



Appeal Decision

Site visit made on 17 August 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Appeal Ref: APP/K3605/C/21/3271054

Land on the west side of Molesey Road, Walton-on-Thames, which is part of the larger site known as Esher Rugby Club, 369 Molesey Road, Walton-on-Thames, Surrey KT12 3PF

- 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 R&A Car Valet, against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice was issued on 12 February 2021.
 - The breach of planning control as alleged in the notice is, within the last four years and without planning permission: the erection of a detached outbuilding, as shown in the attached photos (for illustrative purposes only).
 - The requirements of the notice are:
 - a) Permanently remove the building, as shown in the attached photo, and any supporting structures from the land, and
 - b) Permanently remove all waste associated with complying with step (a).
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
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Decision

1. 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.

Application for costs

2. An application for costs was made by Elmbridge Borough Council against R&A Car Valet. This application is the subject of a separate Decision.

Preliminary Matters

3. As the revised National Planning Policy Framework (NPPF) came into force on 20 July 2021, I offered the parties opportunity to comment on any matters considered relevant to the case. No response was received.

Main Issues

4. The main issues are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the revised NPPF and any relevant development plan policies;
- the effect on the openness of the Green Belt;
- the effect on the character and appearance of the area; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development and the effect on openness

5. The land to which the enforcement notice relates lies within the Green Belt. The NPPF explains that other than in a number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt¹.
6. One such exception is the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport and outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Elmbridge Local Plan (LP)² Policy DM17 also requires built development for outdoor sport and recreation to demonstrate that the building's function is ancillary and appropriate to the use.
7. Although the land to which the enforcement notice relates formerly comprised part of the car park of Esher Rugby Club, it has, for some time, been used for the purposes of a car wash, following the grant of planning permission for a change of use. It is not therefore ancillary to the sport or recreation use, being part of a distinct area used for differing and unrelated purposes. The alleged outbuilding is used in connection with the car wash use and cannot be construed as an appropriate facility for outdoor sport or recreation. Whilst the Rugby Club may benefit financially from whatever arrangement is in place, that is not the same. The exemption does not apply.
8. The appellant also refers to the replacement of structures which were on the land in 2009. However, the Council has evidenced that the canopy structures were erected without planning permission and were subject to a Breach of Condition Notice in 2012. The outbuilding does not therefore fall within the replacement building exception.
9. The appellant further argues that the alleged outbuilding would fall within the exception relating to the partial or complete redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt than the existing development. That exception is similarly applied in

¹ Paragraph 149

² Elmbridge Local Plan Development Management Plan – April 2015

LP Policy DM17 and was considered at appeal in 2015³, following the refusal of planning permission by the Council for the retention of use of a small building for storing materials at the site.

10. In that decision, the Inspector states⁴ that the building, which had already been constructed, occupied an open and prominent position within the site and was readily visible from the rugby club car park and the street scene. As a result, although acknowledging that the site falls within the definition of previously developed land, the Inspector found the building had a materially greater impact on the openness of the Green Belt than the former open site, which was devoid of buildings.
11. I see no reason to arrive at a differing conclusion regarding the alleged outbuilding, particularly as the appellant does not dispute the Council's assertion that it is bigger in footprint and height than that previously considered. The building affects both the visual and spatial openness of the Green Belt, albeit to a relatively modest extent. The exception is not therefore met.
12. Accordingly, I find that the alleged outbuilding is inappropriate development in the Green Belt for the purposes of the NPPF and LP Policy DM17.

Character and appearance

13. The site forms part of the rugby club car park which separates the pitch from Molesey Road, on the edge of the urban area associated with Walton-On-Thames. The rugby club car park runs along full length of the eastern side of the rugby pitch and wraps around the northern end. The clubhouse is situated at the south eastern corner of the pitch. The rugby pitch and the greenery of the open fields to the north provide contrast and visual relief to the area to the south and east which is of mixed character with varied commercial and residential buildings.
14. The outbuilding is sited towards the northern end of the rugby club car park in a somewhat isolated position away from main built form in the vicinity. It can be clearly seen at the entrance to the car wash, as well as from the adjacent rugby club car park. The pitched roof timber outbuilding has the appearance of a summer garden house and within the context I have described appears out of place. It also modestly increases the developed nature of the of the car wash and car park, which are largely devoid of buildings.
15. Although a hedge runs alongside the footpath on the western side of Molesey Road, there is a dip close to the outbuilding which allows for much of its side elevation to be clearly seen from outside of the site, even during the summer months. Whilst the taller parts of the hedge largely screen the outbuilding in in approaching views from the south, it is unlikely, as highlighted by the previous Inspector, to prevent views over the hedge from high sided vehicles, or through the hedge during the winter months. It is also more obvious in the absence of other buildings along the road frontage.
16. Whilst a commercial building provides part of the backdrop in certain views of the outbuilding, in many other views it does not. Moreover, the presence of that commercial building cannot in itself justify further development in the

³ Appeal Ref: APP/K3605/W/14/3001865

⁴ Paragraph 8

Green Belt, on a land that is physically unrelated - being separated by a hedge, footpath, main road, landscaping and car parking.

