
Appeal Decisions

Site visit made on 1 December 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 14 December 2020

Appeal A: Appeal Ref: APP/Y3940/C/19/3221354

Land at Fairfield Piggeries, Leigh Road, Bradford on Avon, Wiltshire BA15 2RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Nicholas Compton against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice was issued on 3 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of land and buildings from agriculture to a mixed use of agriculture, Use Class B1 (Light Industry), Use Class B8 (Storage and Distribution), waste deposit (Sui Generis) and equestrian (Sui Generis). The building that the equestrian (Sui Generis) use relates is annotated on the plan attached to the notice titled "Location Plan" in small blue hatching.
 - The requirements of the notice are:
 - i) Cease the use of the Land and buildings for Light Industry (Use Class B1), Storage and Distribution (Use Class B8) and waste deposit (Sui Generis).
 - ii) Remove from the Land all vehicles, machinery, equipment, tools, materials, goods, items, waste (inclusive but not exclusive to scrap metal, road planings, stone, rubble, hardcore and building waste) and paraphernalia associated with the unauthorised Light Industrial use (Use Class B1), Storage and Distribution use (Use Class B8) and waste deposit (Sui Generis) use of the Land and Buildings.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: Appeal Ref: APP/Y3940/W/20/3253479

Fairfield Piggeries, Leigh Road, Bradford Leigh, Wiltshire BA15 2RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr N Compton against Wiltshire Council.
 - The application Ref 20/00835/FUL, is dated 6 December 2019.
 - The development proposed is change of use of existing buildings from agriculture to mixed use, including B1 light industrial and B8 storage/distribution, incorporating improved access arrangements, parking and a site office.
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Decisions

Appeal A: Appeal Ref: APP/Y3940/C/19/3221354

1. It is directed that the enforcement notice be corrected by the addition of the words ", vehicle breaking (Sui Generis)" after the words "waste deposit (Sui

Generis)" in section 3 of the notice, *The Matters Which Appear To Constitute The Breach Of Planning Control*" and varied by the addition of the words ", vehicle breaking (Sui Generis)" after the words "(Use Class B8)" in section 5 of the notice, *What You Are Required To Do*. Subject to these corrections and variations 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.

Appeal B: Appeal Ref: APP/Y3940/W/20/3253479

2. The appeal is dismissed.

Procedural Matters

3. Case law has established that where, as here, a notice alleges as the breach of planning control a material change of use to a mixed use, that mixed use must include all the uses, both lawful and unauthorised, persisting at the date when the notice was issued. The reason is so that the planning merits of the whole mixed use of the site may be considered in any appeal on ground (a).
4. The appellant contends that a sui generis vehicle breaking use was taking place when the notice was issued although that use has subsequently ended. The Council disagrees that such a use was taking place.
5. Factual disputes of this nature usually need to be resolved by hearing evidence under oath which can only be done by way of a local Inquiry. In this case the parties have agreed that: the vehicle breaking use should be added to the breach of planning control alleged; vehicle breaking should then be added to the list of uses required to cease by step (i) in the summary details above; the appellant does not seek planning permission for vehicle breaking as part of the deemed planning application; and a condition preventing such use would be imposed on any planning permission granted pursuant to the appeal on ground (a). Both parties have confirmed that there would be no injustice to either of them if those corrections and variations were made to the notice. I shall therefore do so using the power available under s176(1) of the principal Act.
6. As is clear from the dates in the summary details above, the planning application that is the subject of Appeal B was made well after the Appeal A notice was issued and the appeal lodged. The Council informed the Planning Inspectorate that rather than failing to determine the planning application, it had in fact declined to do so citing the powers available under s70C of the Act. However, it formally did so after the appeal against non-determination had been lodged. The Planning Inspectorate determined that by that time jurisdiction had passed from the Council to the Secretary of State and Appeal B was therefore deemed to be valid.
7. The notice relates to a far larger area of land than the Appeal B proposal. It also relates to a different and more extensive mixed use. The Council cites eight reasons for issuing the notice and distils these to five main issues for consideration in the Appeal A ground (a) appeal. It cites the first four as what it considers to be the main issues for the determination of Appeal B. The appellant's case deals in turn with each of the reasons for issuing the notice relying in some cases on material forming part of the Appeal B planning application. In all these circumstances, I shall deal with the two appeals together in this decision letter unless otherwise stated.

