



Appeal Decision

Site visit made on 10 November 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 18 November 2020

Appeal Ref: APP/V3120/W/20/3253584

J Curtis and Sons Ltd, Thrupp Lane, Radley, Abingdon OX14 3NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by J Curtis and Sons Ltd against the decision of Vale of White Horse District Council.
 - The application Ref P18/V1704/FUL, dated 4 July 2018, was refused by notice dated 4 December 2019.
 - The application sought planning permission for Variation of condition 1 attached to planning permission 03/01126/FUL to allow permitted use of buildings A, C, D, F and G for a further period of 5 years (from the date of this application) without complying with a condition attached to planning permission Ref 03/01126/FUL, dated 28 August 2003.
 - The condition in dispute is No 1 which states that: the uses hereby permitted shall cease on or before 31 August 2011 or immediately following the substantial completion of the extraction of sand and/or gravel on land in the applicants' control which lies adjacent to the application site, whichever is the sooner.
 - The reason given for the condition is: to accord with the terms of the planning application, as amended, and to preserve the openness and amenity of this part of the Oxford Green Belt in the longer term.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of buildings A, C, D, F and G to business purposes at J Curtis and Sons Ltd, Thrupp Lane, Radley, Abingdon OX14 3NG in accordance with the terms of the application, Ref P18/V1704/FUL, dated 4 July 2018, and the plans submitted with it, subject to the following conditions.
 - 1) The use hereby permitted shall be for a limited period being the period of 5 years from the date of this decision.
 - 2) The premises shall be used for purposes within Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Procedural and preliminary matters

2. The summary details set out above are taken from the documents submitted by the parties to the appeal. The application was made on the Council's form for an application 'for removal or variation of a condition following grant of planning permission. Town and Country Planning Act 1990. Planning (Listed

Buildings and Conservation Areas) Act 1990'. Although this is the commonly used term for an application under s73 of the Act, the statute (s73(1)) applies the section to 'applications...for planning permission for the development of land without complying with the conditions subject to which a previous planning permission was granted.'

3. The effect of a successful application under s73 is the creation of a new planning permission subject to different condition(s) while the original remains extant. It is for the applicant/appellant to choose which to implement.
4. In this case, the original decision dates from December 1992 when, on appeal, enforcement notices were quashed, planning permissions granted and s78 appeals allowed. It appears from the subsequent decision by the Council that the relevant permission is that granted in respect of application RAD/57/15¹ (the 1992 permission). It concerns buildings A, C, D, F and G. While permission was granted in each case for the use of the building by the then named occupier, the only conditions were condition 1 (requiring the use to cease on or before 10 years from the decision date) and condition 2 which limits the use of the buildings to purposes within Class B1. Although the appellants also refer to a building E, I can find no other reference to this building and do not consider that further.
5. By virtue of condition 1 of the 1992 permission the use of the buildings should have ceased on 10 December 2002. On 28 August 2003 the Council granted planning permission² (the 2003 permission) for 'variation of condition 1 of Approval RAD/57/15 to allow the permitted uses of buildings A, C, D, F and G for a further 8 year period.' This was subject to one condition only which stated that 'the uses...shall cease on or before 31 August 2011 or immediately following the substantial completion of the extraction of sand and/or gravel on land...adjacent to the application site, whichever is the sooner.'
6. While the 2003 permission would appear to have been approved pursuant to s73 of the Act, by the date of its approval, the 1992 permission had lapsed. By the date of consent, the 2003 permission was therefore the only extant permission.
7. The 2003 permission lapsed in August 2011. As the Council notes, the continued use of the buildings for various commercial purposes represents a breach of planning control which is vulnerable to enforcement action. Equally clear is that in July 2018 when the appeal application was made, there was no extant planning permission. The appeal application, made under s73 of the Act, is therefore misconceived.
8. In dealing with this appeal I shall therefore treat the application as one made under s73A(2)(b) of the Act, namely for permission for development carried out before the date of the application by virtue of non-compliance with the one condition to which the 2003 permission was subject.
9. That leaves the question of how to describe the development for which retrospective permission is sought. Given the way the Council determined the 2003 permission, the development allowed is not described. It does however refer to the 'permitted uses of buildings A, C, D, F and G'. These uses are set out in the 1992 permission although the buildings are described by reference to

¹ Appeal T/APP/V3120/A/91/197081

² 03/01126/FUL

their former and/or current occupiers rather than by letter and by reference to the activities then taking place in each.

