



Appeal Decision

Site visit made on 9 June 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Appeal Ref: APP/G2245/C/20/3246875

Land at Calcutta Club Car Wash, London Road, Badgers Mount, Halstead, Kent TN14 7AA

- 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 DNR Cleaning Ltd against an enforcement notice issued by Sevenoaks District Council.
 - The enforcement notice was issued on 24 January 2020.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission 1) the change of use of the land from a car park to a mixed use car park and hand car wash for vehicles and 2) the carrying out of operational development namely the erection of a shed and fixed canopy on the land.
 - The requirements of the notice are:
 - a) Cease the use of the land for the mixed use car park and hand carwash. Remove from the land all equipment and materials connected with the change of use.
 - b) Remove the shed and fixed canopy from the land.
 - The period for compliance with the requirements is one month.
 - 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.
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Decision

1. It is directed that the enforcement notice is varied by:
 - The deletion of 'one' in the period for compliance and substitution with 'three'.
2. Subject to the 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.

Matters concerning the notice

3. I note that the appellant is concerned that the red line includes all of the car park, whereas the hand car wash is taking place only on part of the site. A mixed use allegation must be assessed against the appropriate planning unit, which I am satisfied, having regard to the *Burdle* tests¹, includes the area within the red line. But in any case, Section 57(4) of the 1990 Act as amended allows the reversion to the last lawful use following the issue of an enforcement

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

notice. The inclusion of the entire car park within the red line is not therefore a matter which requires correction

4. I note the appellant argues that the buildings are temporary, but no evidence has been submitted to demonstrate that they should not be considered as operational development, having regard to the primary factors established by case law.

The appeal on ground (a) and the deemed application

5. The ground of appeal is that planning permission should be granted.
6. The site is within the Green Belt, and the reasons for issuing the notice identify that the development is inappropriate development, that is harmful to the character and openness of the Green Belt.
7. The National Planning Policy Framework (the Framework) sets out the Government's policy in relation to Green Belts. Inappropriate development is, by definition, harmful and should not be approved other than in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
8. It follows that the main issues are:
 - Whether the development is inappropriate development in the Green Belt; and
 - If the development is inappropriate, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether inappropriate development

9. Policy LO1 of the Sevenoaks Core Strategy 2011 (CS) seeks to protect the rural character of the countryside, with new development only taking place where it is compatible with policies protecting the Green Belt.
10. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 146(g) states that a material change in the use of the land is not inappropriate in the Green Belt provided it preserves its openness and does not conflict with the purposes of including land within it.
11. The construction of new buildings should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 145. One such exception in paragraph 145(g) is the limited infilling or the partial or complete redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt than the existing development. I concur with the view of both main parties that the land is previously developed.
12. The site is a large car park within the grounds of a restaurant and fronting onto the main A224 London Road. The area of the car park that is being used for hand car washing is the northern part, which is partially separated from the rest of the car park by a railway carriage, which forms part of the restaurant.

Although it is well screened by hedging from the adjacent open land, it is readily visible from the main road and the rest of the car park. There are other businesses beyond the restaurant and fronting onto London Road, but the area has a predominantly open and rural appearance.

13. A large cantilevered canopy has been erected, which is supported on two substantial metal posts on the site, and provides a covered area for car washing. It is a significant structure that is clearly visible from London Road as a result of its height and scale, although some screening from the surrounding area is provided by the boundary hedges and the railway carriage. Due to its height and scale, it has a greater visual impact than the existing car park, even if the car park were fully occupied by parked cars. There is a smaller shed towards the rear of the site, as well as other equipment associated with the use as a car wash. The buildings and other paraphernalia have resulted in a significant loss of the openness of the site in the Green Belt, in both visual and spatial terms.
14. In the final comments the appellant has questioned whether the hand car wash use is ancillary to the restaurant rather than a mixed use comprising two primary uses due to the relatively small scale of the area. However, the evidence indicates that the uses are entirely separate and the hand car wash is not ancillary to the restaurant. Moreover, at the time of my site visit, when the restaurant was closed, the hand car wash was in operation.
15. The nature of the use is different to that of a restaurant car park. It is a more intensive use with associated equipment, employees, and a greater frequency of vehicle movement. As it has dedicated buildings and equipment in a specific section of the car park, it is not comparable with the appellant's example of the washing of customers' cars while they are parked in a restaurant or supermarket car park.
16. The material change of use does not preserve the openness of this part of the Green Belt and the operational development has a greater impact on openness than the existing car park. It is therefore inappropriate development in the Green Belt.

Other considerations

17. The site is part of a substantial car park and the restaurant is adjacent to a small business area with a motel, car repairs, car and lorry parking. There are sustainability benefits from locating close to other businesses. However, there is little evidence of a significant number of shared trips taking place.
18. This part of the car park was little used and redundant. The car wash business had relocated from a nearby premises and wanted to stay in the area to retain customers. It provides a well-used and useful local services with public and economic benefits, whilst the loss of the site would be harmful to a small business. I attach limited to moderate weight to these considerations.
19. The Council has approved a car wash at Coolings Nursery², which is located to the other side of Halstead village, and details have been provided. I am aware that this is located within a large garden centre. I am also aware that there is a hand car wash at Polhill Garden Centre, a short distance away from the site.

² Application ref SE/16/01179

However, these are both within a complex of buildings where the visual effect on the openness of the Green Belt is not comparable.

20. A neighbouring occupier has raised concerns with the lack of protective measures in order to contain or eliminate spray from the car wash, the lack of health and safety practices, and that there are other car wash facilities in the area. Health and safety practices are not a matter that indicate permission should be withheld. The Council is satisfied that drainage could be dealt with by a condition, and I have no reason to disagree. The presence of other car wash facilities in the area is not a reason to refuse permission.
21. Although not raised by the Council, the site is within the Kent Downs Area of Outstanding Natural Beauty (AONB). I am required to give great weight to conserving and enhancing landscape and scenic beauty in the AONB, in accordance with paragraph 172 of the Framework. It is located towards the top of scarp slope with an area of woodland to the rear of the site and open fields to the side. As the site is well screened from the wider landscape and closely associated with a cluster of business developments, I conclude that the proposal would not be harmful to the natural and scenic beauty of the AONB.

Green Belt Balance

22. 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 impacts on openness.
23. I give limited to moderate weight to the considerations put forward by the appellant, but that falls far short of clearly outweighing the substantial weight that must be given to harm to the Green Belt. The very special circumstances necessary to justify development do not, therefore, exist. It is therefore in conflict with the Framework and CS Policy LO1 in relation to the Green Belt.

Conclusion in relation to Ground (a)

22. For the reasons given above and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed application should be refused.

The ground (g) appeal

24. This ground of appeal is that the period for compliance with the notices is unreasonably short. The appellant argues that it will take a significant period of time to relocate the business. A one month compliance period would mean that the business would have to close with a consequential effect on livelihoods. A period of six months is requested.
25. I recognise that there is a balance between bringing the identified harm to an end without unnecessary delay, and the interests of the appellant. I consider that one month is too short to allow the appellant to look for alternative premises, and that three months would be an appropriate balance.
26. To this limited extent the appeal on ground (g) succeeds and I will vary the notice accordingly.

N Thomas INSPECTOR