



Appeal Decision

Site visit made on 29 June 2020

by Richard S Jones BA (Hons), BTP, MRTPI

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

Decision date: 11 August 2020

Appeal Ref: APP/P0119/C/20/3248121

Land adjacent to The Tollgate, Oldfield Gate House, Gloucester Road, Dyrham

- 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 Ms Kathryn Bates against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice, numbered COM/17/0385/OD/5, was issued on 11 February 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the change of use of woodland to use as a carpark for and in connection with The Tollgate.
 - The requirements of the notice are:
 - i. Cease the use of the land for the parking of motor vehicles.
 - ii. Remove the building materials spread and imbedded into the land to create the hardstanding.
 - iii. Reinstate the land to its condition prior to this development, including the reintroduction of the low wall.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of twenty-eight (28) days and the substitution of three months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Background

2. The land to which the enforcement notice relates forms part of area of protected woodland located within the countryside, the Cotswold Area of Outstanding Natural Beauty (AONB) and the Bristol and Bath Green Belt. It is positioned adjacent to a layby on the western side of the A46, to the south of the Tollgate, a Grade II listed building used as a café. The appeal land is accessed from the layby, between the trees and a gap created in the low stone wall. The layby provides the main car parking area for the cafe.
3. The appellant recently made a retrospective planning application¹ for the erection of single storey rear extension, installation of raised decking and formation of hardstanding to facilitate increased parking area with associated

¹ Planning application ref: PK18/5131/F

works at the Tollgate Tea Shop. The Council made a split decision, granting permission for the extension and decking, but refusing the hardstanding.

4. The enforcement notice does not allege that the hardstanding is in breach of planning control, but the car parking use that is the subject of the allegation takes place on the hardstanding, and so the notice requires that to be removed.
5. The appellant has highlighted that the Council had previously issued but then withdrew an enforcement notice in respect of the creation of the hardstanding area in 2018, as well as two other notices relating to the Tollgate Tea Shop. It remained open to the Council to take further enforcement action and any issue relating to the refund of fees for the appeals against the earlier notices is outside of my remit.

The Appeal on Ground (a)

Main Issues

6. The appellant has highlighted that the enforcement notice raises no objection to the car park in terms of its effect on the setting of the Tollgate listed building, thereby reflecting the Council's conclusions for the above referenced application. However, I am not bound to reach the same conclusions on any issue as the Council – and I have a duty under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
7. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the NPPF) and relevant development plan policies;
 - the effect of the development on the landscape and scenic beauty of the Cotswold AONB, having regard to the health and amenity value of the protected woodland;
 - the effect of the development on the setting of the Tollgate Grade II listed building; and
 - if the development 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 necessary to justify the development.

Whether inappropriate development within the Green Belt

8. The NPPF and Policy PSP7 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (PSPP) provide that 'inappropriate development' is, by definition, harmful to the Green Belt and it should not be approved except in very special circumstances. Policy CS5 of the South Gloucestershire Local Plan Core Strategy states that proposals for development in the Green Belt will need to comply with the provisions in the NPPF or relevant local plan policies, while Core Strategy Policy CS34 seeks to protect the Green Belt from inappropriate development.

9. The appellant has referred to paragraph 145 of the NPPF but that concerns new buildings in the Green Belt, and so it is not relevant because planning permission is and can only be sought through this appeal for the development said to be in breach of planning control. Paragraph 146 of the NPPF does apply; it provides that material changes in the use of land are not inappropriate in the Green Belt so long as they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
10. The alleged change of use is to use as a car park, which serves a café. Planning permission is not sought for any outdoor sport or recreation use. By its nature, the use of land for parking involves the stationing (as well as coming and going) of vehicles. Plainly, there will be days and hours when the café is shut and the car park is empty. Nevertheless, I find that allowing the alleged use would lead to cars being parked with sufficient frequency so as to cause a loss of physical and visual openness in the Green Belt.
11. Moreover, as indicated above, the cars are parked on what has been described as a hardstanding. That is perhaps a grand term for what is actually there; beyond the access from the layby, the ground area in and around the trees is generally uneven with areas of piled, broken tarmac and concrete, piled materials, patches of tarmac and areas of loose and compacted materials set amongst overgrown vegetation. However, these areas of piled, loose and compacted materials also cause a small loss of openness in the Green Belt.
12. I further find the hardstanding and cars parked upon it cause the alleged use to conflict with the purposes of including land within the Green Belt, which include assisting in safeguarding the countryside from encroachment.
13. It makes no difference that an area of informal hardstanding was laid out next to the café in the past, since it was used for a different purpose (farm storage) and removed before the appeal hardstanding was laid. I conclude that the alleged change of use of land to use as a car park is inappropriate development in the Green Belt for the purposes of the NPPF, PSPP Policy PSP7 and Core Strategy Policies CS5 and CS34.

