
Appeal Decisions

Hearing held on 17 November 2020

Site visit made on 18 November 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 05 January 2021

Appeal A: APP/R0660/C/20/3246325

Land on the North side of Stocks Lane, Over Peover, Knutsford, Cheshire WA16 9EZ

- 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 C Rudd of Frank Rudd & Sons against an enforcement notice issued by Cheshire East Council.
- The enforcement notice was issued on 21 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the land from agriculture and horticulture to a mixed use comprising agriculture, horticulture and the parking of vehicles unassociated with the agricultural and horticultural use of the land, the formation of areas of hardstanding and the erection of lighting columns, ticket machines and a barrier.
- The requirements of the notice are: -
 - a) Cease the use of the land for the parking of vehicles unassociated with the agricultural and horticultural use of the land.
 - b) Remove from the land all vehicles that are unassociated with the agricultural and horticultural use of the land.
 - c) Remove from the land the hardstanding shown in the approximate position shaded in green on the attached plan marked 'Plan B'.
 - d) Remove from the land the lighting columns shown in the approximate positions marked at points A, B and C on the attached plan marked 'Plan B'.
 - e) Remove from the land the ticket machines and barrier shown in their approximate positions marked at points D, E and F on the attached plan marked 'Plan B'.
 - f) Remove all resulting debris arising from steps c), d) and e) from the land
 - g) Reinstate the area of land shaded in green in top soil and reseed with grass seed
- The periods for compliance with the requirements are: -
 - a) 3 weeks
 - b) 3 weeks
 - c) 3 months
 - d) 3 months
 - e) 3 months
 - f) 3 months
 - g) 4 months
- 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 (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Appeal B: APP/R0660/W/19/3235952

Land on the North side of Stocks Lane, Over Peover, Knutsford, Cheshire WA16 9EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr C Rudd of Frank Rudd & Sons against the decision of Cheshire East Council.
- The application Ref 17/5461M, dated 25 October 2017, was refused by notice dated 28 February 2019.
- The development proposed is surface car parking for up to 300 cars within existing yard area and on extended hard standing 60m x 80m and 3 light columns for temporary period only.

Summary Decision: The appeal is dismissed.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. The reasons for issuing the notice, at section 4 of the enforcement notice make it clear that the Council considers that the operational development is an integral part of the material change in use of the land. An enforcement 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.
3. I consider that to ensure that it is clear that the operational development cited is integral to the material change of use that the wording '*together with the associated*' replaces the word '*the*' that is between '*land,*' and '*formation*' in the description of the alleged breach at section 3. Both main parties had the chance to comment on this matter at the hearing. I can correct the enforcement notice without injustice to either of the appeal parties.

Procedural Matters

4. Because of restrictions relating to the Covid-19 pandemic, I conducted a virtual hearing on the 17 November 2020. Following the close of the hearing, I carried out a site inspection on 18 November 2020. The appellant provided access to the appeal site, but I did not discuss the appeals further with him.
5. As set out above there are two appeals on this site. Even though they relate to the issuing of an enforcement notice (Appeal A) and a refusal of planning permission (Appeal B) they relate to the same material change in use of the land. The planning application did not incorporate the ticket machines and barrier. Nevertheless, to avoid duplication I have dealt with the ground (a) appeal, deemed planning application and the section 78 appeal together.
6. In relation to Appeal B I observed that the development has commenced. I have dealt with Appeal B on that basis.

Appeal A – the ground (a) appeal and deemed planning application
Appeal B - section 78 appeal

Main Issues

7. I consider that the main issues are: -

- Whether the development constitutes inappropriate development in the Green Belt, having regard to the effect on the openness and purposes of the Green Belt, the development plan and the National Planning Policy Framework (the Framework);
- The effect on the highway network including implications relating to the approved Travel Plan for Radbroke Hall;
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, whether this amounts to the very special circumstances required to justify the development.

Reasons

8. The appeal site comprises a large irregular shaped piece of land on the northern side of Stocks Lane adjacent to the grounds of Radbroke Hall. There is a large glasshouse used for the growing and production of tomatoes on part of the site.

