



Appeal Decision

Site visit made on 10 December 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 04 January 2021

Appeal Ref: APP/R1845/C/20/3255032

**Harvington Manor, Worcester Road, Harvington, Kidderminster,
Worcestershire DY10 4LX**

- 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 Adam Hewitt against an enforcement notice issued by Wyre Forest District Council.
 - The enforcement notice was issued on 3 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the use of Land and buildings thereon as a salvage yard including the storage of vehicles, trailers, machinery and other items brought onto the Land in association with that use including, but not limited to, items stored for resale.
 - The requirements of the notice are:
 - i) Cease the use and remove from the Land all vehicles, trailers, machinery and other items brought onto the Land in association with that use including, but not limited to, items stored for resale (both as whole items or their constituent parts) whether in the open or within the buildings on the Land.
 - ii) To remove all hardcore from the part of the Land to the rear shown edged green on the plan and restore it to an agricultural use. Any resultant material shall be removed completely from the Land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The s174 appeal on ground (a) and the deemed planning application

Introduction

2. Although the appellant prepared a statement of common ground, the Council disputes most of the content. The appeal site appears to have had a complex history of uses. The appellant claims that prior to the current use starting, the site was occupied by travelling show people and used to store plant and equipment. Prior to that, the use was said to be a garden centre by the appellant but as a nursery enterprise by the Council. This is characterised as an agricultural use by the Council and appears to be considered the lawful use of the land.

3. Land that is or was last occupied by agricultural buildings is excluded from 'previously developed land' (PDL) as defined in the Glossary to the National Planning Policy Framework (Framework). Nevertheless, the extent of the appeal site that is PDL is the one thing that the parties now agree. This represents a change in the Council's position as set out in the reasons for issuing the notice. There it is said that '...in view of its lawful use for agriculture and horticulture, (the site) is not (PDL)'.
4. The site has been in its current use since 2015 according to the appellant. The Council states that the appellant bought the site in 2016. Both could be correct if the site was occupied before being owned. Towards the end of 2019 a retrospective planning application was submitted for 'Change of use of the land and buildings to a storage facility for agricultural machinery and equipment'¹ (the 2019 application). This was refused planning permission by the Council on 20 May 2020 against the officer recommendation and, as can be seen from the summary details above, the notice was issued very shortly thereafter.
5. No appeal was made under s78 of the Act against that decision. However, under this ground of appeal, the appellant seeks planning permission only for the extent of the land that was the subject of the 2019 application. Permission is not sought for the whole of the land edged red on the notice plan. Nevertheless, the reduced area for which planning permission is sought is considerably greater than the area agreed by the parties to be PDL. The appellant has not sought a planning permission for the even smaller portion of the notice land represented by the agreed PDL and I have not therefore considered whether planning permission should be granted for this part of the matter.

Main issues

6. The appeal site is wholly within the West Midlands Green Belt near to but beyond the boundaries of the settlement of Harvington. The main issues for the determination of this ground of appeal are:
 - (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan policies.
 - (b) The effect on the openness of the Green Belt.
 - (c) 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.

Whether the proposal would be inappropriate development in the Green Belt

7. On entering the appeal site from Worcester Road, the main reception building is approached across a paved parking area. The reception building is at the front of a larger workshop building. Much of the remainder of the area for which permission is sought is an open hard-surfaced area with a large concrete pad in the far south east corner. There is a good evergreen tree belt along the Worcester Road boundary of the site. Nevertheless, the vehicles and machinery stored in that part of the site are quite visible from the highway.