Character and appearance

14. The amenity value of the woodland, which is covered by a tree preservation order, makes a notable contribution to the landscape and scenic beauty of this part of the AONB. The use, which involves the parking of cars on what is frankly an untidy and unsightly hardstanding, does not only encroach upon the countryside, it also urbanises and detracts from the intrinsic character and appearance of the woodland.
15. Moreover, the Council's photographs show a clear deterioration in the amenity value of the woodland between 2015 and 2018, arising from the removal of a tree and likely crown lifting work. The appellant states that the tree was diseased and removed to prevent it falling onto the Tollgate café. Although reference is made to professional advice taken, this has not been provided and the photographs supplied are inconclusive as to whether the staining shown on the tree was caused by disease or something else. There is also a considerable amount of apparently healthy wood in view. Without any evidence, expert or otherwise, to corroborate what these photographs are purported to show I can give only very limited weight to the appellant's assertions.

16. In any event, the removal of the tree adjacent to the layby, as well as a section of low walling, has created a gap which allows for views of the car park access from the layby and A46, even in the summer months. In winter the car park would readily be seen through the trees. It is also clearly visible from the outdoor seating area of the café. The harm arising is not justified by the fact that the car park is screened in wider views during the summer months.
17. I am satisfied that a suitable landscaping scheme would significantly soften and provide at least partial screening to the car park during the winter months, particularly given the slightly lower land levels within the site compared to the layby and A46. However, I am mindful that this argument could be repeated all too often, with developments that physically harm the landscape being justified by screening to the overall detriment of the character of the countryside
18. Moreover, I share the concerns of the Council's Tree Officer that the car park use puts the long-term health of the remaining protected trees on the site at risk, through soil compaction initially from the piling of materials around the base of trees, oppressing the root systems and then, on an ongoing basis, from the loading of vehicles. The use also gives rise to a risk of accidental vehicular contact with the trees.
19. The appellant has not provided evidence to allay these concerns. Although stating that porous materials in the hardstanding allow water through to tree roots, surface water run-off in car parks can include oil and other contaminants – and the compacting of soil in any event can adversely affect drainage, gas exchange, nutrient uptake and organic content, serving to impede or restrict root growth
20. I have noted the appellant's offer to impose a condition requiring the existing materials be removed and replaced with a 'grasscrete' alternative but this would not suffice to remedy the harm caused by the impact of the use to the landscape and appearance of the area. It might even increase the harm, if it means the car park can be used more efficiently and thereby accommodate more cars. In any case, I have no evidence, such as an arboricultural impact assessment, to demonstrate whether such a solution is achievable without significant adverse impact on the viability of existing trees, given the likely extent of the root protection areas within this wooded area as well as the potential effects on the existing soil structure.
21. The NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. For the reasons given above, I conclude that the appeal development fails to conserve or enhance the landscape or scenic beauty of the AONB, but rather causes unacceptable harm to the character and appearance of this rural area and to the future health and amenity value of protected trees, and this harm would not be overcome by tree planting and/or re-surfacing the land in grasscrete.
22. The development thereby conflicts with Sites and Places Plan Policies PSP1, PSP2 and PSP3 and Core Strategy Policies CS9 and CS34. These require, amongst other things, development to: conserve and enhance the character, quality, distinctiveness and amenity of the landscape; and to outweigh the loss or damage to mature woodland.

Setting of the listed building

23. The Tollgate comprises an extended, gothic style, two storey building constructed from coursed rubble with stone dressings and a slate hipped roof. Built as a turnpike in the early 19th Century, its purpose was to provide a more secure means by which tolls could be collected.
24. As a result of its close proximity and functional relationship, the car park is viewed and experienced in combination with the Tollgate. The car park can also be clearly seen in views from the rear of the Tollgate and vice versa. Consequently, the car park falls within the setting of the listed building.
25. I appreciate that vehicles parked in the layby are already seen in combination with the Tollgate and this has some mitigating effect. However, it does not justify the size, appearance or exact location of the car park. Notwithstanding that the Council found otherwise, and given the harm I have found to the character and appearance of the land, I find that the use does not preserve or enhance the setting of the listed building.
26. Given that much of the significance of the Tollgate is derived from its fabric and history, which is unaffected by the setting impact, the magnitude of harm would be less than substantial in the context of paragraphs 194 and 195 of the NPPF – although paragraph 193 of the NPPF requires that great weight should be given to the asset's conservation.
27. Where development would cause less than substantial harm to the significance of a heritage asset, it is necessary to weigh the harm against the public benefits of the proposal. Until I have undertaken that exercise, I cannot conclude as to whether the impacts of the development on the setting of the listed building would justify a refusal of permission in their own right. I shall address this matter while also looking at whether the other considerations raised in favour of the appeal would amount to very special circumstances which justify the harm caused by the development to the Green Belt.