Whether the proposal constitutes inappropriate development in the Green Belt

9. Saved Policy GC1 of the Macclesfield Borough Local Plan (MBLP) states, amongst other things, that within the green belt approval will not be given, except in very special circumstances, for the construction of new buildings unless it is for one of a number of purposes. The Council confirmed at the hearing that this policy is considered to be relevant in relation to the operational development associated with the material change in use.
10. Policy PG3 of the Cheshire East Local Plan Strategy (LP) states, amongst other things, that within the Green Belt, planning permission will not be granted for inappropriate development, except in very special circumstances, in accordance with national policy.
11. Although these policies pre-date the current Framework, they are broadly consistent with paragraphs 145 and 146 of the Framework. These advise, amongst other things, that subject to exceptions a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt and that material changes in the use of land are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
12. There is no dispute that the material change in use of the land and its associated operational development do not preserve the openness of the Green Belt. Due to the nature of the physical changes to the appeal site, in respect of the operational development, those parts of the development have a limited spatial impact on the openness of the Green Belt. Nevertheless, the nature of the material change in use relating to the parking of cars is that a relatively large number of vehicles have been parked on the hardstanding at the front and rear of the glasshouse between 06:00 and 22:00 on Mondays through to Fridays. The number of cars parked on the site has varied and the planning

application is for up to 300 cars to be parked. Due to the impact of the current Covid-19 pandemic very few cars, not associated with the agricultural/horticultural use, have parked on the site since the end of March 2020.

13. The number of cars parked each working day had reduced by March 2020 to around 150. Nevertheless, these cars would have been clearly visible from the public footpath that runs along the western boundary of the appeal site and the ones parked at the front would have been visible from Stocks Lane. They would also have been on the site for a large proportion of each day (Monday to Friday). As such, the parking of the vehicles in this manner has a spatial and visual impact on the openness of this part of the Green Belt.
14. The mature landscaping extending along parts of Stocks Lane limits views of other development in the vicinity of the site, giving the setting a rural flavour. By introducing an essentially urban activity into the above context, including lighting columns, the development has therefore also amounted to encroachment into the countryside. This is in conflict with one of the purposes of including land within the Green Belt set out at paragraph 134 of the Framework.
15. Therefore, the development does not preserve the openness of the Green Belt and conflicts with one of the purposes of including land within it. Accordingly, it amounts to inappropriate development in the Green Belt when considered against paragraph 146 of the Framework.

The effect on the highway network

16. The material change in use has occurred through the parking of vehicles on the appeal site that are in association with the technology/office complex at Radbroke Hall. That use appears to have arisen due to the demand for car parking spaces by employees working at that complex not being able to be met within the Radbroke Hall site. The evidence before me indicates that prior to the appeal site being utilised as such vehicles were being parked within nearby highways and laybys.
17. Prior to April this year the technology/office complex had somewhere between 3,500 and 3,700 employees working at Radbroke Hall. In 2017 planning permission¹ was granted for additional office accommodation and an additional car park providing 436 spaces at Radbroke Hall. That additional car park has been constructed. A Travel Plan (TP) to meet a condition imposed on that planning permission was approved in 2018 when the condition was discharged.
18. The TP proposed a number of mode share targets to be met 5 years after the first implementation of the plan. The main target indicated is to reduce the proportion of car alone travel from 82% to 76% by increasing travel by other modes of travel including car sharing and bus/train. It is clear that the majority of employees at Radbroke Hall travelled by car to their workplace up to March 2020. Given that there are 2,536 car parking spaces within the Radbroke Hall site there is insufficient car parking provision within that site to cater for full capacity occupancy levels by employees. The TP indicates that around 1,100 contract staff are not permitted to park on the Radbroke Hall site unless they car share.

¹ Ref No: 17/3806M

19. I was informed at the hearing that the car parking at the appeal site was used, in the main, by contract staff. As there is a daily charge associated with parking on the appeal site it is highly unlikely that employees who are entitled to free parking within the adjacent site would choose to park on the appeal site. The demand for parking spaces had reduced prior to March this year from around 300 to approximately 150 cars per working day.
20. It is unclear as to why that demand had decreased as it could be associated with the additional parking spaces that have been constructed within Radbroke Hall or the implementation of measures through the TP Action Plan. However, the Council confirmed at the hearing that they have no information on what if any of the TP Action Plan measures have been initiated or implemented.
21. There is no evidence before me to indicate that the traffic generated by the office/technology complex has caused any highway safety issues including any accidents on the nearby highway network. The reasons for refusing the planning application, the section 78 appeal, cite the parking standards within Annexe C of the LP. I have not been provided with a copy of that annexe but the Council stated at the hearing that there are no parking standards for agricultural/horticultural uses within it. Nevertheless, it is reasonable to consider that the number of parking spaces required by the employees related to the agricultural/horticultural use would be significantly lower than the number of spaces that could currently be utilised on the front and rear hardstanding.
22. LP Policy CO1 relates to sustainable travel and transport and, amongst other things, it expects development to reduce the need to travel by supporting measures that reduce the level of trips made by single occupancy vehicles. It is reasonable to consider that the permanent provision of car parking within the appeal site to serve the adjacent site would not support the measures contained within the TP Action Plan. Moreover, it would also not support any measures to reduce the level of trips by single occupancy vehicles associated with the agricultural/horticultural use.
23. Nonetheless, the planning application was made on the basis that it was to be for a temporary period. Furthermore, the appellant has stated that he agrees to conditions limiting the material change in use to a temporary period to reflect the end of the TP period and restrict the use of the car park to employees of Radbroke Hall. Conditions imposed restricting the planning permissions in these respects would ensure that the development does not conflict with LP Policy CO1.
24. Nevertheless, the current Covid-19 pandemic has meant that the adjacent site appears to presently be used by a very small number of employees due to the majority of them, more likely than not, being able to work from home. It is not clear what the long-term implications arising from the Covid-19 pandemic will be on working from home/offices at Radbroke Hall or nationally. A public consultation document, from October 2020, relating to future developments at Radbroke Hall does not appear to indicate that the number of employees attending the site would be significantly lower than the pre-March 2020 levels. However, that document states that a Travel Plan will accompany a planning application and that it will seek to encourage colleagues to make sustainable transport choices.