10. However, only Building A is still occupied now as it was in 1992. To describe the development in the same terms as in 1992 would not, in my view, be sufficiently clear. The buildings to which the application relates are clearly shown by letter on the application plan. In all the circumstances of this appeal I consider it reasonable to describe the development for which retrospective planning permission is sought as 'the change of use of buildings A, C, D, F and G to business purposes.'

Main Issues

11. The appeal site is within the Oxford Green Belt. The main issues for my determination of this appeal are therefore:
- (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (Framework) and any relevant development plan policies.
 - (b) The effect on the openness of the Green Belt.
 - (c) The effect of the development on users of Thrupp Lane with regard to highway safety and recreation; and
 - (d) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

12. The planning history of the site is set out fully in both the Council's report to Committee dated 4 December 2019 and in the 1992 permission appeal decision letter. In short, the buildings that are the subject of this appeal were erected in association with a mineral planning permission dating back to 1954 under the permitted development rights then available.
13. The 1954 planning permission has not been submitted in evidence. However, the material condition is that which states:
- "All plant, buildings, foundations and machinery shall be removed from the site by the operator at such time as the Local Planning Authority, after consultation with the operator, is satisfied that they are no longer required for the purpose of working gravel".
14. It appears that the buildings have not been used in association with the permitted gravel extraction for a period of at least 45 years. The commercial uses have been subject to planning permissions granted over the years by the Council. In respect of the subject buildings, those planning permissions are the ones granted in 1992 (on appeal) and in 2003.
15. Although the non-mineral uses of the buildings are subject to planning control by the Council, it seems to me that it is the mineral planning authority, Oxfordshire County Council, that is responsible for the future of the buildings themselves. It has the power to require their removal in accordance with the condition of the 1954 planning permission set out above once it is satisfied,

- having consulted the mineral operator, that the buildings are no longer required for the purpose of mineral working.
16. As I understand it, the County Council has resolved that mineral working at the site has permanently ceased. In accordance with the provisions of the statute and guidance relating to the review of old mineral permissions I understand that the County Council has a duty to serve a Prohibition Order in such circumstances.
 17. It has previously done so in respect of the site in 2012. However, this Order was quashed on appeal. Although the County Council has resolved to serve a further Order, a planning application has been submitted which it has concluded may be new evidence of an intention to work the mineral in the relevant site. By virtue of a decision of the County Council Planning and Regulation Committee on 1 June 2020, the Order has not been served and a decision to do so will be made once the new planning application has been validated and, as necessary, determined. I have no evidence that either has occurred.
 18. My understanding therefore is that the future of the buildings is yet to be resolved. For the purpose of my determination of this appeal I must therefore treat them as buildings erected in accordance with a mineral planning permission for the purpose of mineral working but which are now used for non-mineral purposes. In other words, the appeal application is for the re-use of buildings in the Green Belt.
 19. Such development is addressed by Core Policy 13 (CP13) of the Vale of White Horse Local Plan 2031 Part 1-December 2016 (LP). The wording of CP13 seems to me generally consistent with Framework paragraphs 143 to 147. However, the wording of Framework paragraph 146 (d) (which is the same as 2012 Framework paragraph 90 with which the LP would have been found to be consistent) and the relevant part of CP13 differ slightly.
 20. Framework paragraph 146 sets out a closed list of those forms of development which are not inappropriate development in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Form of development (d) is the reuse of buildings provided that the buildings are of permanent and substantial construction (emphasis added). The same wording for this form of development was used in paragraph 90 of the Framework published in 2012.
 21. CP13 includes the same closed list as paragraph 90 of the 2012 Framework and states that these forms of development are not inappropriate in the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within the Green Belt. The list includes the re-use of buildings '...provided that they are permanent and of substantial construction' (emphasis added).
 22. I am not aware of any caselaw on the interpretation of Framework paragraph 146 (d) nor is it referred to in either the Planning Practice Guidance or the commentary in the Encyclopedia of Planning Law and Practice. The appellants have not argued that CP13 is inconsistent with the Framework and that, in accordance with Framework paragraph 213, the latter should therefore be given greater weight. Nevertheless, in my view, the phrasing of CP13 gives it a meaning different to that of the Framework and makes the policy inconsistent