Other considerations and the Green Belt balance

28. The Framework states that substantial weight will be given to any harm to the Green Belt, and 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. Policy PSP7 of the Sites and Places Plan is consistent with the NPPF in this regard.
29. The appellant asserts that the car park is required to maintain the viability of the café – and I accept that, relative to the amount of covers, the existing layby does not provide many parking spaces. Since the café is in a rural area, it will rely on customers travelling by private car and so the appellant's survey confirms demand for up to 18 cars, even in low season.
30. I also appreciate that the café business has grown as customers like to sit outside and enjoy the views. I am mindful that Coronavirus (Covid-19) will have made the outdoor seating more valuable for its customers as well as the café's viability. I am also mindful of the limited rural employment opportunities as well as the written support of the Parish Council. However, the appellant has not shown that the café would not be viable without the appeal car park being on the ground here. I therefore give the economic benefits moderate weight.

31. The use also sustains a café which has social benefits, being a valued meeting place where customers are able/encouraged to use public footpaths nearby for recreation. Such benefits also attract moderate weight in the balance.
32. I acknowledge that cramped or double parking in the layby could result in risky manoeuvring on the A46. I also note the Highway Authority's comments that demand for parking can adequately be accommodated in the overflow car park. However, an indicative layout has not been provided which demonstrates how many cars could be parked on the land. The relative cost-benefit is not therefore clear.
33. The appellant claims that historically there was an established informal area of hardstanding alongside the café but, as noted above, that was laid out for the different use of agricultural storage, and it is long removed. It cannot be taken as any kind of precedent or justification for the development.
34. I shall accept if only for the sake of argument the economic and social benefits of the use would outweigh the less than substantial harm to the significance of the listed building. However, an absence of harm on that issue would not amount to a positive consideration in favour of the appeal – and I find that the considerations put forward by the appellant – taken individually or together – do not outweigh the harm caused to the Green Belt by reason of inappropriateness, or the unacceptable harm to the landscape and scenic beauty of the AONB.
35. I conclude that the harm caused by the development is not clearly outweighed by the other considerations advanced. Looking at the case as a whole, in accordance with the NPPF, the very special circumstances do not exist to justify any grant of planning permission for the development and override the conflicts with Core Strategy Policies CS5 and CS34, Policies, Sites and Places Plan Policy PSP7 and the NPPF. The appeal on ground (a) does not therefore succeed.

The Appeal on Ground (f)

36. The appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
37. The enforcement notice alleges that there has been a change of use and it requires the use to cease, meaning that the purpose of the enforcement notice is to remedy the breach. For that reason, and since I have found through ground (a) that the harm caused by the breach cannot be overcome, it follows that I cannot rehearse arguments about planning merits through ground (f). The appeal on this ground can only succeed if it is shown that the steps set out in the notice are excessive for the purpose of remedying the breach.
38. I have noted the issues raised by the appellant but a notice directed at a material change of use may 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 before the change of use took place.
39. I am satisfied that the spreading and embedding of building materials on the land and the removal of part of the low wall were undertaken in order to facilitate and sustain the alleged use of land for car parking. Accordingly, it is

not excessive for the notice to require the removal of the building materials and the reintroduction of the wall. It is necessary to require the restoration of the land to its previous condition in order to remedy the breach that has occurred. The appeal on ground (f) therefore fails

The Appeal on Ground (g)

40. The ground (g) appeal is that the 28 days given to comply with the notice is too short. The appellant considers that four months would be more realistic to remove the embedded materials and address customer car parking.
41. Whilst I do not consider 28 days to be too onerous in terms of the removal of the materials from the land, I am nonetheless mindful of the effects arising from the loss of car parking to the Tollgate café business. Extending the period for compliance to three months would in my view strike a reasonable and proportionate balance between the needs of the appellant and her customers, and the public interest in this case. I shall vary the enforcement notice accordingly prior to upholding it. The appeal on ground (g) succeeds to that extent.

Richard S Jones

INSPECTOR