25. Moreover, a planning application for an additional glasshouse on the appeal site has been submitted. The rear car park would cease to be available when that glasshouse is erected. If that planning permission was granted, the appellant stated at the hearing that, it could be 2 or 3 years, depending on the outcome of several factors, before the glasshouse is erected.
26. Given the current uncertainty relating to the above issues I consider that the time period suggested by the appellant would not be reasonable. However, a shorter time period of 12 months, as suggested by the Council at the hearing, would enable the planning circumstances outlined above to be monitored and reviewed. Furthermore, the changes in the planning circumstances would be, more likely than not, to occur within 12 months.
27. Taking into account all of the above, I consider that with the imposition of planning conditions the development would not have an unacceptable impact on the highway network, and it would not conflict with LP Policy CO1.

Other considerations

28. Radbroke Hall is a large employment site. The parking provision on the site appears to have been in demand prior to the current Covid-19 pandemic. There appears to have been an issue with insufficient parking spaces being provided within the Radbroke Hall site that has led to parking within the highway and laybys. The car parking provision within the appeal site also appears to have assisted in reducing traffic queueing to access the Radbroke Hall site.
29. There may be limitations to the number of additional car parking spaces that could be created within the Radbroke Hall site due to a number of factors which include the grade II listed status of Radbroke Hall, the site being within the Green Belt and biodiversity. Nevertheless, the approved TP aims to reduce the amount of lone car travel by 6% and even though there could be issues in relation to enforcing those aims there is no need/demand for the car parking at the present time.
30. Moreover, it would appear that there are proposals for that site that could reduce the car parking demand or manage it in a more efficient manner. In addition, as stated above it is presently unknown what impact the Covid-19 pandemic will have on future working patterns at Radbroke Hall. It is highly likely that some of the staff may be able to work from home for at least some of the time which would further reduce the need for travel by car. In addition, given my findings above the development would be for a limited period.
31. Overall, I give these other considerations moderate weight.

Planning Balance

32. The proposal would be inappropriate development in the Green Belt. At paragraph 143, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.

33. For the reasons given above, the other considerations in combination do not clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist. As such the development conflicts with saved MBLP Policy GC1 and LP Policy PG3 and the Framework. With regard to paragraph 213 of the Framework given my findings above the conflict with those policies has significant weight. The development conflicts with the development plan as a whole and material considerations do not indicate that it should be determined other than in accordance with the development plan.

Conclusion – ground (a) appeal and deemed planning application

34. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal on ground (a) should not succeed. I shall refuse to grant planning permission on the deemed application.

Conclusion – section 78 appeal

35. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

The ground (f) appeal

36. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
37. The notice does not specify which of the two purposes it seeks to achieve. Nonetheless, in requiring the cessation of the use and removal of all of the operational development that the Council states are associated with that use it is evident that the Council seeks to remedy the breach.
38. An enforcement notice directed at a material change of use may require operational development to be removed, provided it facilitated and was part and parcel of and integral to the unauthorised change of use.
39. There is no dispute that the lighting columns, ticket machines and barrier facilitated and are integral to the material change of use relating to the parking of vehicles unassociated with the agricultural and horticultural use of the land. However, the appellant contends that only the large hardstanding to the rear of the glasshouse was constructed to facilitate that change of use.
40. The Council have provided a copy of an amended plan indicating the areas of hardstanding that it considers should be removed. This excludes areas adjacent to the glasshouse that were shown on the approved plans/details of associated with the planning permission² for the glasshouse (2013 permission).
41. There are a number of hardstanding and tracks that have been constructed on the appeal site that are not shown within the 2013 permission. However, the enforcement notice can only require the removal of the hardstanding/tracks that facilitated and were integral to the material change of use. The Council stated at the hearing that it considered that the tracks/hardstanding on the eastern side of the appeal site that are mainly adjacent to the eastern elevation