17. I appreciate that the structure may be capable of being moved but there is no suggestion that its provision is anything other than long term. I also appreciate that, of its type it, the outbuilding is of reasonable quality and is relatively modest in size. Nevertheless, it detracts from the open character and appearance of the Green Belt, to a modest extent.
18. The appellant states that the two canopy structures on the site in 2009 had a far more detrimental impact on the Green Belt than the alleged outbuilding. However, as noted above, the Council has evidenced that they were erected without planning permission. Such a comparison therefore attracts very little weight.
19. For the above reasons, I conclude that the outbuilding results in a modest degree of harm to the character and appearance of the area, contrary to LP Policy DM2 and Elmbridge Core Strategy (July 2011) Policies CS3 and CS17. These require, amongst other things, all development proposals to be based on an understanding of local character including any specific local designations.

Other considerations and the Green Belt balance

20. I have found that the alleged outbuilding amounts to inappropriate development which, by definition, is harmful to the Green Belt⁵. I have also found that the outbuilding results in a modest loss of openness. This is contrary to the fundamental aim of Green Belt policy, which is to keep land permanently open. The NPPF requires I attach substantial weight to any Green Belt harm.
21. I have also found harm to the character and appearance of the area, though the extent of that harm is modest and does not weigh heavily against the alleged development.
22. Although utilising previously developed land, having regard to my Green Belt and character and appearance findings, I do not agree that the outbuilding contributes to the environmental objective of sustainable development.
23. Both LP Policy DM17 and the NPPF make clear that inappropriate development should not be approved except in very special circumstances. 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.
24. I have no reason to doubt that whatever income the rugby club receives from the car wash, it will assist in its operation. However, it has not been demonstrated that without the money the club may not be viable, that the burden of providing the recreation would fall upon taxpayers or would cease, or that the income is necessary to pay for the maintenance of the site and insurance for players. The weight I have attributed to such assertions is therefore limited.
25. I accept that the outbuilding is beneficial to the operation of the car wash and that the car wash will contribute to the social and economic objectives of sustainable development. However, it has not been clearly demonstrated that

⁵ As set out in paragraph 147 of the NPPF

the absence of the outbuilding would affect the viability of the car wash. This consideration therefore attracts limited weight.

26. The appellant refers to the Health and Safety Executive's list of facilities that should be provided as standard for employees. Although there is no running water or toilets within the outbuilding, I fully accept that it provides welfare benefits for staff in terms of shelter during inclement weather and a space for breaks and to eat meals. I saw no other option for employees in that regard.
27. However, this issue was previously considered in the 2015 appeal. In that decision⁶, the Inspector highlighted that the car wash use was approved as one which *"was not reliant on the provision of any new structures or buildings. This is reflected in the wording of the condition which was imposed to restrict the construction or erection of any new structures on the site. It is also reflected in the two previous temporary permissions that were granted for the use. They were granted so that the Council could be satisfied that the use as proposed would not have an adverse impact on the openness and amenity of the Green Belt."*
28. Moreover, when considering the appeals for two small buildings and the aforementioned canopies at the site in 2011, the Inspector highlighted⁷ that the *"establishment of a business without securing planning permission for such facilities carries the risk that if planning applications are subsequently refused the business may no longer be able to meet its health and safety obligations, or be able to operate in the way it wishes. This could result in unacceptable working conditions for staff and jeopardise the quality of service the business offers. However, this is a compelling argument for appropriate business planning."* Accordingly, the employment facilities argument attracts limited weight in favour of the development.
29. I therefore find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. As such, the alleged development is contrary to LP Policy DM17 and the NPPF.
30. The appeal on ground (a) does not therefore succeed.

Richard S Jones

INSPECTOR

⁶ Paragraph 17

⁷ Paragraph 14 of Appeal References: APP/K3605/A/11/2150897 and APP/K3605/A/11/2150898