



Appeal Decision

Inquiry Held on 16-18 March 2021

Site visit made on 9 March 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/D0121/C/20/3249212

Former Coles Garage, Red Hill, Redhill, Bristol BS40 5TE

- 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 Martin Alford against an enforcement notice issued by North Somerset Council ('the Notice').
- The enforcement notice, numbered 18/00585/OTH, was issued on 21 February 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land for the parking of vehicles for airport customers.
- The requirements of the notice are (1) Cease the use of the land for the parking of vehicles for airport parking customers; and (2) Remove all vehicles unconnected with the lawful use of the land.
- The period for compliance with the requirements is 14 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation in the terms set out below in the Formal Decision.

Procedural Matters

1. The appeal was originally to be assessed under the written representations procedure. Following a site visit, the then Inspector assessing the appeal, Mr Symons, wrote to the parties¹ setting out the need to change the procedure to an Inquiry. In this, he stated that the remit of the Inquiry would be limited to matters on ground (c) relating to the identification of the planning unit and the consequences this would have on the ground (d) appeal and, with regards to the ground (a) appeal, the effect of the development on the openness of the Green Belt. The remaining matters would be assessed solely on the basis of the written submissions
2. I visited the site prior to the opening of the Inquiry, on 9 March 2021, in order to better appreciate its layout during the discussions that would ensue at the Inquiry. I met with the Appellant and an Enforcement Officer of the Council. The merits of the case were not discussed at this visit. At the Inquiry, it was agreed that nothing arose from the discussions that required me to re-visit the site. As neither party would be prejudiced by this, I did not re-visit the site.
3. When I visited the site, it appeared that the plan attached to the notice was incorrect. I wrote to the parties on 11 March setting out my thoughts on the matter and, if the plan was incorrect, invited the submission of a revised plan.

¹ 15 September 2020

The Council submitted this on 15 March. At the Inquiry, the Appellant stated that he had no objections to the use of the revised plan. As its use would not prejudice any party, this is the plan that I have used in my decision.

4. The Appellant stated, both before and at the Inquiry, that the Proof of Evidence ('PoE) of the Council's only witness was excessive and went beyond the remit of Mr Symons' letter. The PoE was submitted in a timely manner and in accordance with Mr Symons' letter, and was therefore accepted. It was for the Council to demonstrate the relevance of its content, including the appeal decisions it contained, in the Inquiry.
5. The Appellant also challenged the admissibility of comments made by the Council on his Grounds (b) and (g) cases in the Council's 'Additional Comments', dated 4 March. As an email from the Inspectorate, dated 22 February, allowed for both parties to make such comments, they too were accepted.

The Notice

6. The Appellant challenged the Notice as it does not state what the lawful use of the land is. As a result, the reader cannot be sure whether the alleged breach of planning control is different to the lawful use of the land. Further, it does not define customers. As a result, it is unclear who can and cannot park on the land.
7. The Appellant is right inasmuch as car parking is car parking. The issue here is that the Notice alleges that the car parking use to which the Appellant is putting the site is a primary use that does not benefit from planning permission, rather than being ancillary to the lawful use of the land. I find the Notice tells the Appellant fairly what he has done wrong and what he must do to remedy this². The terminology in the Notice is commonly used in such cases and, from his submissions, the Appellant had no problems in understanding them. As such, I see no reason to amend the allegation. Furthermore, there is no requirement to identify the lawful use of land on the Notice.
8. Therefore, for the above reasons, I do not find that the Notice to be a nullity.

The Appeal Site

9. The appeal site lies on the north side of the A38(T), a short distance to the northeast of the village of Redhill. It is part of a range of commercial buildings and associated hardstanding areas. This commercial land slopes gently uphill away from the road. The buildings, that appeared to have a variety of users, lie roughly at the centre of the commercial land.
10. The land to which the Notice relates, as shown in the revised plan, lies at the north-western corner of the Redhill land. It comprises a single storey building with a small forecourt and a fairly large hard surfaced area. Its west and north boundaries are formed by metal fencing, beyond which are trees. There is a fence between it and the commercial land to the east. The site is open to the south, where it abuts a parking area associated with a camper van business running from another building on the wider site.

² *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196

11. The land is not subject to any landscape or townscape designations, but lies within the Bristol and Bath Green Belt ('GB').

Ground (b)

12. This ground of appeal is that those matters alleged in the notice have not occurred. It is for the appellant to prove his case on the balance of probability.
13. The Notice alleges the use of the land for the parking of vehicles for airport customers. The Appellant sets out that the land is merely used for the parking of motor vehicles and it is irrelevant where these come from; and, as such, there has not been a material change of use.
14. The question of whether there has been a material change of use is addressed in the Ground (c) appeal. However, it is clear from his submissions that the Appellant has been using the land for the purpose alleged in the Notice. I am also aware of the content of a statutory declaration³ that he produced in support of an application for a certificate of lawfulness⁴ for 'Vehicle Parking' on the land. In this, he refers to the use of the land for airport parking. Furthermore, his evidence to the Inquiry was based on his, and others', use of the land for airport parking.
15. Given the above, I find that the land has been used for the purpose set out in the notice. Therefore, the appeal on ground (b) fails.