- with it. I therefore conclude that CP13 cannot attract full weight in accordance with Framework paragraph 213.
23. If I am wrong in that assessment and CP13 should, in fact, bear the same meaning as Framework paragraph 146 (d) full weight should be given to CP13 in accordance with Framework paragraph 213. In either case, it is, in effect, the Framework phrasing that must be applied.
24. The Framework and CP13 if consistent with it therefore require three considerations. First, are the buildings of permanent and substantial construction? Second, what is the effect of their use on the openness of the Green Belt? Third, what is the effect of their use on the purposes of including land within the Green Belt? These are addressed in turn.
25. The Council describes the buildings as being temporary 'by definition' rather than permanent in nature. That is correct in the sense that they have a finite life given the wording of the quoted condition of the 1954 mineral planning permission. However, the Framework and CP13 if consistent with it requires a different assessment, namely whether they are of permanent and substantial construction. I therefore disagree with the Council's interpretation of the meaning of 'permanent' in Framework paragraph 146 (d) although it may be a correct interpretation of CP13. I have explained above why, in that case, I do not believe CP13 to be consistent with the Framework.
26. Building A is a blockwork structure with a corrugated dual pitch roof with a number of almost full-height openings in the front elevation housing roller shutters. It was occupied by R P Cherry and Sons Ltd, as it was in 1992. Building G is of similar construction, size and design. At the date of my site inspection it was vacant.
27. Buildings C, F and D are, respectively, the westerly, central and easterly bays of a single blockwork building also under a corrugated roof. There is a small extension to the side of Building C. All were occupied at the date of my site inspection although, in each case, by a different occupier to that recorded in 1992. I do not believe the user, Andy's Autos Ltd, identified for Buildings C, F and D in paragraph 1.3 of the appellants' transport appraisal (TA) is correct.
28. There is no material difference between the buildings today and the description given of them in the 1992 permission appeal decision letter. The evidence strongly suggests that they have been in existence for at least 28 years and, from other paragraphs in the same decision letter, for considerably longer. My fact and degree judgement is that each of the buildings that are the subject of this appeal are of permanent and substantial construction.
29. I turn now to the effect on openness. Whatever the outcome of this appeal, the buildings will remain until their future is resolved by the County Council. The presence of the buildings affects the openness of the Green Belt but the reuse of the buildings themselves can have no further effect, either negative or positive. However, the associated use of the areas of hardstanding in front of buildings A and G could.
30. The appeal buildings lie within a larger industrial estate at the end of Thrupp Lane. Not subject of this appeal application are a number of small buildings and a small yard to the west of Building C and to the south of the Building G yard. In front of Buildings C, F and D is a small area for vehicle parking, the

use of which has no material effect on the openness of the Green Belt.

Opposite these buildings is the vehicular access to a concrete plant operated by Tarmac which covers an extensive area. To the east and north of Building D is the even more extensive yard and large buildings associated with Terrafirma Roadways.

31. At the time of my site inspection, the yard in front of Building A was used for vehicle parking. As noted above, Building G was vacant and the yard thus largely unused. How it may be used going forward would depend on any future occupier. In the context of the area as a whole and the continued uses of the other extensive open areas, these two yards are quite modest in extent. In my judgement, their use has and would have a very limited effect on the overall openness of this part of the Green Belt.
32. Finally, while the Council contends that the appeal proposal would conflict with the purposes of including land within the Green Belt it does not say which of the five set out in Framework paragraph 134 would be compromised.
33. In my judgement the only one of relevance would be (c), to assist in safeguarding the countryside from encroachment. If the appeal was dismissed the other businesses discussed above would remain as would Buildings A, G, C, F and D. I believe the appellants are correct in saying that there is nothing in the condition of the 1954 planning permission that could require the hardstandings to be removed although they may be as part of any restoration scheme. It seems to me therefore that the only practical effect of denying planning permission would be to remove the vehicle parking use of the hardstandings associated with Buildings A and G. I do not consider this would have any material effect on the extent to which this area of countryside is already encroached upon by development.
34. To conclude on this main issue, having regard to the Framework and CP13 to the extent that it is consistent with it, I consider the development that is the subject of this appeal to be not inappropriate development in the Green Belt.
35. Having considered the effect of the development on the openness of the Green Belt in coming to my decision on main issue (a) it is unnecessary to consider the matter again under main issue (b). In addition, having concluded that the development is not inappropriate development in the Green Belt, main issue (d), the Green Belt balance to establish whether or not very special circumstances exist, does not require to be considered.

