



Appeal Decision

Site visit made on 18 May 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

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

Decision date: 05 July 2021

Appeal Ref: APP/R0335/C/20/3264319

Buckhurst Moors, Amen Corner, and land associated with, Binfield, Berkshire RG12 8TD

- 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 Reginald Scott against an enforcement notice issued by Bracknell Forest Borough Council.
 - The enforcement notice, numbered EN19/00218/UCOU, was issued on 2 November 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission the change of use of part of land to Concrete batching business.
 - The requirements of the notice are:
 - i. *Cease the use of the land shown shaded in blue as concrete batching business on the enclosed plan and remove from the land outlined in red.*
 - ii. *Remove all paraphernalia relating to the use from the land outlined in red including but not limited to machinery used for the purpose of concrete batching, piles of material for the processing/batching of concrete, concrete blocks, concrete barriers, concrete pumps, shipping container utilised as office in relation to concrete batching business.*
 - iii. *Remove all materials resulting from compliance with steps i) and ii) from the land outlined in red.*
 - The period for compliance with the requirements is 1 month.
 - 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.
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Decision

1. It is directed that the enforcement notice is varied by:

- the deletion of the words "and remove from the land outlined in red" in requirement i)
- the insertion of the words "as a concrete batching business" between the words "use" and "from" in requirement ii
- the deletion of 1 month and the substitution of 3 months as the period for compliance.

Subject to the variations 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.

Procedural matters

2. I have a duty to get the enforcement notice in order if I can do so without prejudice to either the Council or the appellant. Requirement i) says "Cease the use of the land shown shaded in blue as concrete batching business on the enclosed plan and remove from the land outlined in red." (my emphasis). It does not specify what is to be removed. As requirement ii) does explain what is required to be removed, I can only conclude that the words "and remove from the land" are superfluous. I shall therefore correct the notice to delete these words. Neither party would be prejudiced by my doing so.
3. Requirement ii) applies to all the land edged in red on the plan, which includes land outside of the area used as a concrete batching business. As that land edged red includes other lawful uses, it is necessary to make it clear that the paraphernalia to be removed is only that relating to the use as a concrete batching business. I shall correct the notice to this effect, and again it would not prejudice either party.

Appeal on ground (a)

Main Issues

4. The main issues are:
 - i) the effect of the development on the living conditions of occupiers of North View;
 - ii) the effect of the development on highway safety, and
 - iii) the effect of the development on the local economy.

Reasons

Living conditions

5. The appeal site comprises a large area of open land to the south of an area in use for a variety of B2 uses, backing onto an area of woodland. It is used for concrete batching. Cement is brought by lorry to the site, where it is mixed with water, sand and aggregate to make concrete of various specifications. It is then poured into cement mixer lorries and taken to its final destination in construction sites. The concrete batching business (CBB) operates 5 concrete mixers, and they shuttle to and from constructions sites in the locality. Raw materials are also brought to the site daily.
6. There is no suggestion that the operation of the plant itself causes any harm to living conditions; it is too remote from any dwellings, other than those owned by the appellant and his family to cause any harm. The concerns expressed by the Council and nearby residents focus solely on traffic movements in association with the CBB to and from the site. The site is accessed via Moor Lane, a private road which links to North View, a residential street containing 10 dwellings on the south side of the road.
7. The Council issued four enforcement notices in 2006 in relation to various business uses on the wider Buckhurst Moor site owned by the appellant. These notices were the subject of an appeal, with the Inspector granting planning permission for some minor storage uses, but otherwise upholding the notices, subject to variations and corrections. All of the uses then enforced against

obtained access via Moor Lane and North View. The notices did not allege harm to the living conditions of occupiers of North View properties, but the Inspector nevertheless dealt with this as a main issue on the ground (a) appeals. He found, like previous Inspectors on earlier appeals in relation to specific proposals which sought access via Moor Lane, that the access was unsatisfactory and that there was an adverse effect on the living conditions of occupiers.