Ground (c)

16. An appeal under this ground is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. Briefly, the Appellant's case here is that the appeal site is a separate planning unit with the benefit of planning permission for its primary use as a car park, dating from 1984. It is for the Appellant to make his case on the balance of probabilities.
17. The planning history for the site is set out in the Statement of Common Ground. The parties agreed that up until 1983 the whole of the commercial land at Redhill was owned by L F Jewel. Land Registry (LR) documents show that at that time the land was divided into an eastern and a western section⁵. L.F. Jewel retained the eastern section. A covenant on the Register entry for the western section⁶, which includes the appeal site, required the erection of a secure division between it and the land retained by L.F. Jewel. That division was to be maintained thereafter.
18. The parties disagreed, however, in relation to two planning permissions granted by the then local planning authority (LPA), Woodspring District Council, in 1984.
19. The first of these was LPA reference 101/84, for 'New workshop extension to existing motor trade premises at Cole Motors, Redhill, Wrington', granted on 1 March 1984⁷. The applicant was The HAT Property Company Ltd.

³ Karen Bartlett Proof of Evidence (KB PoE) Appendix 13 pp 161-164

⁴ Under section 191 TCPA 1990

⁵ These sections were variously described as both East and West and North and South in the Inquiry.

⁶ LR Reference AV234425

⁷ See Appendix 8 to KB PoE

20. The other was LPA reference 129/84 for 'Car park at L.F. Jewel Garage, Redhill', granted on 7 March 1984⁸. The applicant was L.F. Jewel Ltd.
21. Appendix 8 to the Council's PoE included a drawing that has a LPA stamp with the 'Application No' given as 101/84. This was reproduced in black and white, and thus the site plan boundary is not in red. It is nonetheless clear to me that this building was erected on the western section and is, moreover, the building that is on the appeal site and used by the appellant.
22. Two drawings were submitted with the Council's Appendix 9. Both have a LPA stamp with an 'Application No' given as 129/84. That, on page 48, is an enlarged version of a 1:2500 Location Plan. Again, it is monochrome. A thick line runs around the boundary of both the western and eastern sections as well as the adjacent dwelling, 'White Chimneys'. There is an area marked in black to the east of buildings on the site, between them and the site's eastern boundary. Amongst other things, the drawing on page 47 shows the then existing layout of the buildings on both the western and eastern sections. To their east is a 'Grassed Earth Bank', a section through which is shown. Below this, on the drawing, are proposed layout and sections details. This drawing is entitled 'Formation of new parking area for L.F. Jewel Ltd Redhill'.
23. Notwithstanding the limitations of the two drawings in Appendix 9, in terms of the quality of the reproductions, the Location Plan's scale, and its apparent re-use from an earlier application, I am of the view that they show that the car park granted permission by 129/84 was in the eastern section.
24. I note that, from 1977 to 1996, of the seven applications made at Redhill all save for 101/84 and 129/84 had individual 10-digit grid references (GRs). Whilst I find that the drawings show the developments approved by planning permissions 101/84 and 129/84 to be in different sections, the GRs given on the decision notices, suggest that both are within 1m of one another. The Appellant states that the GRs lie where the building in 101/84⁹ was approved. That is to say within the western part of the site. The upshot of this, as argued by the Appellant, is that the land has the benefit of planning permission (129/84) for its primary use as a car park.
25. The Officer report for 129/84 was also attached to the Council's Appendix 9. This states that "An earthbank at the northern end of the site serves as a visual screen to the garage site and buildings". The Council drew attention to a planning application for the 'Formation of earth mound to provide screen at Redhill, Wrington', LPA reference 3439/79¹⁰. The Location Plan for that permission shows that the earth mound was the grassed earth bank that was proposed to be removed to create the car park in 129/84.
26. In cross-examination, Mr Munnings agreed that the two permissions (3439/79 and 129/84), related to one another to a degree, but suggested that there might be other plans that he was unaware of. Similarly, he suggested that there might have been another earth bank on the western section of the site. His strong view was that the GRs should carry more weight in the assessment of which land the permissions related to.