The effect of the development on users of Thrupp Lane with regard to highway safety and recreation

36. Thrupp Lane runs generally south from its junction with Radley Road. At its northern end it is two-way and subject to a 30mph speed restriction. However, over much of its length it is single-track with informal passing places and subject to the national speed limit. Much of the Lane is more or less straight with good forward visibility. There are however three 90-degree bends at regular intervals. Together with the reduced width, the geometry of the highway has a limiting effect on traffic speed. Up to a point around the road junction just beyond the entrance to the H Tuckwell & Sons Ltd quarry it is a public highway. It is however in what appeared to me to be in a generally poor state of repair with an uneven surface and failing verges in many places. Beyond and running adjacent to Thrupp Lake, it is a private road giving access

to the appeal buildings and the other development referred to under my first main issue.

37. Many of those making representations to the Planning Inspectorate have drawn attention to the comment by the Inspector in the previous 1992 appeal that '...it is incontrovertible that Thrupp Lane is of inadequate width to cater satisfactorily for the mixture of light and heavy traffic that uses it'. In my view that certainly remains the case now. However, in my experience, this is not uncommon in country areas where quarries have operated, as here, from the 1950s or earlier; a time when the vehicles serving them were much smaller than those doing so today.
38. It is also clear from the many representations received that the conflict between those using the Lane for recreation and those using it for access to the various commercial premises is a matter of great concern to the local community. The Lane is well used for recreation by walkers and runners and became part of the Sustrans National Cycletrack Network Route 5 (NCN5) in 2002, interestingly before the Council granted the 2003 permission extending the use of the buildings subject of this appeal for a further eight years.
39. This matter is considered in the Radley Neighbourhood Plan 2018-2031 (NP), which was adopted in 2018, where the Radley Lakes Area is discussed in section 4.6. The appeal site lies on the edge of but within the area defined on NP Map 7 and the appeal must be assessed against NP policy PP.8. The policy applies only within the area shown on NP Map 7 and does not apply to the whole length of Thrupp Lane.
40. The potential for nature conservation and quiet recreation in this area has increasingly been recognised since the approach to quarry restoration changed from one of backfilling with pulverised fuel ash from Didcot power station to allow a return to agriculture to one of restoration for nature conservation. However, a fair reading of the strategy set out in NP 4.6.2 is that realising this potential is the end goal to be achieved through a gradual process as the various mineral planning permissions expire and mineral working ceases. A new access solution which removes the current conflicts between recreational users and HGV traffic is said to be the key to unlocking this potential.
41. NP Community Action CA.11 sets out what the new access solution should be. In short, it requires the provision of a new road leading westwards and the closure of Thrupp Lane to vehicular traffic at a point to the north of the H Tuckwell & Sons Ltd quarry. The NP recognises that such a scheme can only be achieved by the Parish Council through cooperative working with all the local authorities and the relevant landowners.
42. NP policy PP.8 addresses three types of development. I agree with the Parish Council that it is only the final paragraph of the policy that applies and then only the second bullet. This says that development will be supported only if it meets the five criteria set out earlier in the policy and it is served by a suitable and safe access route that avoids conflicts between vehicles accessing the site and pedestrians and cyclists accessing the wider area.
43. Turning first to the five criteria, I have already concluded in considering the first main issue that the development would comply with CP13 (criterion 1) if consistent with the Framework. No evidence has been submitted to suggest that the appeal development would cause any detriment to the wider landscape

(criterion 2) or the integrity of the local ecology (criterion 4), nor has the Council raised any issue in respect of LP policy CP42, flood risk (criterion 3). Criterion 5 requires appropriate transport mitigation to be included. In my view that is embraced by the second bullet set out in the paragraph above. Subject to conclusions on that, I consider that the appeal proposal meets the five criteria of NP policy PP.8.