8. Since that time, planning permission (Ref: 09/00738/FUL) was granted in 2009 for the use of Units 7,8 and 9 for B2/B8 uses with associated parking and turning and the cessation of the use of Unit 4 and part of Unit 3 for B2/B8. A temporary planning permission was also granted in 2012 for the retention of B2/B8 uses on 13 units in the core area, with a condition requiring the cessation of the use within 18 months, the reason indicating that a temporary permission was considered to be acceptable until the area was comprehensively redeveloped. The Council has not sought to undertake further enforcement action to secure compliance with the condition, and the uses remain, along with others which have acquired a lawful status over the passage of time.
9. The Inspector's finding that the uses were unacceptable because of their effect on residential living conditions was based on assessments of traffic that, on the appellant's figures, were put at about 400 movements per day, with 31 HGVs, to the Council's TRICS assessment of a potential figure of 600 movements a day.
10. Residents have referred to a traffic log undertaken by the Parish Council but this evidence is not before me and the Parish Council has not made representations on the appeal. The undisputed evidence before me is that in September 2019, when the CBB was already in operation, the site generated around 700 movements a day, with 120 as HGV movements. However, these figures only captured traffic between 07:00 and 19:00, at a time when the CBB was claimed by residents to be operating much earlier than 06:00, and thus the overall figures for traffic and HGV movements may have been higher. Regardless of this, these figures are considerably greater than those which the previous Inspector found to be unacceptable. The appellant makes the point that the CBB generates 88 movements a day, which is a small proportion of the overall number of movements. However, of those 88 movements, 80 are by HGVs, about 66% of the total volume of heavy traffic, which I consider to represent a significant proportion.
11. The houses on North View have short front gardens, and windows to habitable rooms at ground and first floor face the road. Cars are parked on the street, so that there is usually insufficient space for two vehicles to pass along a substantial part of the road. Vehicles mount the footways in order to pass where there is physical room to do so, and photographs submitted by residents show the CBB lorries doing so. There is limited forward visibility where Moor Lane meets North View, so that in the event of two vehicles meeting in the vicinity of North View, it will often necessitate one vehicle's reversing, which in the case of Moor Lane, offers poor visibility.
12. Drivers also park cars partly on the footway, no doubt to distance them from the heavy passing traffic, but in doing so, they reduce the width of the footway for pedestrians. I noted on my visit that there was evidence of damage to both

of the footways, and fine dust and dirt was compacted against the footway kerbs. The highway maintenance details submitted by the Council indicate that North View has been the subject of numerous repairs, mainly the filling of potholes. The photographs submitted by residents show the verges at the back of footways churned up by what are clearly large tyres, and dust is apparent on cars and on the vegetation nearby.

13. Residents also complain about vibration caused by the vehicles. I have no technical evidence about this matter, but it seems to me to be self-evident that slow-moving HGVs are likely to create both noise and vibration, particularly when needing to manoeuvre at slow speed to avoid parked cars and other traffic.
14. Following complaints by residents about early morning traffic from the CBB, said to be as early as 5:00 am, the operator has altered their opening hours so that the plant now opens no earlier than 06:30 on weekdays and 07:00 on Saturdays. Even so, many people will not choose to wake as early as 06:30, and I consider that such heavy early morning traffic would be likely to be disturbing.
15. Heavy vehicles are likely to be the noisiest of all the passing traffic, as well creating the most mud, spray and dust, and have the most significant visual impact as they pass the houses. The CBB gives rise to about 66% of all HGV traffic using Moor Lane, and such significant volumes of traffic leave me in no doubt that the CBB has a significant and harmful impact on the living conditions of occupiers of the houses on North View.
16. I recognise that some of the businesses at Scotts Farm and Moor Lane are long-established and that residents should expect disturbance from traffic associated with them. However, the CBB represents a material change in circumstances and I consider that this results in substantial harm to their living conditions, and conflicts in particular with saved Policies EN20 and EN25 of the Bracknell Forest Borough Local Plan (BLP), which respectively deal with design and noise and other pollution.

Highway safety

17. I have referred above to the physical characteristics of North View; the inability for two vehicles to pass is likely to lead to conflict, and residents have referred to a number of accidents having occurred in North View, including where at least a car has been written off, albeit none are said to have involved vehicles operated by the CBB. Even so, these occurrences indicate the unsatisfactory nature of the access road. The practice of occupiers parking partly on the footway may force those with pushchairs or wheelchairs into the carriageway, which I consider to be potentially dangerous on a road with such a high volume of commercial traffic.
18. Residents have also referred to a number of accidents occurring along North View. I have been provided with a statutory declaration from the site manager of the CBB, who affirms that there have been no accidents involving their lorries travelling along North View, and that he would have been aware of any damage if it had occurred. The CBB lorries possess a distinctive colour scheme, so any vehicles involved in an accident would be easily recognised. In the absence of any specific evidence to the contrary, I attach considerable weight to the statutory declaration. Even so, additional traffic using North View

will increase the likelihood of potentially dangerous passing or reversing manoeuvres being carried out.

19. I note that residents have complained of speeding vehicles, and whilst I saw several cars and vans passing at speeds that I regarded as inappropriate in the circumstances, I did not see any vehicles connected with the CBB travelling at speed. I am told by the appellant that the site operator has asked drivers to travel slowly along North View, and I saw that this was being adhered to on my visits. However, there can be no certainty that this practice would continue if planning permission were to be granted.
20. Moor Lane is mostly wide enough to allow two vehicles to pass but there is no footway, and I consider that it is not wide enough to allow pedestrians and two-way passing traffic to travel safely. I note that in this regard the Inspector who dealt with the 2006 appeals found that the access was unsatisfactory, one reason being that the provision for non-car users was poor, so that the use of these modes was potentially unsafe and therefore unattractive. This chimes with my views on the current position.
21. Whilst it may be possible to mitigate some of the effects of the development by widening Moor Lane and providing a footway, it would not be possible to mitigate the dangers of travelling along North View.
22. I therefore consider that the CBB exacerbates the existing highway dangers posed by the poor access, and results in material harm to highway safety, contrary to Policies CS23 and CS24 of the Bracknell Forest Borough Core Strategy and saved BLP Policies M4 and M5, which respectively deal with transport, transport and new development, highway measures and cycling and walking.