Appeal A: the s174 appeal on ground (c)

8. In an appeal on this ground, the onus rests upon the appellant to establish the case, on the balance of probabilities. By the time of my site inspection a lot of the materials shown in the Council's photographs had been removed from the land. However, from the photographs provided by both parties, but particularly by the Council, I have no doubt that the materials present when the notice was issued were correctly characterised as waste. Indeed, I do not understand it to be the appellant's case that they were not.
9. Rather, the gist of the appellant's case on this ground is that some of machinery (unspecified) and the waste materials listed (specifically stone, road planings and other materials) are legitimately associated with those parts of the site used for agriculture. In particular, deposits of stone, road planings and other materials are legitimately utilised to repair existing surfaces and access points around the holding when needed (emphasis added). The area where the deposits are is indicated on a plan. These deposits are said not to require planning permission but from the way the notice is drafted, it is not possible to distinguish them from the other materials attacked by the requirements.
10. Schedule 2, Part 6, Classes A and B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended set out permitted development rights for, respectively, agricultural development on units of above and below 5ha. The appellant does not state the size of the agricultural unit. Both Classes permit waste materials to be brought onto the land for defined purposes which broadly include the purposes identified by the appellant. However, under each Class that right is subject to a condition requiring the waste materials to be incorporated into the works forthwith. Depositing the waste 'until needed' is not therefore development permitted by the GPDO.
11. Furthermore, on units of more than 5ha the deposit of waste may be permitted development in the circumstances set out, but that permission is subject to prior approval from the local planning authority. The appellant has provided no evidence that prior approval has ever been sought or given or any other information to enable this permitted development right to be assessed.
12. For these reasons I do not consider that the appellant has made out the case and the appeal on ground (c) fails. The case made in relation to the machinery is more appropriately considered under the appeal on ground (f).

Appeal A: the s174 appeal on ground (a) and the deemed planning application and Appeal B

Main Issues

13. The appeal site is a former pig farm situated within the Western Wiltshire Green Belt broadly to the north of Bradford on Avon. The main issues for both appeals are:
 - (a) Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (Framework) and any relevant development plan policies.
 - (b) The effect of the development on the openness of the Green Belt.

- (c) Whether the development would support the rural economy having regard to the development strategy of the Wiltshire Core Strategy 2015 (CS).
 - (d) The effect of the development on highway safety.
 - (e) 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.
14. The Council identifies an additional main issue for Appeal A, namely whether the waste activities would accord with the waste policies of the development plan. In my view this is not necessary. First, the development alleged is a mixed use of the whole site which is a single planning unit. It therefore needs to be considered as such against the Framework and the development plan. Second, the appellant has not requested that I consider the separate elements of the mixed use with a view to issuing a split decision. In the light of the scope of the Appeal B proposal that is perhaps not surprising.

Whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies

Appeal A

15. The Appeal A development is a material change in the use of the land. While Framework paragraph 146 (e) says that such developments are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purpose of including land within the Green Belt, the reuse of the buildings is only part of the mixed use alleged. In my judgement, Framework paragraph 146 (d) is not therefore relevant to the determination of this aspect of Appeal A because the uses alleged are not confined to the buildings.
16. The photographs provided by the Council show considerable waste deposits over extensive areas of the site. The notes of the site visits on 17 August 2017 and 24 July 2018 also indicate storage of various items outside of, but in connection with the uses in, certain of the buildings. That remained the case at the date of my site inspection when there were also a number of vehicles parked around the site, presumably belonging to those working in the few buildings that appeared to be operational.
17. Spatially, in my judgement, the totality of the extensive waste deposits together with the external storage and vehicle parking, fails to preserve the openness of the Green Belt. The development also fails to safeguard the countryside from encroachment, one of the five purposes of including land within the Green Belt. There are a number of public rights of way in the vicinity although (from the Council's photographs) I believe the way that the waste appears to have been deposited in amongst the vegetation on the site suggests that, visually, the deposits would not be apparent to those using them.
18. I have already noted that by the time of my site visit much of the waste shown in the Council's photographs had been removed. I also note the appellant's suggestion that waste processing might be brought inside one of the buildings. However, first, I agree with the Council that this proposal is beyond the scope

of an appeal under ground (a) and, second, there is no evidence of any processing taking place in any event. All the evidence is of waste deposit without any subsequent processing.