44. There are in fact two parts to the second bullet. First, the access route must be suitable and safe and, second, it must avoid the conflicts set out.
45. Dealing first with 'suitable and safe', the appellants have submitted a TA which has been reviewed by the Highway Authority. The TA estimates that bringing the uses of the buildings to a halt would reduce traffic on the public road section of Thrupp Lane by around 25-30%³. This would represent an absolute reduction in traffic levels. However, given both the other users of the road (which include the additional users of the industrial estate within which the appeal buildings lie, the Tarmac concrete plant and the quarry operated by H Tuckwell & Sons Ltd) and the nature of the traffic that would be removed (mostly cars and light goods vehicles), the TA asserts that there would be no material change in the character of the traffic on the Lane as the majority of the HGV traffic would be retained.
46. Taking the geometry of the Lane and its limiting effect on traffic speed into account, the Highway Authority raised no objection to the appeal proposal on highway safety grounds. Furthermore, there is no evidence that any form of weight restriction on Thrupp Lane has been imposed or considered. I acknowledge that this is a matter of great concern to those making representations, but I have no other professionally prepared technical evidence to lead me to disagree with the assessment of the responsible authority. I appreciate that the local community consider that a number of accidents have been caused along the Lane but neither the appellant nor the Highway Authority draw my attention to any formal accident data.
47. There is therefore no evidence from the Highway Authority to lead me to conclude that the access route as a whole is anything other than suitable and safe.
48. I now turn to the second part of the bullet. In doing so, it is necessary to understand the nature of the vehicle/recreational user conflicts that are occurring along Thrupp Lane. In considering this matter it is important therefore to draw a distinction between the effect of traffic arising from the appeal buildings and that arising from other quarry and commercial activities which use the public highway for vehicle access.
49. The traffic survey submitted by the Parish Council explicitly states that the survey points were chosen to distinguish between traffic from the Tarmac and the Tuckwell sites alone; neither are subject of this appeal. It recognises that this would omit traffic '...using only the top part of Thrupp Lane, but this was not the main focus of interest.' Furthermore, in the photographs submitted by local residents it is clear that many of the large vehicles shown as being responsible for the issues raised are in the company livery of Tarmac or other

³ I note that this calculation is disputed by the Friends of Radley Lakes. However, as explained in the 'procedural and preliminary matters' above, the application is for permission for development already carried out. The traffic is already being generated and the approach in the TA therefore seems reasonable and is, in any event, not challenged by the Highway Authority.

well-known regional aggregates companies. The HGV movements from Terrafirma are also specifically referred to. None of these operations are the subject of this appeal and there is no reason to believe that its outcome will materially affect the issues identified.

50. There is therefore very little evidence substantiated by survey data of actual vehicle/recreational user conflicts being caused on Thrupp Lane by vehicles using the appeal buildings although there are references in the representations made to issues arising from vehicles accessing Building A.
51. To summarise, the appeal development is served by a suitable and safe access route and there is no evidence that the appeal proposal will materially affect, one way or the other, the vehicle/recreational user conflicts that already exist. I do not therefore consider transport mitigation measures to be appropriate or necessary and thus find no conflict with criterion 5. There is therefore no conflict with the final paragraph of NP policy PP.8 and thus no conflict on this issue with NP policy PP.8 as a whole.

Conditions

52. In considering the conditions that should be imposed on the planning permission that I shall grant I have had regard to the advice in the Planning Practice Guidance.
53. The appellants only ever sought a planning permission for a further period of five years. In the event of the appeal being allowed, the Council has suggested such a period be imposed by condition. In the particular circumstances of the area, which include the need to resolve the position with the mineral planning permissions, when and how the appeal site may be restored and when progress can be made on achieving the aspirations and strategy set out in the NP for the Radley Lakes Area, such a condition is entirely appropriate and necessary.
54. Although the Council has not suggested it, I also believe a condition is required to control the uses to which the buildings may be put. Such a condition was imposed on the 1992 permission but it was lost given the form in which the Council issued the 2003 permission. Nevertheless, as the appellant at least has approached this matter as if the 1992 permission was, in essence, being renewed for a second time, it is appropriate to reimpose it now in a form that recognises the changes made to the Town and Country Planning (Use Classes) Order 1987 as amended since 1992 and the current advice on restricting changes within a Class set out in the Planning Practice Guidance.

Conclusion

55. For the reasons given above I conclude that the appeal should be allowed.

Brian Cook

Inspector