The effect on the local economy

23. Almost all built development relies on concrete. There is a considerable amount of development under way or planned in the borough and in surrounding areas, particularly the construction of new houses, to which the government attaches especial importance. The appellant tells me that there are no other concrete production sites within the Bracknell Forest area, and that the innate properties of concrete require that it should be poured within 90-120 minutes of its being mixed.
24. The appellant says that prior to moving to Buckhurst Moors, a site had been found in Wokingham but it was not acceptable to the Council. No other sites were found, and the Council in this case has not identified alternative premises to which they could move.
25. In 2019 the Council granted a temporary planning permission for use as specialist plant and equipment training and driver assessment centre at Ashley Farm in Warfield, a site within the Green Belt. Although the Council officers recognised a need for such a use, it was unnecessary to attribute weight to this need as no harm had been identified against which the benefits needed to be balanced. Even so, I recognise that the supply of concrete is vitally important to the local construction industry, and, along with the difficulty in securing an alternative site in the area, I attach significant weight to the benefits of locating the CBB on this site.

26. The location of the CBB close to local construction sites also has economic advantages, as well as minimising the need to travel, and I attach modest weight to both of these matters.
27. I therefore conclude that the benefits of locating the CBB on this site to the local economy attracts significant weight.

Other matters

28. The site is allocated in the Bracknell Forest Borough Local Plan for mixed-use redevelopment. There is also a current planning application before the Council for a redevelopment of the site for business uses which includes a new access onto Moor Lane, not far to the west of the current access via North View. The appellant says that the concrete batching business could be accommodated in one of the proposed B2 units. However, that application has been before the Council since 2019, and whilst the appellant tells me that negotiations have reached a stage where it is likely that the application can proceed to a decision, I cannot be assured that its approval is imminent, and the Council indicates that there are still matters to be resolved. There may also be uncertainty about the timeframe for implementation. Whilst the redevelopment may resolve all the matters of concern, its present inchoate status attracts little weight.
29. A material consideration is a possible fallback position, whereby the appellant says that in the event of planning permission being refused, he could give notice to quit to an existing tenant on the Scotts Farm development, to allow the concrete batching business to move there, without being subject to any conditions. However, I have not been told which site might be used, or of its planning status. The sites operating in breach of condition are being used unlawfully, and the CBB could not rely on the Council not taking action to enforce the conditions. In the absence of evidence of a specific and lawful fallback, I attach little weight to this proposition.
30. I have had regard to the concerns about the potential toxicity of cement dust deposited along the road and in the wider environment, but there is insufficient evidence for this to add to my reasons.

Overall planning balance and conclusion on ground (a)

31. I have found that the CBB use results in significant harm to the living conditions of the occupiers of North View, as well as to highway safety. Although the economic benefits of the use carry great weight, on balance, and even taking into account the appellant's suggestion that a permission should be a temporary one of 3 years, they are not so great as to outweigh the harm that I have found, or the clear conflict with the development plan policies referred to above. I therefore conclude that planning permission should be refused and that the appeal on ground (a) should be dismissed.

Appeal on ground (f) – that the requirements of the notice are excessive

32. The requirements of the notice do no more than is necessary to remedy the breach of planning control. In view of my findings on the ground (a) appeal, I consider that nothing less than the complete cessation of the CBB and the removal of the plant, equipment and associated structures would be adequate. No lesser steps (short of granting planning permission) have been suggested

by the appellant and none is obvious to me. Accordingly the appeal on ground (f) fails.

Appeal on ground (g) – that the period for compliance is unreasonable short

33. The appellant accepts that it is physically possible to comply with the notice within the one month specified. However, he argues that this would force the closure of the business, the loss of 13 jobs and the end of local concrete supply. A balance has to be struck between ending a seriously harmful use as quickly as possible and the wider implications of compliance. The appellant has suggested a compliance period of 1 year-18 months, but I consider that this would not be reasonable in the circumstances. On the other hand one month is too short. I recognise that there may be severe difficulties in finding alternative premises, but because of the substantial harm that the use causes, it is important to secure the cessation of the use as soon as possible. I shall therefore vary the compliance period to that of 3 months. To this limited extent, the appeal succeeds on this ground.

Overall conclusion

34. For the reasons given above, I conclude that the appeal on grounds (a) and (f) should not succeed and that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

JP Roberts

INSPECTOR