19. For these reasons, namely the effect on openness and encroachment, I consider that the Appeal A development amounts to inappropriate development in the Green Belt.

Appeal B

20. The appeal site is confined to that part of the land largely occupied by the former pig farm buildings. A mixed use development of light industrial (B1) and storage and distribution (B8) with associated parking areas and circulation space would be provided, largely through the conversion of the existing buildings. There would be a net increase in commercial floorspace of some 270sqm, mainly, it appears, as a result of adding a mezzanine floor to three of the units.
21. Framework paragraph 146 (d) confirms that provided the buildings are of permanent and substantial construction their re-use is not inappropriate development in the Green Belt provided also that the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
22. As with Appeal A, the development proposed must be considered as a whole. Some of the existing buildings are little more than open-sided steel-framed structures. This is particularly the case with Units 2, 3 and 4 as numbered on the application plans. These plans show that extensive works are proposed to these three units and to units 5, 6 and 7. As a matter of fact and degree judgement, I consider these works would amount to a rebuild of, not a reuse of, some at least of the existing buildings. That requires an assessment against Framework paragraph 145 rather than paragraph 146.
23. Even if I am wrong on that, the development would also provide 113 formal vehicle parking spaces and 30 covered cycle parking spaces. Such an amount of hard surfacing, which would then be occupied by vehicles, and built development (the covered cycle parking) cannot preserve the openness of the Green Belt or avoid encroachment of development into the countryside in my view. Therefore, even if the development should be considered as a reuse of buildings of permanent and substantial construction, the development, as a whole, would not pass the two tests set out in the preamble of Framework paragraph 146.
24. Framework paragraph 145 requires that the construction of new buildings is regarded as inappropriate development in the Green Belt. There are however exceptions. Neither the Council nor the appellant consider this in their evidence. Having regard to the definitions of various terms in the Framework Glossary, it seems to me that it is only paragraph 145 (c) that could apply on the basis that some at least of the buildings are being altered. However, the requirement is that the work does not result in a disproportionate addition over and above the size of the original building. What constitutes the 'original building' is explained in the Glossary. I have no evidence about that in order to make the necessary assessment.

25. I therefore conclude that whether the proposed development is considered against Framework paragraph 145 or 146 it would amount to inappropriate development in the Green Belt.

The effect of the development on the openness of the Green Belt

26. A consideration of the effect on the openness of the Green Belt is integral to my conclusion that the Appeal A development is and the Appeal B development, if judged against Framework paragraph 146, would be inappropriate development in the Green Belt. This issue therefore only needs to be considered if the Appeal B development is judged against Framework paragraph 145 (c).
27. Throughout those parts of the Design and Access Statement (DAS) dealing with Layout and Access emphasis is placed upon the enhancements that would be made to site access, vehicle circulation throughout the site and parking provision. It is not clear to me from my site visit how the Transport Statement (TS) came to assess the current informal 'parking bays' to be capable of providing approximately 95 vehicle spaces. There is however no evidence that such vehicle numbers have ever been parked at the site.
28. As already mentioned, some 113 vehicle parking spaces would be provided and, for reasons that I shall come to, if the development was fully occupied, I believe that number would be likely to be taken up. That would represent a material increase in the vehicles now likely to be parked within the confines of the appeal site. In my judgement, that would represent a material and moderate harm to the openness of the Green Belt.

Whether the development would support the rural economy having regard to the development strategy of the development plan

29. CS Core Policy 1 and Core Policy 2 set out the Council's development strategy and how it will be delivered. In short, development is to be concentrated within the hierarchy of settlements set out. Bradford on Avon is defined as a market town but the appeal site is not located either within or adjacent to its boundaries.
30. The appellant argues that the appeals should be considered against CS Core Policy 34. This requires the development site to be adjacent to a settlement in one of the first three tiers of the hierarchy. On the appellant's own evidence the appeal site is approximately 800m from the existing built edge of Bradford on Avon. A further criterion would permit consideration against this policy if the appeal site was within or adjacent to a large or small village (as defined). Although the appellant claims that the appeal site is 'in' Bradford Leigh and this is said in the TS to be a 'small village', I do not believe that Bradford Leigh is so classified within the CS. There is therefore no evidence that the appeal site is located in policy terms as the appellant contends. Finally, the Council states that the developments are not strategic in nature and the wording of the policy leaves that determination solely for the Council. In my understanding of the application of the policy, CS Core Policy 34 cannot therefore be relevant to the determination of these appeals.
31. As such, the relevant CS policies are Core Policies 48, 60 and 61.