⁸ Ibid – Appendix 9

⁹ Attachment 8 Simon Munnings' Statement of Case

¹⁰ K Bartlett Proof of Evidence – Appendix 5

27. No evidence of other plans, nor of another earth bank, was brought forward. Similarly, no evidence was produced to show that the use of GRs on planning permissions was a regulatory requirement at that time. It appears that their use was a function of the LPA during the registration of applications. No evidence was produced to show that GRs were given by applicants as part of their application submissions. Thus, I cannot agree that the GR on the planning permission should be the defining factor in identifying the site of a development. Were this to be the case, an applicant might make an application in a position that he has identified on a location plan and find that, due to the Council assigning an incorrect GR, it had been approved in a quite different position. Similarly, that a consultee might be confused by an incorrect GR cannot outweigh the primacy of the drawings submitted by an Applicant. On this latter point, in my experience a location plan is most commonly used as the point of reference for identifying an application site.
28. I find the argument that there would have been no need for planning permission for a car park on the L.F Jewel site, as parking would have been ancillary to the main use of that land, to be incorrect. I find similarly with regards to the assertion that this would point to 129/84 relating to the appeal site, where permission would have been required. The approved drawings show operational development, including the erection of two retaining walls – one of which was to be 8 feet high, that would in my judgement have needed planning permission. That this was why permission was required is backed up by the opening paragraph of the “Description” of the development in the Officer’s report on page 44 of Appendix 9. This describes the works as involving “the removal of parts of this earthbank” and “a retaining wall is to be constructed”.
29. For the above reasoning, I do not find that the secure division required by the covenant in the LR documents was another earth bund. As a matter of fact and degree, that was the mound that was the subject of application 129/84 on the L F Jewel site. Although not determinative, on the balance of probabilities the secure division was a chain link fence that is shown on the drawing on page 42 of Appendix 8.
30. Furthermore, by this time the evidence¹¹ shows that the western section was known as Cole Motors. Thus, I give very little weight to the suggestion that “L.F. Jewel Garage” as the address to which application 129/84 relates was a description of the whole of the commercial land at Redhill.
31. It was suggested by Mr Munnings that there might be other plans that have not been brought forward by the Council. Mrs Bartlett acknowledged that there were other drawings on the Council’s microfiche records, but they were not relevant. I have no reason to find otherwise and, as those plans are not before me, I cannot take them into account. In any event, the onus lies with the Appellant to prove his case.
32. Under its reference 1524/82¹², the LPA determined on 27 July 1982 that, under the terms of s53 of the Town and Country Planning Act 1971, the use of land and premises for the operation of a luxury coach business on the eastern section did not involve a material change of use of the land.

¹¹ Appendix 8, p.38, KB PoE

¹² Appendix 6, KB PoE

33. From the evidence, the s53 determination did not establish a primary use of the land for the parking of coaches. Rather, it set out that this use was not development so long as this was ancillary to the lawful use of the land. This was agreed to by Mr Munnings in cross-examination.
34. I find, therefore, that neither the planning permissions referred to nor the s53 determination created a new planning unit on the appeal site. Its permitted use is for purposes ancillary to that of the western section of the larger commercial site.
35. The Appellant's use of the land is not ancillary to the use of the remainder of the site. It is a separate primary use that represents a breach of planning control. For the above reasoning, the ground (c) fails.

Ground (d)

36. This ground of appeal is that, at the time when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The onus is on the appellants to prove their case, on the balance of probability. Case law¹³ states that evidence should not be rejected simply on the basis that it is not corroborated. Where this is the case, to be accepted evidence should be sufficiently precise and unambiguous.
37. The relevant time period in respect of the alleged breach, set out in section 171B of the Act, is ten years. Therefore, it is for the appellant to show that the use of the land had occurred for ten years prior to the Notice being issued and, if this was the case and it became lawful, that it was not thereafter lost.
38. The Appellant says that he commenced his use of the land for airport parking in 2010, that is to say 10 years prior to the issuing of the Notice, and that he used it continuously during this period. Further, he states that the land was used for this purpose prior to his interest in the land.
39. The Council's position is that the use of the land for the purpose alleged in the Notice began, at the earliest, in October 2016. As it is not disputed, I have taken it 'as read' that the use of the land did take place between October 2016 and the date of the issuing of the Notice.
40. Oral evidence on the manner and duration of the use of the land was given by the Appellant and several other witnesses. In addition, although stating that he first became involved in the appeal site in 2020, Mr Munnings gave evidence on this matter in respect of photographic evidence.
41. The Appellant, in his evidence, set out the manner in which he has run his business. This not only involved the appeal site, but also that a driveway at his house, "Ellandee" in the village of Backwell was important to this. He said that he moved to that property in January 2010. He described how customers drove their vehicles to the Airport for their flights, where they were met by one of his employees who would take the car from them and this would be taken to Ellandee and, later, to the appeal site. The reverse happens when customers return.

