benefit of single site operation encompassed in Appeal A therefore attract only moderate weight.
38. The appellant contends that the business has a need for a large area in order to store, manufacture and stock the associated materials and supplies and that no suitable alternative site to the appeal site has been found in the locality. Searches have been made for a site of at least 0.5 hectares within a 15 mile radius of the appeal site with no suitable alternative sites being available. Reference is made to two sites marketed by Rightmove⁶ but in both cases the appellant is of the opinion that they would be unsuitable through poorer access, the likelihood of planning permission being refused for the required change of use from agricultural land and the loss of employees through excessive distances to travel.
39. By comparison the appeal site offers the advantage of being near to the Gleneagles Close site, so that employees could be retained. The appellant contends that the business is profitable largely because they own the land, and do not need to pay rent or a mortgage; also, that the making of such payments on other sites would potentially severely affect profitability whereas the appeal site offers an affordable alternative. However, the advantages of affordability and profitability alone are not a justification for relocating from one Green Belt site to another Green Belt site. The procurement of suitable land is a reasonable business cost. The impact on the Green Belt and the availability of alternative sites also need to be considered in this context.
40. At the Hearing the Council referred to the possible use of another site owned by the appellant currently used as a scrap metal merchants' site. The appellant informed that this site is small by comparison with the appeal site and has a poorer access making it difficult for larger lorries to make deliveries and turn. The site had therefore been discounted as a valid alternative. Nonetheless, it is indicative of one type of site that may be suitable for all or part of the business to relocate to.

⁶ Land off Broadford Lane near to Chobham and land at Bisley Green towards Woking

41. The appellant contends that the location for this business is only appropriate in a rural location. This would include land within the Green Belt and rural locations beyond it. I do not accept that a fencing manufacturing and supply business must have a rural location. The business is relevant to not just the rural community but also to customers in urban and suburban locations. Whilst the effective operation of the business on a single site would require a site large enough for the manufacture, manoeuvring and storage of fence panels, I am not persuaded that this necessitates a rural location. I have not been presented with evidence of a suitable alternative to the Hithermoor Road site, but the lack of evidence to date does not mean that there are not alternative options in more urban locations in reasonable proximity to the present business location. Nor has it been demonstrated that a location on an industrial estate or elsewhere in a more urban environment would be so costly as to make the business unviable.
42. If the business had to reduce or cease activities, there would be consequences for other related businesses and for employees. Reference has been made to Park Panels based in Nottinghamshire who regularly deliver concrete materials twice a week to the Gleneagles Close site. There would be an indirect impact upon other businesses such as this resulting from a significant downturn in activity, but such businesses would be able to seek other markets and suppliers, particularly in remote locations such as Nottinghamshire. A satisfactory location for the business other than the Hithermoor Road site would enable such business relationships to continue.
43. Employees may lose their jobs if the business had to contract or relocate a considerable distance and they were unable to travel. Loyalty to employees is admirable, but there is little evidence to suggest that employees would not be able to secure alternative employment given the diversity and proximity of other economic activity in the wider area. It would be advantageous to retain existing skilled employees when relocating, but if the distances involved were to preclude this option to some degree, then it would be necessary to train new employees. This would not be an unusual circumstance for a business.
44. I have attributed significant weight to the need for the business to continue in the light of planning policies. However, in relation to the other economic factors advanced in favour of the appeal proposals, the lack of alternative sites and the impact on employees and other businesses, I attribute only moderate weight based on the evidence before me.
45. The appellant has also referred to security of equipment as a reason in favour of both appeal proposals. The witness statement from Chloe Beach specifies ownership of 4 panel tables and other high value equipment on site equating to about £120,000, and that security would be an issue if the business had to move further away as there would not be easy access if something were to happen. In Appeal A, all equipment and storage could be on the one site and close to a home address. In Appeal B, manufacturing equipment would be off site, but the Gleneagles Close site where manufacturing could continue is near. Security is a risk common to many businesses. The Hithermoor Road site would be convenient in terms of managing security risks, but this needs to be offset in relation to harm arising at the site. I am not convinced that it would be necessary to relocate all or part of the business such a considerable distance that security would become a significantly greater risk. Convenience in relation to security therefore attracts only limited weight in favour of the proposals.

