
Appeal Decision

Site visit made on 5 January 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2021

Appeal Ref: APP/M0655/W/20/3260844

**Land to the south west of Rixton Old Hall, Manchester Road,
Rixton-with-Glazebrook, Warrington WA3 6EW**

- 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 Brendan Maher of W Maher and Sons Ltd against the decision of Warrington Borough Council.
 - The application Ref 2020/36656, dated 26 February 2020, was refused by notice dated 30 July 2020.
 - The development proposed is described as: 'demolition of two brick-built buildings and erection of a new vehicle workshop and retrospective approval of 5 HGV¹ parking bays'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. For clarity, I have taken the name of the appellant in the banner heading above from the appeal form, as it is more precise.

Main Issues

3. The main issues of this appeal are:
 - i. whether the proposed development amounts to inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the development plan;
 - ii. the effect of the proposed development on openness;
 - iii. the effect of the proposed development on character and appearance; and,
 - iv. if the proposal is inappropriate development, whether harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development

4. Policy CS1 of the Council's Local Plan Core Strategy 2014 (CS) identifies the priority afforded to the protection of the Green Belt, and CS Policy CS5 requires

¹ Heavy Goods Vehicle

development proposals within the Green Belt to accord with relevant national policy. The proposed development is for the erection of a new vehicle workshop following the demolition of two brick-built buildings, and retrospective approval of 5no. HGV parking bays. The scheme was amended during its assessment with the Council, resulting in the proposed development having reduced dimensions, through a reduction in ridge and eaves height.

5. The Framework identifies inappropriate development as harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 of the Framework sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt. This is subject to a number of exceptions which includes paragraph 145 d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. There is no dispute between the parties that the proposed development would be in the same use as the existing structure and in this respect the development would comply with paragraph 145 d) of the Framework. However, when compared to the existing buildings, the dimensions of the proposed development, in terms of its height and width would be increased, so that its overall scale, bulk and mass would be materially larger. Consequently, the proposed development would not comply with the exception listed at paragraph 145 d) of the Framework.
6. The appellant disagrees with the application of paragraph 145 d) in the appeal scheme and asserts that paragraph 145 g) should be applied. Paragraph 145 g) also advises that an exception could be the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development. However, the main parties are in dispute over whether the site constitutes Previously Developed Land (PDL) due to the definition of PDL² in Annex 2 of the Framework and the historic association of the site for the winning and working of clay and tipping of waste.
7. The Council refer to the original permission³ having a condition included to ensure that upon completion of the use of the land for mineral extraction / landfill, the site was restored appropriately. However, this condition required compliance within one year of the date of permission, which was over 40 years ago. Given the period of time that has lapsed, I find it highly likely that condition 2 on the original permission would be immune from any enforcement action against non-compliance. Additionally, on the evidence before me, whilst I have been made aware of other relevant planning applications⁴, I have not been made aware of any other planning applications that have been approved with similar restorative conditions imposed to that on the original permission. Thus, in the absence of any substantive evidence to the contrary, I consider that the existing buildings on the site are unlikely to be the subject of development management procedures and is therefore PDL. Nevertheless

² Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

³ 1/8069 dated 12 October 1979

⁴ 1/11095 (1980) and A01/44128 (2001 and withdrawn in 2002)

paragraph 145 g) requires that the development of such sites must also be considered in terms of the effect on openness.

8. Paragraph 146 of the Framework states that certain other forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The HGV parking bays comprises operational development within the meaning of Section 55 of the Town and Country Planning Act 1990 and in this instance paragraph 146 d) would be relevant. My conclusions on the next issue will, therefore, determine whether this element of the scheme and the proposed development is inappropriate.