¹ Application ref: 19/0807/FULL

8. Although arranged in a well organised manner to allow circulation space, the entire area of open land is used to store damaged and disused vehicles and machinery. Indeed, at the time of my site visit, the area used extended beyond that for which permission is now sought. While there were some cars and light goods vans present, the vast majority were heavy goods vehicle trucks and trailers, large agricultural tractors and various items of agricultural machinery. The concrete pad was used to accommodate a significant number of burnt out agricultural vehicles. There were also a number of material screens commonly used on building and waste management sites. The common feature of all these items was their very considerable size.
9. The appellant draws attention to Framework paragraph 145 (g) which includes as an exception to the requirement to regard the construction of new buildings as inappropriate development in the Green Belt the partial or complete redevelopment of PDL which would not have a greater impact on the openness of the Green Belt than the existing development. This is reflected in Policy SAL.UP1 (v) of the Wyre Forest District Site Allocations and Policies Local Plan (LP) adopted in July 2013 which, while predating the current Framework, is nevertheless consistent with it.
10. Setting aside the fact that the development alleged is a material change of use which does not involve any new building, as set out above, only part of the site is PDL. In my view, Framework paragraph 145 cannot therefore apply and I note this is the view also of the Council. Rather, the appeal needs to be assessed against Framework paragraph 146 (e). This provides that material changes in the use of land are not inappropriate development in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it.
11. I acknowledge that much, if not all, of the hard standing now used may have existed prior to the appeal development taking place. However, the way it was used is not clear from the evidence. The sheer size and number of vehicles and trailers and items of plant and machinery now stored across the whole site can only lead to the conclusion that, spatially, the development carried out causes significant harm to and thus does not preserve the openness of the Green Belt. As referred to above, part of the development is visible from the highway. Visually therefore, the harmful effect on openness is apparent.
12. Furthermore, it represents a significant encroachment of development into the countryside beyond any PDL. Safeguarding the countryside from such encroachment is one of the five purpose of including land within the Green Belt set out in Framework paragraph 134.
13. Applying the relevant Framework policies to the development for which permission is sought leads to the conclusion on this issue that the development is inappropriate development in the Green Belt. As such it is contrary to LP policy SAL.UP1 and to LP policy SAL.GPB1. This policy requires proposals for economic development outside of the areas allocated within the policy to be on PDL. As explained above, only part of the development is so located.

The effect on the openness of the Green Belt.

14. Since the effect on the openness of the Green Belt is integral to the conclusion that the development amounts to inappropriate development in the Green Belt, there is no need to consider this issue again.

The Green Belt balance.

15. Framework paragraph 143 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Framework paragraph 144 states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. In that balancing exercise, Framework policy requires that substantial weight is given to any harm to the Green Belt.
16. Four other considerations are put forward by the appellant although they can be distilled to two.
17. First, it is argued that the enterprise provides around 20 full time equivalent jobs in an area where there are few opportunities available, there are no reasonable available sites of the scale required that are either allocated or with a relevant planning permission and the operation makes a contribution of around £1.37m to the local economy.
18. In my view, considerable weight should be afforded to the protection of employment opportunities at this challenging time. However, part of this argument is undermined somewhat by the fact that the Council is currently considering a planning application from the appellant to relocate the operation to an alternative site elsewhere within the Council area. From the plans provided by the Council this would appear to be within or adjoining an existing trading estate. I have no further information about the progress of this planning application, which is not referred to by the appellant, but clearly other potential sites are available and are being actively pursued. Nevertheless, as the outcome of the planning application is not known, I believe considerable weight should be afforded to this basket of other considerations.
19. Second, the operation is said to contribute positively to the need to recycle and manage waste materials so that vehicles which may not be economically repairable are re-used positively.
20. In my view, this is an 'other consideration' that could attract some weight only if it could be shown that there were no other similar operations available within the general catchment area of the business. No such evidence has been provided and I therefore give very limited weight to this point.
21. The appellant also lists several factors such as contamination and the effect of the development on the living conditions of neighbouring occupiers which either do not conflict with policy or could be made compliant through the imposition of appropriate conditions. That may well be the case and the Council does not disagree. However, absence of harm and thus no policy conflict is neutral in the planning balance, weighing neither for nor against the development.
22. To conclude therefore I find that the other considerations in this case (attracting 'considerable' and 'very limited' weight) do not clearly outweigh the harm ('substantial' as a matter of Framework policy) that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

23. For the reasons given above I conclude that the appeal on ground (a) should not succeed and I refuse to grant planning permission on the deemed application.

The s174 appeal on ground (f)

24. On this ground of appeal the statement of case submitted with the initial appeal argued that 'the requirement to remove all vehicles whether in the open or within buildings is excessive for reasons we will give later in this document and in detailed submissions'. This statement was made on the assumption that the request that the matter be dealt with by way of a public Inquiry would be accepted. The Addendum submitted once it had been confirmed that the appeal would be determined by the written representations procedure addresses only the issues of PDL and very special circumstances. No further evidence has been given to support the appeal on this ground.
25. The Council recognises that the requirements of the notice interfere with the appellant's business. It is however encouraged by the appellant's apparent acknowledgement that the business could still operate from a smaller area of the site since this brings into play other sites within the District that could provide suitable premises.
26. It is clear to me that the Council's purpose in issuing the notice is to remedy the breach of planning control. Varying the requirements to allow an unspecified number of vehicles to remain in the open or within the buildings would defeat that purpose and would not remedy the harm to the Green Belt from the inappropriate development within it.
27. For these reasons the appeal on ground (f) fails.

Overall conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Brian Cook

Inspector