46. The appellant alleges that there has been a failure of local planning policy through the contraction of employment land in Spelthorne and the absence of allocation of new employment land so exacerbating the limited opportunities available to relocate the business. Reference is made to the amount of business floorspace in section 3 of the Spelthorne Local Economic Assessment (2016) (LEA) with the comment that this appears to be mainly office, retail and warehouse orientated. However, figure 1 to paragraph 3.2 of the LEA shows that industry and warehouse floorspace equates approximately to the combined floorspace for office and retail uses; furthermore, that there has been little change in this over the period of assessment from 2012-2016. Paragraph 3.7 also confirms that there is a significant amount of business floorspace immediately adjoining the borough. There is the potential for relocation of the business to such locations.
47. The appellant has quoted from paragraph 2.19 of the Spelthorne Economic Strategy (2017) (SES), "*The level of vacant business floor space is 4%, whereas in 2013 it was 7.9%*", to assert a decrease in available sites for relocation. However, at paragraph 2.22 the SES concludes, "*The scope for business growth from both vacant premises and the implementation of sites with planning permission and other proposals represents further capacity for economic growth*". I do not regard reported changes in the quantum of business floor area available or in the fall in vacancy rates to be significant in the context of the appeal proposals given indicated quantities of industrial and warehousing floorspace remaining in Spelthorne from the LEA and the SES, and the existence of more floorspace near to the borough. The Council is addressing the need for provision of employment land at a strategic level in its emerging local plan. The balance of evidence before me does not suggest that there has been a failure of policy; this matter does not therefore attract weight.
48. The appellant reasons that if the material considerations do not outweigh the harm sufficiently to justify a permanent consent then a temporary consent falls to be considered. Caselaw is referenced to confirm that a temporary consent means that any harm would be reduced⁷ and that the substantial weight previously attaching to harm arising from inappropriate development on the Green Belt falls to be reduced, because it would be limited in time⁸. A three-year temporary consent is suggested to allow enough time to increase the likelihood of the business finding a suitable alternative location and to be able to relocate with minimum impact on the business and those employed.
49. A temporary permission in the case of either appeal proposal would involve significant investment and operational development before business activities could commence. In the case of Appeal B, there would be the erection of the acoustic fence, other enclosures and the laying of a considerable area of hardstanding plus the refurbishment of the proposed sales building. In Appeal A there would be the additional expense of constructing the large workshop building instead of the converted sales building. In both appeal proposals there would be a substantial change arising to the character and appearance of the area and on the openness of the Green Belt. Furthermore, it is uncertain that all operational development, such as the more extensive hardstanding areas, would be readily capable of removal at the end of the temporary period.

⁷ McCarthy v SSCLG & South Cambridgeshire DC [2006] EWHC 3287

⁸ Moore v SSCLG and London Borough of Bromley [2013] EWCA Civ 1194

50. The case “*Moore*” referred to by the appellant related to the placing of a single mobile home on Green Belt land, development that had already taken place at the time of the appeal. Associated operational development at the site had also already taken place, so the granting of a temporary permission in that case would not have involved significant additional operational development. It is therefore unlike the current appeal proposals.
51. There is uncertainty on how economic circumstances may change over the suggested three year period but there is no evidence to indicate that it would take such a long time to procure an alternative site for either all or part of the appellant’s business. A much shorter period would ordinarily suffice for site searching and moving. But a short period would not be commensurate with the considerable investment involved in establishing the business on site for a temporary permission. A three year period may reflect the time necessary to recoup costs involved in laying out the site, but it would result in a substantial and harmful change in the local environment for this three year period. Any benefits and harm need to be weighed in the planning balance.

Planning balances

52. The most important local planning policy for both appeal proposals is Policy GB1 of the SBLP. Although the policy predates the Framework, I have found it not to be out of date but broadly compatible with the Framework’s provisions. Consideration of very special circumstances is covered in its supporting text. As such, the tilted balance set out at Paragraph 11(d) of the Framework is not engaged. The appeal proposals fall to be considered under the ordinary planning balance in which applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise⁹.
53. Both appeal proposals would amount to inappropriate development in the Green Belt. In both cases the operational development associated with the proposed change of use would not preserve the openness of the Green Belt and there would be limited conflict with the purposes of including land within it. In Appeal A, the proposed workshop would also be an unjustified building in the Green Belt. Paragraph 144 of the Framework states that, “*substantial weight is given to any harm to the Green Belt*”. In addition, there would be harm to the character and appearance of the area in both appeals, a matter to which I have attributed significant weight.
54. As to the benefits of the appeal proposals, the continuation of the business and its contribution towards the local economy is a matter that attracts significant weight. In relation to the other economic factors advanced in favour of the appeal proposals, the lack of alternative available sites, the impact on employees and other businesses and the advantages and convenience of single site operation encompassed in Appeal A, I attribute only moderate weight based on the evidence before me. Limited weight is afforded to the security concerns advanced in favour of the proposals, but the claimed enhancement of site conditions and the alleged failure of local planning policy do not attract any weight.

⁹ Section 38(6) of the Planning and Compulsory Purchase Act 2004

55. Paragraph 144 of the Framework states that “*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*”. In the case of both appeal proposals, the benefits arising would not clearly outweigh the substantial harm to the Green Belt and harm to the character and appearance of the area. Very special circumstances therefore do not exist. Even in the cases advanced for a temporary planning permission, the benefits arising from a time limited relocation to the appeal site would not outweigh the harm to the Green Belt and to the character and appearance of the area.
56. Both appeal proposals would conflict with Policy GB1 of the SBLP and with the Green Belt provisions of the Framework. Planning permission should not be granted on a permanent or temporary basis to either appeal proposal.

Conclusion

57. For the reasons given and having regard to all other matters raised Appeal A and Appeal B are both therefore dismissed.

Rory MacLeod

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Studio Ltd (agent)
Matthew Beach	Heathrow Fencing Ltd (appellant)
Chloe Beach	Heathrow Fencing Ltd (appellant)

FOR THE LOCAL PLANNING AUTHORITY:

Phillip Hughes	PHD Chartered Town Planners (consultant)
Paul Tomson	Planning Officer, Spelthorne Borough Council
Kamil Dolebski	Planning Officer, Spelthorne Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

Google Earth Aerial Image of the appeal site dated 2002

Site Plan 17_860B_002 (in relation to appeal B)

Signed copy of Statement of Common Ground

Signed copy of Witness Statement of Matthew Beach

Signed copy of Witness Statement of Chloe Beach