² Ref No: 13/3314M

- of the glasshouse have not been directly utilised for the unauthorised change of use. However, it considers that they are required as the parked vehicles restrict the amount of hardstanding around other parts of the glasshouse.
42. Nevertheless, there is little evidence before me to indicate that the tracks to the eastern side of the appeal site have facilitated and are integral to the material change of use. It appears that they are part and parcel of the agricultural/horticultural use as they allow access around the tanks and silos and to the composting area.
43. Vehicles associated with the material change of use have parked within the area to the front of the glasshouse that is adjacent to the Stock Lane frontage and is shaded green on 'Plan B'. However, from the evidence before me it appears that this area was constructed as part of the method statement for the construction of the glasshouse that was discharged as by the Council through condition 13 of the 2013 permission. There is no requirement as part of the discharged details for that area to be removed.
44. This area of hardstanding and part of the track to the eastern side of the appeal site can be seen on the photographs submitted by the appellant's agent. The agent explained at the hearing when and why these photographs were taken, and I have no reason to dispute that they were taken in February 2016. As such, it is more likely than not that the tracks to the eastern side were constructed in association with the agricultural/horticultural use of the glass house prior to the material change of use occurring. In addition, the area to the front was on the balance of probability installed to facilitate the construction of the glasshouse and could lawfully be used as part of the 2013 permission.
45. Accordingly, the requirement to remove these parts of the operational development exceeds what is necessary to remedy the breach of planning control in the circumstances of this case. Ground (f) therefore succeeds in so far as the notice should be varied to replace 'Plan B' with the appended 'Plan B' that is attached to this decision.
46. There is a relatively narrow strip of hardstanding between the public footpath and the area adjacent to the western elevation of the glasshouse that is also shaded green on Plan B. Cars were parked on this area in March 2017 and it does facilitate access to the rear hardstanding. Nevertheless, it is not clear when this part of the hardstanding was constructed. The hardstanding on that area does not appear to have been constructed in Feb 2016 as in the submitted photographs that area appears to have grass on it.
47. I acknowledge that the hardstanding may be required to allow the necessary plant and equipment to clean the windows/roof of the glasshouse. However, there is little evidence before me to indicate that it was constructed for that purpose or another lawful purpose. On the balance of probability, I consider that it is more likely than not that this part of the hardstanding was constructed to facilitate access to the smaller rear hardstanding that can be seen in the aerial photograph dated March 2017 and that it was integral to the material change of use. In addition, there is no dispute that the large area of hardstanding to the rear of the building was constructed to facilitate the material change of use and was integral to that use. Consequently, the requirement to remove these parts of the operational development is not excessive.

The ground (g) appeal

48. This ground is that the period for compliance falls short of what should reasonably be allowed. The appellant considered that the period of 3 weeks to cease the use of the land for the parking of vehicles unassociated with the agricultural and horticultural use of the land was not reasonable as the contractors would need to find alternative parking. However, due to the current Covid-19 pandemic the parking of vehicles cited above has not occurred for some time. As such, there is no dispute that in the current circumstances that the period for compliance is reasonable. Consequently, the ground (g) appeal fails.

Other Matters

49. A third party representing an energy company informed me at the hearing that that company only has an interest in one of the sub-stations on the appeal site and that it would be unable to assist in bringing about any rectification of the alleged breach of planning control. The Council confirmed to that third party that it understood the company's interest in the site. It is not within my jurisdiction to determine whether that company would be requested to ensure the requirements of the enforcement notice are complied with.

Conclusion – grounds (f) and (g)

50. For the reasons given above I conclude that, whilst the ground (g) appeal fails, the requirements in part are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Formal Decision - Appeal A

51. The appeal is allowed on ground (f), and it is directed that the enforcement notice be varied by: -

- Replacing 'Plan B' with the appended 'Plan B' that is attached to this decision.

It is directed that the enforcement notice be corrected by: -

- Replacing the word '*the*' that is between '*land,*' and '*formation*' in the description of the alleged breach at section 3 with the wording '*together with the associated*';

Subject to these variations and corrections 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.

Formal Decision – Appeal B

52. The appeal is dismissed.

D. Boffin

INSPECTOR



Plan B

This is the plan referred to in my decision dated:

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

Land on the North side of Stocks Lane, Over Peover, Knutsford, Cheshire WA16 9EZ

Reference: APP/R0660/C/20/3246325

Scale: Not to Scale



9/11/2020

Land on North side of Stocks Lane, Over Peover, Knutsford. WA16 9EZ



© Crown copyright and database rights 2020. Ordnance Survey 100049045 You are permitted to use this data solely to enable you to respond to, or interest with, the organisation that provided you with the data. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.