Appeal A

32. While it may be argued that part of the mixed use development carried out converts and/or reuses structurally sound buildings without major rebuilding, the waste deposit elements of the mixed use take place in the open and thus conflict with criterion (i) of CS Core Policy 48. To the extent that the waste uses also introduce a discordant visual feature into an otherwise rural landscape there would also be conflict with criterion (ii) of the policy.
33. Applying national guidance, the TS considers that there is potential for commuting to the site to be by walking from the nearer parts of Bradford on Avon and by cycle from farther afield although it is acknowledged that there are no formal cycling facilities in the vicinity of the appeal site. However, while bus services do pass the appeal site, there are no physical stops. The services operate as 'hail and ride' and the current timetables are acknowledged not to be appropriate for commuting.
34. Taking all these factors into account, the development is very unlikely to reduce the need to travel by private vehicle or encourage the use of sustainable transport alternatives. Appeal A therefore conflicts with CS Core Policies 60 and 61.

Appeal B

35. As discussed under the first main issue, the works required to the buildings, which includes the demolition of some structures, to achieve the Appeal B proposal amounts, in my view, to development beyond that which would be permitted by CS Core Policy 48 (i). To the extent that the development would be visible from beyond the site boundaries, I do not consider that the proposal would detract from the character and appearance of the area. If anything, redevelopment of what are fairly dilapidated buildings and other structures would be an enhancement. Nevertheless, there would be conflict with the first criterion of the policy and thus with CS Core Policy 48 itself.
36. The discussion of Appeal A in the context of CS Core Policies 60 and 61 is equally relevant to Appeal B. Indeed, the proposed balance of provision between vehicle parking spaces and those for cycles reinforces my conclusion that, contrary to policy aims, most journeys to the appeal site would be and are expected to be by private vehicle. Appeal B would therefore conflict with CS Core Policies 60 and 61.

The effect of the development on highway safety

37. The Appeal A development uses an access at the southern end of the site while the Appeal B proposal would also enhance a second access at the northern end of the road frontage. It seems to me that the Council accepts that both accesses can be altered to achieve the visibility splays necessary to overcome any highway safety concerns. To that extent, both appeal developments would or could be made to accord with CS Core Policy 61.
38. The Council's objection concerns the ecological value of the trees and other vegetation that would need to be removed to achieve the required visibility splays. The appeal site lies within the consultation zone for both greater and lesser horseshoe bats. The appellant argues on the basis of a Phase 1 ecological survey that the affected vegetation is of low habitat potential.

39. The ecological survey does not appear to have been submitted with the appeal documents. That may be because the Council contends that, dating from 2015, it is now out-of-date. Nevertheless, the Council simply refers to the potential of the habitat rather than any investigations of its own or consultation responses from nature conservation interests. This is not a matter on which I consider that I have the evidence to determine whether or not providing safe highway access would itself cause a conflict with CS Core Policy 61 (vi) and any other relevant development plan policy.

The Green Belt balance

Other considerations

40. The appellant draws attention to several paragraphs of the Framework which are said to be supportive of the developments. However, many of these are reflected in the CS policies referred to above and the appellant does not contend any inconsistency between the development plan and the Framework such that greater weight should be given to the latter in accordance with Framework paragraph 213.
41. The appellant also contends that on several issues such as landscape, green infrastructure, air quality, contaminated land and high quality design one or both appeal developments do not conflict with the relevant CS policy or could be made to comply through the imposition of appropriate conditions. That may well be the case, but a lack of policy conflict and thus 'harm' is a neutral effect weighing neither for nor against the development in the planning balance. My conclusion on the highway safety issue falls into this category too.
42. It is also argued by the appellant that objective 3 and policy E1 of the Bradford on Avon Neighbourhood Plan 2013-2026 are supportive of both developments. However, neither party has provided the Neighbourhood Plan in evidence. If policy E1 is quoted by the appellant in full and correctly, it would appear to apply the same requirement as CS Core Policy 34 for development to be within or adjacent to Bradford on Avon to be supported. Notwithstanding the appellant's commentary on policy E1, the appeal site is neither 'within' nor 'adjacent' and therefore cannot benefit from the support given by the policy.
43. Since the appellant does not consider either development proposal to be inappropriate development in the Green Belt, no other considerations have been put forward to weigh in the Green Belt balance.