Openness

9. The Framework indicates that openness is an essential characteristic of the Green Belt with a key objective being to keep land permanently open. The Planning Practice Guidance (PPG) identifies factors which can be taken into consideration when assessing the impact of a proposal on Green Belt openness. It states that openness is capable of both spatial and visual aspects. The appellant has referred to a judgment⁵ to support his submission that concerned openness of the Green Belt, where it was stated that the matters relevant to openness in any particular case are a matter of planning judgement, not law.
10. Whilst the site forms part of a larger commercial enterprise, it is notably open in its rural location, albeit, adjacent to an internal road, with an open field, notable in size to the rear. Due to the private nature of the land and the distance from the road and areas of public realm the proposed development and the HGV parking area would not be clearly visible from wider public views. However, it would nevertheless be prominent when viewed in closer proximity. The hard standing facilitates the parking of HGVs that, whilst not constituting an act of development in itself, adds to the loss of openness on an intermittent basis when the area of parking is in use.
11. The proposed development would have a greater bulk and massing than the existing buildings through the increase in the height of the roof, and a larger footprint. The increase in height of the scheme with corresponding greater volume would increase the built-up nature of the appeal site. Despite the appeal site being located adjacent to the internal road, it would, because of its proposed dimensions, take up more space than the buildings to be demolished. Consequently, the structure would be more prominent than the existing structures in the landscape.
12. In arriving at this conclusion, I note that there was previously another building occupying the site. However, I am informed that this has since been demolished due to its condition. There are little details of this building in the submission, although I note that it was 5m in height. As such, this previous building does not alter my findings on the scheme before me and the scheme would inevitably result in there being a considerably greater built form on the site than at present.
13. It follows that whilst the development would not be visually intrusive in terms of openness, it would nonetheless, have a harmful impact on openness due to its spatial characteristics. Therefore, I conclude that the development results in

⁵ Tuner v SSCLG & East Dorset Council [2016] EWCA Civ 466

a moderate loss of openness to the Green Belt. As such, the proposed development and the existing HGV parking bays would represent inappropriate development, contrary to the requirements of the Framework.

Character and appearance

14. Whilst the appeal site is located within a rural location, I acknowledge the existing commercial activity/operation in the wider site, and how the proposed development and the HGV parking bays would be/are located in an area of the site that would not be readily visible from public vantage points. Although, the appeal scheme would likely have an increased visual effect, particularly when it is in use.
15. The site has a visual connection with the surrounding open countryside, especially with the adjoining agricultural field. However, I consider that given the existing use of the wider site and the associated presence of HGVs, the appeal scheme would not form a strident visual feature in its surroundings. Additionally, the proposed development is of a design that is not uncommon in the countryside through its agrarian appearance, albeit with an intended commercial use. Furthermore, HGV parking bays would be complementary to the proposed development and surrounding road network, through good, functional design and the use of appropriate materials. Overall, I do not find any significant visual harm would occur to the appeal site or the surrounding area as a consequence of the appeal scheme.
16. For the reasons given above, I conclude that the development does not create any significant harm to the character and appearance of the appeal site and surrounding countryside. The proposed development and the HGV parking bays therefore accord with the design, character and appearance aims of CS Policy QE7, and the requirements of the Framework.
17. The Council has referred to CS Policy QE6 in its reason for refusal, but I do not consider this policy to be relevant to this appeal as it relates to Environment and Amenity Protection.

Other considerations

18. I have concluded that the proposal represents inappropriate development in the Green Belt and harms the openness of the Green Belt. Paragraph 144 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm. The appellant contends there are considerations that would outweigh harm arising from inappropriate development and any other harm to amount to very special circumstances.
19. The appellant's formal case to demonstrate very special circumstances, surrounds the operational requirements/practicalities of the appellant as all vehicles are currently maintained/repaired in Irlam and all the office based staff work from Rixton Old Hall with the HGVs and agricultural vehicles parked overnight in the estate too. It is also asserted that this would represent a more sustainable solution to the existing situation, through the reduction in vehicle movements.
20. The appellant also asserts that the dimensions of the proposed development is necessary due to the size of the HGVs and that it would also incorporate the electrical main distribution board for the estate, which is currently contained in

one of the existing buildings that is poor in condition and in need of replacement. Modern health and safety requirements for vehicle maintenance staff has also been cited.

Other Matter

21. I have also noted the comments from the appellant about the way the Council handled the application, but this does not affect the planning merits of the case. I have considered this appeal on its own merits and concluded that the appeal scheme is unacceptable for the reasons set out above.

Green Belt Balance

22. I accept the absence of other harm arising from the appeal scheme, including character and appearance. However, I have concluded that the appeal scheme has harmful implications for the Green Belt in terms of inappropriate development, the erosion of the openness of the Green Belt. Accordingly, there is conflict with national policy and the development plan when taken as a whole, and there are no other material considerations that indicate otherwise.
23. Having carefully considered the benefits of the appeal scheme and all other considerations, I find that individually and cumulatively, they would not clearly outweigh the substantial weight given to Green Belt harm. Also, I do not consider that otherwise unacceptable development could be made acceptable through the use of a planning condition in this instance. As such, the very special circumstances needed to justify the proposed development in the Green Belt do not exist in this case. Therefore, the proposed development conflicts with CS Policies CS1, CS5 and the requirements of the Framework.

Conclusion

24. Taking all matters into consideration, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR