



Appeal Decision

Site visit made on 25 January 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2021

Appeal Ref: APP/Q4245/C/20/3261510

Land at Clay Lane Nursery, Clay Lane/Thorley Lane, Timperley WA15 7AF

- 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 Day by Day against an enforcement notice issued by Trafford Borough Council.
 - The enforcement notice was issued on 16 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use from nursery use to a mixed use of airport car storage, builder's storage and nursery use with associated alterations, including the extension of external hard surfaced areas.
 - The requirements of the notice are:
 1. Cease the use of the site for airport car storage.
 2. Remove all vehicles, materials and equipment brought on to the land in connection with the use.
 3. Remove all works carried out to the land in connection with the use, including the enlargement of external hard surfaced areas and the erection of acoustic boundary fence.
 4. Restore the land to its condition before the airport car storage use commenced.
 5. The use of the land for builders storage shall only take place within the glass house located at the eastern side of the site in the area shown hatched in green on the attached plan ENF/01 and within the four shipping containers located opposite the site entrance and shown on the attached photograph ENF/02.
 - The period for compliance with the requirements is six 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. 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 Act as amended.
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Decision

1. It is directed that the enforcement notice be varied by:
 - Deleting the words "and the erection of acoustic boundary fence" in paragraph 5.3.
2. Subject to this variation 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.

Background

3. The appeal site lies within the Green Belt and is accessed from a shared track off Thorley Lane (A5144). The site is a broadly L-shaped plot of land which was

formerly a garden nursery and includes two large glass houses. Glass house A is situated close to the site access on the northern part of the site, and glass house B and a polytunnel within the south eastern corner of the site. The open land between these glass houses is mostly laid to hard surfacing.

4. The site was previously granted a temporary planning permission with conditions, for a change of use of parts of it to airport parking for a period of three years, via a previous appeal decision¹ which expired in June 2018. More recently, a retrospective planning application for the change of use of land from nursery use to a mixed use of airport car storage, builder's storage and nursery use was refused by the Council, and subsequently dismissed on appeal.²
5. Based on the evidence before me, airport car parking/storage has continued on the site, albeit the numbers of cars have significantly reduced in recent months as a result of COVID-19 travel restrictions. The site operates as part of a meet and greet service. According the appellant, the customers' cars are collected at the airport and driven to the appeal site (via a holding compound at the airport), stored in the glass houses and on external areas at peak times, and then returned to the airport in time for customer arrival. Storage of the vehicles is booked in advance by customers and arranged and managed within the site to limit unnecessary manoeuvres.
6. In addition, other uses have been operating from within the site. Builder's storage and a nursery use are accommodated in the remaining eastern sections of glass house B, and there are four shipping containers opposite the site entrance which are also utilised for builder's storage. Whilst part of the mixed use of the site, the enforcement notice does not require those additional uses to cease.

Appeal on ground (a), deemed planning application

Main Issue

7. It has been established in the most recent appeal that the use of glass houses and the polytunnels for internal parking of vehicles, a nursery and builder's storage would preserve openness and would not conflict with the purposes of including land within the Green Belt. However, it has also been established in the most recent appeal that the change of use of land for overflow airport car storage on external areas of hard surfacing, and which forms part of the mixed use alleged in the notice, results in a significant loss of openness of the Green Belt and has an urbanisation impact on former open land. From the evidence before me, and my own observations on my site visit, I see no reason to take a different view and concur that the unauthorised development fails to meet the requirement of paragraph 146 of the National Planning Policy Framework (Framework) to preserve openness, and is therefore inappropriate development in the Green Belt.
8. The appellant does not dispute the appeal findings but considers that the harm identified to the Green Belt and the living conditions of neighbouring residents could be mitigated by the imposition of planning conditions. In particular, the appellant states that they no longer seeks to utilise the hard surface areas for overflow car storage and believes that the use of those outside areas could be restricted by condition.

¹ Appeal Ref: APP/Q4245/W/15/3005495

² Appeal Ref: APP/Q4245/W/20/3247803

9. The main issue in this case is therefore:

- Whether the harm identified to the Green Belt and to the living conditions of neighbouring residents, could be mitigated by the use of planning conditions.

Reasons

Green Belt

10. The Framework advises that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. In addition, it states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects³.
11. To prevent harm to the openness and urbanisation of the Green Belt, the appellant suggests that a condition could be imposed to restrict the airport car parking/storage usage to the internal use of the buildings only, indicating that when granting temporary planning permission for airport car parking on the site in 2015, the Inspector had deemed such a condition to be reasonable and enforceable.
12. However, the planning permission granted in 2015 was a temporary three-year consent, solely for airport car parking. In that case, the Inspector deemed a temporary consent appropriate and necessary to allow for the effect of the appeal proposal on the area to be assessed. It is clear from the Council's and third party evidence that conditions attached to the 2015 temporary consent to safeguard the openness of the Green Belt, were not adhered to. Vehicles have continued to be stored on areas of hard standing, outside of the glass houses, contrary to conditions attached to that consent.
13. I recognise the appellant's willingness to accept a condition that would restrict the airport car storage use to the use of the buildings only. However, it is also necessary to consider the business realities, and whether or not a condition is likely to be breached⁴. The evidence shows that during peak times and when demand exceeds the internal space available, parking takes place on available external space within the site. The appellant has not provided any substantive evidence to explain how his existing business operating model would change to overcome the constraints which have prevented him from adhering to planning conditions he says he is now willing to accept. In addition to circumstances when demand for car storage outstrips the internal space available within the site, reasons given for not complying with conditions in the past, include the heat within the glasshouses causing windscreens to pop, and larger 4 x 4 vehicles not fitting inside the buildings.⁵ From the evidence before me those constraints of the site remain unresolved.
14. Moreover, the deemed planning application is for a mixed use of the site. It is clear from previous correspondence with the Council⁶ that the appellant only leases/rents the land and has limited control on who has access to the Land as a whole or where parking by other operators and their customers takes place.

³ Paragraphs 54 & 55, National Planning Policy Framework.

⁴ *Akhtar v FSS* [2005] EWHC 2719 (Admin), 2005 WL 3353241

⁵ Appendices 6 & 7, Appellant's Statement of Case.

⁶ Appendix 5, Appellant's Statement of Case.

Consequently, in this appeal case, given the proposed mixed use it would be difficult for the Council to assess whether or not any parking on the outside areas was connected with the nursery, builder's storage use or airport car parking. Enforcement of the suggested condition would therefore be problematic.

15. The appellant has now been operating on the site since 2014. Despite the appellant's best intentions to adhere to conditions restricting the use of outside areas, further areas of hardstanding have been created and the storage of cars in connection with their business on those areas of hardstanding has continued when demand required additional space or the internal space was deemed unsuitable. I have not been provided with any substantive evidence that would demonstrate to me that the business is able to operate within the limitations of the suggested condition and such a condition would not therefore be reasonable. Furthermore, given the proposed mixed use of the site, I do not consider that this condition would be enforceable. A register of arrival and departure times of employees of Day by Day as suggested by the appellant would not overcome the difficulties that would arise when monitoring which whether the vehicles are parked outside are there in association with the airport car storage use or, parked in connection with the nursery or builder's store.
16. For the reasons given above, I conclude that the harm to the Green Belt could not be mitigated by conditions. The development is therefore contrary to the aims of the Framework and the development plan. In particular, I find conflict with Policy R4 of the Trafford Local Plan: Core Strategy, adopted 2012 (CS), which seeks to protect the Green Belt from inappropriate development.

Living conditions

17. To safeguard the harm to living conditions of neighbouring residents which were identified in the most recent appeal, the appellant has stated that they would be willing to accept a condition that restricts operating hours to 08:00 to 18:00 seven days a week. It was a condition of the temporary consent granted in 2015, that no vehicles were taken to or from the site outside the hours of 09:00 and 17:00 hours on any day, whilst the more recent application/appeal sought permission for extended operating hours (07:00 to 20:00 hours).
18. Taking into account the lawful use of the site as a nursery, the nature of the adjoining land uses, and the acoustic fence that has been erected on the western boundary of the site, I am satisfied that if the airport car parking only operated on the site between the hours of 08:00 and 18:00 on any one day, then the living conditions of neighbouring residents would be safeguarded.
19. The appellant's 'Site Operation Statement'⁷ sets out the appellant's business model, a meet and great airport parking system that relies on a holding compound near the airport to manage the movement of vehicles to and from the appeal site. A holding compound is essential to the operation of the appellant's business, as only with that compound is the appellant able to comply with any time restriction conditions imposed on the appeal site. Moreover, without a holding compound, the appellant would not be able to provide a service to customers whose flights departed or returned during the evening, night or early morning. Therefore, I agree with the Council, that

⁷ Appendix A, Appellant's Statement of Case.

without a mechanism to secure the continued provision of a holding compound, it would be unreasonable to impose planning conditions preventing the 24 hour operation of a use when that business is reliant on providing a 24 hour service. No such mechanism has been provided or is available to me.