Appeal A

44. I have concluded that this development amounts to inappropriate development in the Green Belt. Framework paragraph 143 confirms that such development is by definition harmful to the Green Belt and paragraph 145 requires that substantial weight is given to any harm to the Green Belt in considering any planning application. To this harm should be added the harm that has been caused by the failure of the development to deliver the sustainable development strategy set out in CS Core Policies 1 and 2 and the specific conflict identified with CS Core Policies 48, 60 and 61. This is a conflict to which I attribute moderate weight.
45. Referring to the extensive history of enforcement action, including prosecution for non-compliance with the requirements of a previous notice, the Council argues that the Appeal A development constitutes intentional unauthorised

development which should weigh in the Green Belt balance against the development. In response the appellant argues that since the pig farming business became unviable, opportunities have been taken to generate an income from the land while trying to work with the Council to achieve an acceptable future for the site.

46. In my view, there is some evidence of knowing disregard for the planning process. However, this attracts limited weight in my judgement.
47. As set out above, there are no other considerations to weigh against the totality of the Green Belt and other harm. Other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the Appeal A development do not exist.

Appeal B

48. As with Appeal A, I have concluded that this development would amount to inappropriate development in the Green Belt. Framework paragraph 143 confirms that such development is by definition harmful to the Green Belt and paragraph 145 requires that substantial weight is given to any harm to the Green Belt in considering any planning application. I have also concluded that if the 'inappropriate development' conclusion derives from the assessment against Framework paragraph 145 (c), there would also be harm to the openness of the Green Belt. To this Green Belt harm should be added the harm that would be caused by the failure of the development to deliver the sustainable development strategy set out in CS Core Policies 1 and 2 and the specific identified conflict that there would be with CS Core Policies 48, 60 and 61. This is a conflict to which I attribute moderate weight.
49. Again, as with Appeal A there are no other considerations to weigh against the totality of the Green Belt and other harm. Other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the Appeal B development do not exist.

Overall conclusions

50. For the reasons given above I conclude that Appeal A should not succeed on ground (a) and planning permission shall not be granted on the deemed planning application.
51. For the reasons given above I conclude that Appeal B should be dismissed.

Appeal A: the s174 appeal on ground (f)

52. The appellant's initial case on this ground was that some of the vehicles, equipment and waste should be able to remain on site to be used in association with agriculture rather than removed as required by the notice. The difficulties in ascertaining which matters are caught by the notice make it impossible to determine which elements need to be removed from site and which can stay. Therefore, without suitable clarification from the Council, the appellant believes the requirements to be excessive.
53. However, the Council pointed out, correctly in my view, that none of the steps attack any agricultural use or any vehicles, equipment and waste reasonably

required for agriculture or reasonably associated with agriculture and are the minimum steps required to remedy the planning harm caused by the unlawful development.

54. In response, the appellant has narrowed the case to uncertainty about which waste should be removed. I believe I have dealt with this argument when considering the appeal on ground (c). In short, unless any waste is incorporated forthwith into the works for which it has been brought onto the land it is clear that it should be removed.
55. The requirements as framed are not therefore excessive. The appeal on ground (f) does not therefore succeed.

Appeal A: the s174 appeal on ground (g)

56. The gist of the appeal on this ground is that a period of 12 months would be more appropriate given the number of tenants needing to find alternative business premises in the local area and the sheer volume of stored material to be moved in one specific case. The Council responded by simply asserting that the period allowed would be ample time to find alternative lawful sites.
57. Unfortunately, neither party has provided any evidence of the local business property market to support their respective positions. I am conscious that development plan policies that seek to support and protect local employment opportunities are particularly important during these unprecedented times when the pandemic has placed great challenges on many small businesses.
58. I am nevertheless aware that a period of 12 months is tantamount to a temporary planning consent which would undermine the Council's purpose in issuing the notice. I shall therefore not vary the period for compliance as requested. The Council has the power under s173A(1)(b) to, among other things, extend any period specified in the notice. This power is however entirely discretionary and a matter solely for the Council.
59. For these reasons, the appeal on ground (g) fails.

Overall conclusion on Appeal A

60. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Brian Cook

Inspector