¹³ *Gabbittas v SSE & Newham BC* [1985] JPL 630

42. Evidence was brought forward by the Council¹⁴ that the then owner of Ellandee, Mr David Wadlake, completed and returned a Planning Contravention Notice (PCN) regarding an investigation into the use of that property. He signed and dated this 1 September 2015, stating that the current use of the land at that time was "Residency and Short Term Parking" and that this use started in July 2014¹⁵. In cross-examination, the Appellant agreed that he did not move to Ellandee in 2010 and that his Proof was inaccurate on this point. In a claim form for Housing and Council Tax Benefits signed and dated 4 April 2011, the Appellant gave his address as 'Paddocks Lodge'. On two occasions when questioned on the matter of living at Ellandee, the Appellant stated that he was confused about events from 10 years ago. On the matter of the PCN responses given by Mr Wadlake, the Appellant stated that he was more than 90% sure he moved in in February, but was unable to say what year this was.
43. The significance of this is that the Appellant's evidence showed that the use of Ellandee was an integral part of his use of the appeal site for airport parking.
44. Initially, the Appellant stated that an employee of the then owners of the site, Redhill Engineering, agreed verbally and with a handshake that he could use the appeal site. The date given for this was 2 January 2010. He was unable to provide any documentary evidence for this. As the business was initially run on a cash basis, he was unable to offer any receipts or invoices. As the business became increasingly busy, he said that things were "done properly" – though he did not offer any documents in support of that claim. When asked if this was in 2016, he answered that he was "not sure", referring to troubles with websites at the time he changed the system of payment. When asked if he agreed that the date was not 2010, he admitted to being "utterly confused" regarding dates. In re-examination, he stated that there was very little credit card use in 2010. Although he said there was a diary with information of his business being run from the site since 2010, he did not produce this.
45. When asked in re-examination when he started on the site, Mr Alford answered "3 years ago" and clarified this as being "2017". As this was said at the time he was discussing an 18-month period away from work as a result of illness, I took this to be the date he returned to work. Whilst this was, perhaps, a further example of Mr Alford's confusion about dates, I noted that he was firm during cross-examination that he was already operating his business from the site when he first sub-let it from Mr Bray in 2016.
46. Mr Bray agreed in cross-examination that he did not have direct knowledge of the site until 6 October 2016. His PoE referred to a variety of vehicle-related uses over the 35 years that he has known the site, but he agreed at the Inquiry that much of this was in the form of general knowledge. His direct knowledge of the use of the land for airport parking dates from the relocation of his motorhome business to Redhill in 2016. He was able to say that Mr Alford was already operating from the site when he took up his lease at that time.
47. Mr Bray has let the land from Mr Vowles since 2016. The latter was able to say that when he visited the site some 18 years ago he witnessed vehicles being parked nose-to-tail, in the manner that the Council attributes to airport parking. He saw this again during a subsequent visit to the site a couple of

¹⁴ Appendix 31, KB PoE

¹⁵ Questions 6 and 7

years later. Between then and 2016, he was unable to provide specific evidence of the use of the land for airport parking. He explained that he was happy for Mr Bray to sub-let the land to Mr Alford, who he said was already running the business from the site at that time.

48. Mr Boulter stated that he owned commercial land at Redhill from 1992 to February 2017. He believed that the land had been used for airport parking from 2004, if not earlier. His direct evidence of this derived from looking at the site through a fence. He said that when Mitie ran the yard vehicles were crammed in, and agreed that an aerial photograph from 2014 seemed to show that the land was used by Mitie vans. He did, however, say that he had seen airport parking mixed in with Mitie's vehicles.
49. Whilst he could not recall first meeting the Appellant, he said that he thought that he moved to the site in 2016 and did not recall speaking to him before that. He noticed a change after 2016 when vehicles were parked very close together in a very different manner to what had occurred previously.
50. Mr Insley has been a driver involved in airport parking for 20 years. He could only say that it was "general knowledge" that airport parking had taken place on the appeal site. He had collected cars from the site and was aware of the use of the site for airport parking since 2004. However, he said that he only visited the site occasionally and could not give precise dates or numbers, due to the passage of time. He agreed that his was a general statement.
51. Mr Lane runs an airport parking business from a nearby site. He had been impressed that the Appellant had managed to gain the use of the appeal site, as he had been interested in it in 2003. However, he had been unable to use the site as the owners told him that there was an airport parking operator on the site and that there was no space. He was unable to be specific in terms of airport parking at the site, but his impression was that the business had been there for several years before and after his visit.
52. In cross-examination, he said that although when he visited he was told that airport parking was taking place, he had not seen it. He was able to say that he had seen cars on the site from the road, however. He, too, said that his evidence was a general statement and he could not be precise on dates or numbers of vehicles.
53. Tracey Waine said that she had lived in the area for many years. She was able to recall visiting the L.F. Jewel business on many occasions with her husband, a farmer. She remembered that Coles Garage had allowed the use of the land for airport parking. She said that this was general knowledge and that, from the manner of parking, the use was obviously going on and that she saw cars going in and out in the 1980s. She had worked for the Appellant since 2009 and said that he had used the appeal site since 2010. Under cross-examination she agreed that she could not provide detailed evidence of the use of the land prior to 2017. Before then, she agreed, her work for the Appellant had been intermittent on an "as and when" basis, but this became more intensive from then on. On re-examination, she said that she first knew of the Appellant's use of the land "around 2010-ish" when it was used as an overflow facility on a weekly basis.
54. A PoE for Anthony Miles was provided, but he was unable to attend the Inquiry. As such, his evidence carries significantly less weight than that of people whose

- evidence was fully tested. He says that he had been asked by Mr Alford to clear the yard of overhanging trees in "summer 2016". He says that he knew that Mr Alford had been renting the site for some years, but did not provide any further evidence of when and how this use occurred.
55. A number of aerial photographs were submitted. Some, in the form of Google Earth images, had been previously submitted by the site's owners in support of an application for a certificate of lawful use of the land for non-incidental parking¹⁶. Others had been specifically commissioned by the Council. Although some doubts were expressed about the dates attributed to the photographs, having commissioned theirs the Council could be sure of when they were taken. Given their mainly overhead vantage points, their value to the Inquiry largely lay in the way vehicles were parked and the nature of those vehicles.
56. The images dated 1991 and 1999 are grainy, but show very few vehicles on the site. That dated 2005 shows fairly dense parking, particularly on the western side of the appeal site. This might indicate the form of "pocket" of airport parking referred to in the Inquiry. The image attributed to 2009 shows a very low level of parking on the site, with perhaps 20 vehicles spread across it. An image from 2013 is not very clear, but appears to show quite a number of vehicles on the site.
57. Images dated 2014 shows up to about 30 vehicles on the site. To my eye, the majority of these are very similar in terms of their size, colour and nature of vehicle and this indicates that they were most likely part of the Mitie fleet that was operating from the site.
58. Save, perhaps, for the 2005 and 2013 images, none of the photographs show vehicles parked very closely together in a manner that was described as 'block parking', which I was told was a defining characteristic of airport parking.
59. There is a marked change in the manner that vehicles are parked on the site in the images from 2017, 2018 and 2019. They are parked nose-to-tail in blocks, with little space between them save for the minimum required to allow vehicles to be removed. Due to the tightly-packed nature of the parking, to allow some vehicles to be removed would require several others to be moved as well. From these, and the other evidence I heard, I have no doubt that these depict airport parking as the primary use of the land.
60. Notwithstanding the limitations of aerial photographs, including that they represent a 'snapshot in time', I find that those submitted do not support the contention that the site has been continuously used for airport parking for 10 years.
61. One of these photographs, dated 15 August 2016, shows no vehicles in view on the entire western section – save for what appears to be a lorry and van on the road frontage. There was disagreement between the parties on why this was the case. The appellant's case was that the date of the photograph was wrong and argued that it was cleared for two days during the change of ownership of the land, in early October 2016. This allowed for vegetation surrounding the yard to be cut back and the surface of the yard to be repaired. Mr Alford stated that he did, however, keep some vehicles in the building on the site at this time. The Council said that the appellant's version cannot be correct as the

¹⁶ Appendix 11 – KB PoE

photograph dates from well before the date for the completion of Mr Vowles' purchase and Mr Bray's lease commencing in early October 2016.

62. With regards to this photograph, Mr Vowles said that one of the last acts that was undertaken by its previous owners before he took up ownership was the removal of a diesel tank from the land; this is absent from the photograph. For his part, Mr Bray recollected that the lorry on the site frontage was of a type associated with the clearance of the site by the previous owners. He also said that the fence shown on the photograph was removed by him very soon after he took over the lease. This leads me to find that, on the balance of probability, the photograph dates from early October.
63. This, however, is not determinative in the ground (d) appeal. It does provide further evidence that Mr Alford was on the site prior to Mr Vowles' purchase, probably as a result of an unwritten agreement with the previous owner. However, it takes his case no further forward in terms of when he began using the land for this purpose and whether this was continuous for 10 years.

Conclusion on Ground (d)

64. Various dates were given for the commencement of the use of the land for airport parking markedly earlier than the 21 February 2010, that is to say well before the date 10 years prior to the issuing of the notice. The earliest being "several years" prior to 2003, with 2004 also being claimed. However, none of the evidence in this regard was precise. It was variously attributed to general knowledge, based on hearsay, supposition or, at best, looking into the site from the outside. No-one could say with the required degree of certainty that the cars that were parked on the land were as a result of airport parking.
65. It might well be the case that the land was used for airport parking during the early 2000s. Witnesses made reference to times when there were "pockets" of airport parking on the land. However, again, this did not demonstrate a 10-year continuous use of the land, nor that this was its primary use. Substantive evidence of the land being used continuously for 10 years before 2010 was not provided.
66. The evidence given for the period between 2010 and the date that the Notice was issued did not show, on the balance of probability, that the land had been used for airport parking. Mr Alford was unable to recall key dates and no documentary evidence was brought forward to show that he used the land as he claimed. Neither he nor anyone else was able to provide the required level of evidence to show that he had operated from the site for 10 years.

Ground (a)

67. This ground of appeal is that in respect of the breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
68. The Council's reasoning for issuing the Notice were that the use leads to traffic congestion in the area and that the site is not accessible by public transport. When he determined that the Inquiry was necessary, Mr Symons set out that the effect of the development on the openness of the GB also needed to be considered. Therefore, the main issues in the ground (a) appeal are:

- i) whether the use affects the openness of the Green Belt or the purposes for

including land within it, thereby amounting to inappropriate development in the Green Belt;

ii) whether the use would result in greater reliance on travel by private car;

iii) the effect of the use on highway safety, and

iv) if the use is inappropriate development, would the harm by reason of inappropriateness be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Inappropriateness

69. Government guidance in paragraph 133 of the National Planning Policy Framework (the Framework) sets out that great importance should be attached to the GB. This paragraph further states that the fundamental aim of GB policy is to keep land permanently open and that its essential characteristics are its openness and permanence.
70. Paragraph 143 states that inappropriate development is, by definition, harmful to the GB. Paragraph 146 lists certain types of development that are not inappropriate in the GB, provided they preserve its openness and do not conflict with the purposes of including land within it. Amongst these are "material changes in the use of land". The list of uses that follows does not include car parking, but it is not a closed list. Policy DM12 of the North Somerset Development Management Policies, adopted July 2016, ('DMP'), mirrors the terms of the Framework.
71. Notwithstanding that it did not refer to harm to the GB in its Reasons for Issuing the notice, the Council's position in the Inquiry was that there would be both visual and spatial harm.
72. I have found that planning permission 129/84 did not relate to this site. Both parties agreed that if I were to find this to be the case, the land could be used for parking ancillary to the lawful use of the land, which is a mixed use of maintenance, servicing and repair of motor vehicles and car sales¹⁷. In this case, the Appellant argued that the use that he puts the land to has no greater effect on the GB than ancillary uses would, and this represents a valid fallback position.
73. Judgements¹⁸ set out how fallback positions should be assessed. *Samuel Smith* states that there should be a real prospect of the fallback position occurring, whilst *Gambone* sets out a two-stage approach: firstly, is there greater than a theoretical possibility that the development might take place (the "real prospect" test)?; and, secondly, if there is a greater than theoretical possibility, what weight should be ascribed to it?
74. It is apparent that the manner of parking of vehicles for airport customers differs markedly from that which might be associated with lawful uses of the land. Vehicles are 'block-parked', that is to say very closely together, and the Appellant was of the view that the land could accommodate some 120 vehicles.

¹⁷ Disagreed Fact no1 Statement of Common Ground

¹⁸ *Samuel Smith Old Brewery (Tadcaster) v SSCLG* [2009] EWCA Civ333
Gambone v SSCLG [2014] EWHC 952

Block parking on the site is clearly illustrated in the photographs from 2018 and 2019 submitted by the Council¹⁹.

75. Several fallback positions were put forward by the Appellant. The first of these related to the aforementioned s53 determination²⁰. This established that, at that time, the use of the western section for the operation of a luxury coach business did not constitute development. This determination related to “approximately six luxury coaches”. I agree with Mr Munnings that the area of the western section where this parking might occur would probably have to be the appeal site, due to its size and shape. He guessed that it could accommodate some 20 coaches.
76. Even if it was accepted that the terms of this determination were still valid, I do not have sufficient evidence to show how many coaches might be accommodated or that this would have the same spatial effect as the airport parking. As was said in the Inquiry, the space required for coaches is such that there would have to be quite substantial open areas to allow for their manoeuvring. Further, as no evidence was brought forward of a coach operator that might use the site, I do not find that there is a real prospect of this use happening.
77. It was further suggested that vehicle sales might be undertaken from the land. Given the need for prospective purchasers to gain access to all quarters of a vehicle, these would not be likely to be parked in the dense manner that is the case with airport parking. No evidence regarding interest in the land for a car sales use was brought forward.
78. I find that there is not a real prospect of the land being used for coach- or car-sales-related uses. Furthermore, even were there to have been such a prospect, on the evidence I find that those uses would not have the same effect on openness, as vehicles would not be so densely parked.
79. It was put forward that the parking of vehicles for purposes ancillary to the use of the buildings on the western section of the land at Redhill would have the same effect on openness as that arising from airport parking. None of the aerial photographs showing past use of the land, prior to those I refer to from 2018 and 2019, show the land being used in the same intensive manner. This includes those from the time that Mitie used the land for the parking of its fleet of vans. My finding, notwithstanding that there are no planning restrictions on the numbers of vehicles might be park there for ancillary purposes, is that there is no real prospect of this occurring in the intensive manner of airport parking.
80. Given its historic use for ancillary parking, I find that there is a real prospect that the land would be used for this again. Mr Bray was somewhat ambivalent about using it in association with his camper van business, but stated that it was a car park and could be used for little else. I saw that he had parked camper vans on the land when I visited and I find it more than probable that it would be used in this way, rather than leaving the resource unused. However, I do not have evidence that he would be likely to use it in the intensive manner that the appellant does. Therefore, I give this fall-back position little weight.

¹⁹ Appendix 11 – pp 111 and 112

²⁰ Dated 27 July 1982

81. In terms of the visual effect on the GB, the Council stated that the site cannot be readily seen from public vantage points²¹. It identifies two areas of harm in terms of this visual effect: that vehicles on the site become more visible in winter when the boundary vegetation is thinner; and from the increased intensity of use. The Appellant's position, as espoused by Mr Munnings, was that at most the appeal site would be glimpsed from the A38, but this would be insignificant when compared to uses at the front of the site. Of the Appellant's other witnesses, Mr Lane said he had seen cars on the site from the road.
82. With regards to the thinning of boundary vegetation, the Council gave no information regarding from where the increased visibility would be apparent. Given the topography of the area, the high palisade fence that borders the land and that there are a number of evergreens along the boundary, I find that cars on the site would not become appreciably more visible in the winter.
83. The site is set well back from the A38. Buildings screen the majority of the site when seen from that road. The gap between these buildings and the western boundary of the Redhill commercial site affords a brief glimpse to the appeal site beyond. However, as I saw, when vehicles relating to the lawful use of the land are parked between the road and the appeal site, vehicles on the latter are not discernible. Were there to be no vehicles parked in this area, one would see vehicles on the appeal site. However, differences in the manner of vehicles parked on the land for different uses would not be appreciated from the road.
84. The Council asserted that traffic movements associated with the use would further impact on the openness of the GB. Its evidence in this regard was scant. Additional movements do result from the airport parking use. However, when taken into account with those from the remainder of the Redhill site, they would not have a noticeable effect on openness.
85. On the basis of the evidence before me, I find that the use of the land for airport parking would reduce GB openness to a greater degree than any potential lawful use of the site.
86. The Appellant proposed a condition requiring the cessation of the airport parking use and removal of any markings on the tarmac when demand for it reduces significantly to the point that it would not be a primary use of the land. The phrases, "the need for the facility" and "in the event that the demand for the facility reduces significantly" in the proposed condition lack precision. As such, the harm that airport parking causes could potentially continue in perpetuity. It thus fails the tests for conditions in paragraph 55 of the Framework. It was proposed in the Inquiry that a condition requiring the submission of a parking layout scheme would address any harm to openness. Such a scheme should have been submitted to allow its effect on GB openness to be fully assessed before allowing the use. I therefore ruled that it would not be appropriate to apply such a condition.
87. In reaching my findings, I have had regard to the appeal decisions that were submitted by the Council²² and that relating to Birds Farm²³ introduced at the Inquiry. They provide guidance on the approach to be taken to the question of airport parking in the GB, and I have used them in this respect. Decisions have

²¹ K Bartlett – Proof of Evidence

²² Appendix 21 – KB PoE

²³ APP/D0121/C/20/3250491 and 3250492

to be taken on the individual merits of each case following the terms of s38(6) of the Planning and Compensation Act 2004 and that is the approach that I have followed here.

88. My finding is that, although it does not cause harm to the openness of the GB visually, the spatial effects of the use of the land for airport parking does reduce openness. This harm could not be ameliorated by condition. Therefore, the use is inappropriate development.

Reliance on Car Travel

89. A number of policies were referred to in the Council's submissions that had not been referred to in the Notice. Amongst these was DMP Policy DM30, 'Off-airport car parking'. Amongst its aims are the need to promote wider travel choices and the protection of the GB through making alternative provision for airport-related car parking. The Airport Surface Access Strategy²⁴ (ASAS) reflects this and includes a commitment by the airport's operator to subsidising buses and travel plans for those working there. Together, these show the commitment of the Council and the airport operator to increasing access to the airport by alternatives to car travel.
90. Further evidence of the importance that the Council attaches to this matter is apparent from the recently determined Birds Farm appeal. The Inspector there, following the line taken in other appeal decisions he cites, afforded the ASAS great weight. As it accords with the approach in development plan policies, I give it the same weight in my deliberations.
91. Little evidence on alternative modes of transport, which would be limited to buses, was provided by either party. I did not see a bus stop serving the Redhill site and I was not told that buses served it. I did see a bus stop in Redhill village but, due to its distance from the site, it would be unattractive to airport users parking at the site.
92. Notwithstanding the relative lack of submissions on this issue, the evidence that I was presented with shows that the proposal is contrary to the Council's objectives to reduce car travel to and from the airport and widen the opportunity to access it by other means in DMP Policy 24. This reflects the terms of the Framework to pursue public transport use and actively manage patterns of growth with which it also conflicts.

Highway Safety

93. There is good visibility for vehicles entering and leaving the site from the A38(T) and the Council have not suggested that there is any significant highway danger arising from its use. It is undoubtedly a well-used road with, I was told, four busy periods. These related to commuter traffic to and from Bristol and early and late traffic movements associated with flights at Bristol Airport.
94. There was disagreement between the parties regarding the number of traffic movements associated with the Appellant's use of the land. The evidence showed²⁵ that the estimated number of vehicular movements at the western section of the site was 10-20 when planning application 101/84 was granted.

²⁴ Appendix 22 - KB PoE

²⁵ Appendix 8, p37

Using the Appellant's estimate of a maximum of 120 cars on the site, I agree with the Council's figure of up to 38 additional vehicle movements arising from the airport parking use. The Council also point to the nature of the Appellant's business involving up to 8 different vehicle movements in the area, when such matters as customers' driving to and from the airport, the Appellant's drivers movements to and from the airport, movements to and from the Appellant's home and those to and from the site are taken into account.

95. The Notice states that this would result in severe residual cumulative impact on traffic congestion. By email dated 26 June 2020, the Planning Inspectorate informed the Council that as the site was within 67m of a trunk road it should consult the relevant highway authority. The Council responded on 2 July 2020 saying that it had consulted Highways England (HE).
96. No evidence of HE's view was provided at the Inquiry and, furthermore, no substantive evidence was produced by the Council to show that the use of the land for airport parking would result in severe congestion on the A38(T) or other roads in the area.
97. For his part, Mr Alford set out that it was best for his business to avoid busy times on the roads and this was the way he operates.
98. Therefore, on the basis of the evidence before me, I find that the use of the land for airport parking would not have an adverse effect on highway safety. As such, the use would not be contrary to DMP Policy DM24 or those terms of the Framework that relate to highway safety.

Other considerations

99. Paragraph 144 of the Framework states "When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations".
100. I have found that the use of the land for airport parking is harmful to the GB through inappropriateness and that it harms the openness of the GB in spatial terms. I have also found that the use causes harm to the Council's aim to reduce car travel to the airport, contrary to its policy aims.
101. The benefits from the scheme relate to an undoubted demand for the facility and the employment opportunities this gives to Mr Alford's employees. However, these are limited and do not clearly outweigh the harm that I have identified. Therefore, the very special circumstances referred to in paragraph 144 are not present here. It is, thus, contrary to this guidance and the terms of North Somerset Development Management Policies, adopted July 2016, (DMP) Policy DM12 that mirror the Framework, and results in a loss of openness to the GB that is harmful in itself.

Ground (g)

102. The case put forward by the Appellant is that the 14 days for compliance with the Notice is too short. The business operates using a website booking system and that these bookings can be made up to 12 months in advance.

This, he says, creates a contractual obligation to provide the booked parking. He therefore he seeks a 12-month period for compliance.

103. I have not been provided with any substantive evidence of the contractual arrangements referred to by the Appellant. Similarly, the Appellant has not submitted any evidence to counter the Council's submission regarding access for his business to alternative sites.

104. Notwithstanding this, I can understand that bookings that are made might need to be honoured. It was said in the Inquiry that the business has been very quiet during lockdown, given the lack of flights from Bristol Airport. Interest in flying might have grown with the announcement of the Government's Road Map to the easing of restrictions. However, I am not convinced that 12 months is required. I therefore, consider that it would be reasonable to vary the period to 5 months to accommodate any bookings made for the 2021 summer period. To this extent, the Ground (g) succeeds.

Formal Decision

106. It is directed that the enforcement notice is corrected by substituting the plan attached to this decision letter for that attached to the enforcement notice and varied by the deletion of "14 days" from the 'Time for Compliance' in section 6 of the Notice and substituting "5 months". Subject to the correction and variation, the appeal is dismissed, 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.

Roy Curnow

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Gavin Collett Counsel, of Magdalen Chambers.
Instructed by Mr Martin Alford

He Called:

(In Order of Appearance)

Mr Martin Alford The Appellant

Mr Jeremy Bray

Mr Michael Vowles

Mr Christopher Boulter

Mrs Tracey Waine

Mr A Lane

Mr Graham Insley

Mr Simon Munnings Dorset Property Services

FOR NORTH SOMERSET COUNCIL (NSC):

Mr Matthew Henderson Counsel, of Landmark Chambers.
Instructed by Emma Anderson, of NSC

He Called:

Mrs Karen Bartlett Principal Planning Enforcement Officer (NSC)



Plan

This is the plan referred to in my decision dated: 17 June 2021

by Roy Curnow MA BSc(Hons) MRTPI

Land at: Former Coles Garage, Red Hill, Redhill, Bristol BS40 5TE

Reference: APP/D0121/C/20/3249212

Scale: Not to Scale