20. I appreciate that an Inspector granted the temporary consent in 2015 based on the appellant's Site Operation Strategy. However, that consent was granted for a temporary period only in order that an assessment could be made of its effect. The evidence before me is that, despite the appellant's best intentions, planning conditions imposed on the temporary consent have not been adhered to. In addition, any planning permission granted would be for the use of the land and not solely for the benefit of the existing site operators. It would be unreasonable to impose a condition that would restrict the hours of operation to daytime only, when by its very nature airport car parking is required on a 24hour basis.
21. I am also mindful that the appeal proposal is for a mixed use which includes the site's lawful use as a nursery. The appellant does not have any control over the activities of other site operators, and consequently difficulty would arise in distinguishing between the activities of different users. I am not persuaded that a condition restricting vehicles movements relating to airport car parking only, even with the register kept by Day to Day Parking and access to CCTV records would be enforceable, as it would require an unreasonable amount of monitoring.
22. For the reasons given above, I conclude that the harm identified to the living conditions to neighbouring residents, by reason of noise and disturbance, could not be mitigated by the use of planning conditions. The development is therefore contrary to Policy L7 of the CS which seeks to ensure, amongst other things, that development does not prejudice the amenity of occupants of adjacent properties by reason of noise and/or disturbance.

Conclusion

23. For the reasons given above and taking into account all other matters raised, the appeal on ground (a) must fail.

Appeal on ground (f)

24. The issue is whether the requirements of the notice are excessive to achieve the purpose(s) of the notice.
25. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case, the purpose of the notice is to remedy the breach of planning control and injury to amenity.
26. The appellant considers that the requirements of the notice, which includes a requirement to remove the acoustic boundary fence is excessive. It is submitted that the fence could be erected as permitted development, does not have a harmful effect on the outlook for the occupiers of No 2 Clay Lane, and it is not unreasonable for a builder's yard or nursery use to require a secure fence around the site.

27. I appreciate that the fence was installed to facilitate the airport car storage use. However, the alleged breach of control in this case is a mixed use, which also includes use for builder's storage. The notice does not require the builder's storage use to cease, and I agree with the appellant that it would not be unreasonable for the operators of that use to continue to have some site security.
28. From my own observations on my site visit, the fence provides a secure means of enclosure for all of the site operators and could continue to serve that purpose once the airport car storage use has ceased. It is not visually intrusive, and although it is clearly visible from the front windows of No 2 Clay Lane, given its position on the opposite side of the vehicular access track and some 4-6 metres away from their front elevation, I do not consider that it has a significant or harmful effect on the outlook for the occupiers of No 2.
29. A requirement to cease the use of the site for airport car storage is the minimum necessary to remedy the breach of planning control. There would be a continued need for the retention of the fence to maintain site security for its lawful operator's and to require the removal of the fence does exceed what is necessary to remedy the breach of planning control and injury to amenity, in the circumstance of this case. Ground (f) therefore succeeds in so far as the notice should be varied to delete the requirement to remove the acoustic boundary fence.

Appeal on ground (g)

30. The issue is whether the compliance period of six months is reasonable. The appellant considers that this is too short a time period to find a new site and seek planning permission for its use. A 12-month period has been requested.
31. I appreciate that the COVID-19 pandemic will have adversely affected this business. However, I have not been provided with any substantive evidence that would demonstrate to me that six months is an unrealistic time frame within which to find a site, gain planning permission and relocate. I am also mindful of the continued harm to interests of acknowledged importance which would result from the continued operation of this unauthorised use.
32. The appeal on ground (g) fails.

Overall Conclusion

33. For the reasons give above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with a variation and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR