
Appeal Decision

Site visit made on 30 November 2021

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 14 December 2021

Appeal Ref: APP/N0410/C/21/3266826

Land at 20 Smallholding, Oxford Road, Denham, Buckinghamshire UB9 4DG

- 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 John Vaughan (Vaughan Plant Haulage Limited) against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice was issued on 3 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of the Land from agricultural use to a sui generis use for vehicle and plant haulage and plant hire including the outdoor parking and storage of vehicles, plant and machinery and the carrying out of operational development facilitating and integral to the unauthorised material change of use, comprising the following: a) the construction of a building as a workshop and offices on the Land in the approximate position shown cross hatched and marked 'A' on the Plan attached to the notice ("the Building"); and b) the laying of concrete hardstanding on the Land located in the approximate position shown dotted and labelled 'B' on the Plan attached to the notice ("the Hardstanding").
 - The requirements of the notice are:
 - i) Cease the unauthorised sui generis use of the Land for vehicle and plant haulage and plant hire and remove from the Land all materials, structures, vehicles, equipment, plant and any other paraphernalia brought onto the Land in connection with the said unauthorised use;
 - ii) Demolish or dismantle the Building;
 - iii) Break up the Hardstanding, including any hardstanding in the location of the Building; and
 - iv) Remove from the Land all debris and materials arising from compliance with steps 5.2 to 5.3 of this Notice
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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 be corrected: by the deletion of the words "from agricultural use" in section 3 of the notice. Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely a sui generis use for vehicle and plant haulage and plant hire including the outdoor parking and storage of vehicles, plant and machinery and the carrying out of operational development facilitating and integral to the unauthorised material change of use, comprising the following: a) the

construction of a building as a workshop and offices on the Land in the approximate position shown cross hatched and marked 'A' on the Plan attached to the notice ("the Building"); and b) the laying of concrete hardstanding on the Land located in the approximate position shown dotted and labelled 'B' on the Plan attached to the notice ("the Hardstanding") on the land shown edged and stippled black on the plan annexed to this decision, subject to the following conditions:

- 1) Within three months of the date of the permission a landscaping scheme shall be submitted to the local planning authority for approval in writing. The scheme of landscaping shall include a management plan and Landscape Maintenance Schedule which shall include indications of all existing trees, shrubs and hedgerows on the site and details, including crown spreads, of those to be retained. None of the trees, shrubs or hedgerows shown for retention shall be removed or felled, lopped or topped within a period of five years from the date of this permission, without the prior written permission of the local planning authority. The submitted landscaping scheme shall include additional tree planting and/or hedgerow planting along the north, south and west boundaries of the site. The management plan shall include details about planting preparation including tree pits, staking methods and aftercare. The details of the aftercare shall include provision for the long term survival of the planting and the approved management plan shall be implemented in its entirety.
- 2) The landscaping works shall be carried out in accordance with the approved details and in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with the approved scheme of management and/or maintenance.
- 3) Details of any floodlighting shall be submitted to and approved in writing by the local planning authority before its installation. Development shall be carried out in accordance with the approved details.

The s174 appeal on ground (b)

2. The appellant's case on this ground of appeal is that the Council is wrong to characterise the previous use of the land as 'agricultural'. The breach of planning control is therefore misdescribed.
3. The Council's view is that the lawful use of the land is agriculture. However, it correctly points out that, while it is good practice in cases where a material change of use is alleged as the breach of planning control to specify the previous land use, the courts have held that there is no requirement to do so. The notice could therefore be corrected by deleting the reference to the previous use without injustice to either party.
4. The purpose of the appeal on this ground is to establish the correct fallback position when considering the appeal on ground (a). I do not understand the appellant to be arguing that the notice is a nullity or flawed in some other way that would cause it to be quashed on technical grounds. Since the appeal on ground (a) will therefore be considered, I shall deal with the fallback argument now.

5. Planning permission (ref: 08/01465/FUL) was granted in October 2008 for 'erection of one replacement building for class B8 storage purposes with ancillary parking and turning areas' (the 2008 permission). The permission was subject to 16 conditions. It is quite clear from the officer report which has been provided in evidence that, while the premises was formerly in agricultural use, it was very far from a greenfield site. It is described as being premises that are '....currently unused and deteriorating and comprise eight redundant agricultural buildings, animal pens and concrete walls (with) a lot of the site covered with hardstanding (which is) becoming overgrown with grass'.
6. There have been several applications to, as the Council describes it in the officer reports, vary the conditions attached to the 2008 permission. In fact, these are applications made under s73 of the Act to carry out the consented development without complying with conditions that have been imposed. All the applications were approved by the Council or, in one case, on appeal.
7. Each approval creates a new permission. Each time, the Council correctly carried forward the extant conditions from the 2008 permission as amended by later s73 approvals. The final approval (ref: 15/00127/VC) dates from March 2015 (the 2015 permission). It was subject to 15 conditions. In my view, there is a clear line through the various permissions back to the 2008 permission as the development that is approved.
8. In July 2015 an application was made under s192 of the Act for a certificate of lawfulness of proposed use or development (LDC). The officer report describes the development for which the LDC is sought as 'the erection of a proposed replacement building for class B8 storage purposes with ancillary parking and turning areas'. In other words, the 2008 permission development but subject to the 2015 permission conditions.
9. The officer report confirms that schemes to discharge all of the conditions precedent imposed on the 2015 permission had been submitted and approved. Furthermore, on 14 April 2015 the Council became aware that excavation works in connection with the laying of at least 5m of the approved access road had commenced. The Council took the view that this amounted to a material operation for the purposes of s56(4) of the Act and confirmed that the 2015 permission development had therefore commenced.
10. The LDC sought was issued in September 2015. It confirms that the erection of a proposed replacement building for class B8 storage purposes with ancillary parking and turning areas in accordance with the 2015 permission would have been lawful at the application date of 21 July 2015 for the reasons that 'the planning permission under ref. no. 15/00127/VC has been commenced in accordance with the provisions of Sec. 56 (2) of the (Act)' (emphasis added)
11. The LDC also states that the development shall be undertaken solely in accordance with the documents listed and an informative advises that if the development ultimately carried out is materially different from that described in the LDC, enforcement action may be taken. A further informative refers to but does not quote precisely s192(4) of the Act.
12. Condition 1 of the 2015 permission requires the development (the 2008 permission scheme as explained above) to be begun not later than 18 April 2015. That may well explain why a material operation was carried out by 14 April 2015 and why a LDC application was made to confirm that the 2008

- permission development could still be carried out. The LDC granted gave that assurance.
13. It is common ground that while the building has been erected broadly in accordance with the 2008 permission plans, the hardstanding and landscaping carried out does not accord with the approved drawings. Other conditions, such as condition no. 8 which prohibits storage outside the building, have also not been complied with. However, as the LDC itself says, these are matters to be pursued through the enforcement code. It cannot negate the LDC since the caveat to the 'conclusively presumed' provision of s192(4) only bites if the material change occurs before the operations are begun. In this case, they have occurred after as the LDC 'reasons' themselves confirm.
 14. In my judgement therefore the fallback position in this case is the 2008 permission development. The LDC confirms it has been begun and is therefore lawfully implemented. In those circumstances s57(4) of the Act confirms that where a notice has been issued, no planning permission is required to use the land for a purpose for which it could lawfully have been used if the alleged development had not been carried out.
 15. The appellant's evidence is that, should this appeal fail, the fallback permission will be used to accommodate one of the two businesses operating from the site, albeit in a slightly different way. The Council doubts that this would be practical given the extent of the hardstanding. However, that is clearly something that the appellant is aware of in contending as he does. I have no reason therefore to doubt that the fallback is a realistic prospect.
 16. The question which remains is whether the notice requires correction. In my view, the Council could, and perhaps should, have alleged as the breach of planning control a failure to comply with particular conditions of the 2015 permission. The courts have held that it is open to an Inspector to make such a correction subject to there being no injustice to either party. Neither party has addressed this breach in their evidence and so such a correction would not be an appropriate use of the s176(1) power.
 17. I have considered whether the notice should be quashed. However, this is likely to lead simply to another notice being issued. Given the evidence submitted by the appellant, prolonging the uncertainty would not appear to be in the best interests of the business. Moreover, it is open to the Council to take the view, as it has, that the development carried out is so materially different to that permitted by the 2015 permission and begun, that it amounts to a development not authorised by that permission at all.
 18. I shall therefore correct the alleged breach of planning control by deleting the words 'from agricultural use' and determine the appeal on that basis. To that extent, the appeal on ground (b) succeeds.
 19. The deemed planning application now relates to the breach of planning control as corrected.

The s174 appeal on ground (a) and the deemed planning application

20. The appeal site is located within the Metropolitan Green Belt. It is common ground that the development carried out is inappropriate development in the Green Belt although the appellant's case is that it is only the additional vehicle parking and hardstanding areas rather than the development as a whole that

should be so characterised. Having regard to Council's reasons for issuing the notice, I consider the main issues for the determination of this ground of appeal to be:

- (a) The effect on the openness of the Green Belt.
- (b) The effect on the character and appearance of the area.
- (c) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

The effect on the openness of the Green Belt

- 21. The fundamental aim of national Green Belt policy remains to prevent urban sprawl by keeping land permanently open. An essential characteristic of Green Belts is their openness (National Planning Policy Framework (Framework) paragraph 137). In this respect, policy GB1 of the South Bucks District Local Plan (LP) adopted in March 1999 is consistent with this fundamental policy aim.
- 22. The court has held that openness can have both a spatial and a visual aspect; that is a matter of planning judgement. It has also been held that openness is the counterpart of urban sprawl and does not therefore imply freedom from *any* development (emphasis added by the court).
- 23. The appeal site lies to one side of the A40 which hereabouts is a dual carriageway with street lighting to both sides. To the other side of the A40 lies the village of Denham. Between the appeal site and the junction of the A40 and the M40 motorway there are a variety of land uses including nurseries and a topsoil supplier and some residential properties. Most businesses and properties have frontage access to the A40. While many of these activities are typically found in urban fringe or semi-rural locations, the extent of the associated built development means that this area cannot be considered 'open' in either spatial or visual terms in my judgement.
- 24. The appeal site lies immediately to the north of one of the nurseries and just to the south of a petrol filling station. Broadly to the north and certainly to the west of the appeal site are open fields. The appeal site is best described, in my view, as being both spatially and visually as urban fringe.
- 25. The Landscape and Visual Impact Assessment (LVIA) submitted by the appellant refers to satellite images of the site dating back to 1999 as showing the appeal site populated by several large buildings. While the images are not submitted in evidence, that is consistent with the Council's description of the past condition of the site referred to above. It seems to me that the appeal site was, up to the demolition of these buildings, characteristic of the land to the south, but not open in any meaningful sense.
- 26. The Council took the opportunity of the 2008 permission development to enhance the openness of this part of the Green Belt. It is clear from the officer's report that the reduction in the number of buildings on the site, the lesser amount of hardstanding and the landscaping scheme proposed were among the material considerations in the balanced decision to grant planning permission. The 2008 permission included a condition (8) that prevented storage outside the building although there would have been vehicle parking and circulation (condition 2).

27. The appeal development has decreased the openness of the Green Belt once more. While the building itself and the use to which it is put has no greater impact on openness than the 2008 permission development, the extent of the hardstanding and, more particularly, the parking of vehicles and plant does. Although none was present when I visited the site, I understand that some of the plant is of considerable height. I acknowledge that what the appellant considers to be a more effective planting scheme than that approved as part of the 2008 permission development may achieve some mitigation of the visual impact locally, but the tall items of plant would still be very apparent.
28. The development carried out does therefore cause some harm to the openness of the Green Belt both spatially and visually, even when compared to the fallback position. To be fair to the appellant, this is acknowledged. However, in the context of the compromised openness of the Green Belt in the immediate locality and the fallback position that I have concluded exists, I consider the harm to be limited.

The effect on the character and appearance of the area

29. The Council has couched its evidence on this issue largely in terms of Green Belt policy effects on openness and two of the five purposes of Green Belt designation set out in the Framework; checking the unrestricted sprawl of large built-up areas and safeguarding the countryside from encroachment.
30. The appellant has commissioned a LVIA. The landscape character summary concludes that the character of the area around the appeal site is predominantly urban with both the A40 and the M40 having a notable and detracting influence on the character of the area. Denham village has grown over the last century and numerous urban fringe activities such as the nurseries have developed and expanded along the A40 adding to the urban feel of the area.
31. I would concur with that assessment on the basis of my visit to the area. The A40 is a major highway with development to either side of it. Even though most, but not all, of the development on the appeal site side is urban fringe in nature, large buildings are associated with these uses. In my view, the appeal development simply reads as part of this urban/urban fringe character.
32. Visually too, the appeal site is viewed when travelling along the A40 as part of and typical of the other businesses that front onto it. From open land, highways and footpaths to the west it simply reads as part of the urban edge.
33. The proposed landscaping would help to soften this edge although it would have a limited effect in screening those taller items of plant that are stored on the hardstanding. When considered in the context of the fallback development I cannot agree with the Council that there would be any material difference in the extent to which either represents a further urbanising effect on what is already an area with a predominantly urban character and appearance. Nor, when compared with the fallback position, would there be any material difference in the effect on the two Green Belt purposes referred to above.
34. The development does not therefore conflict with either LP policy EP3 or core policy 8 of the South Bucks Core Strategy (CS) adopted in February 2011.

Other considerations

35. Several other considerations have been put forward by the appellant. Many of these can however be grouped under the general heading of the specific nature of the enterprise.
36. The appellant provides specialist haulage services moving major items of plant and machinery to specific clients managing the rail network and the London underground. Clients' activities include maintenance, upgrading and emergency repair of the networks; 24/7 working is therefore required from the site. The business specialises in the movement of abnormal loads and is a Tier 1 supplier of services to Network Rail. Of 13 such suppliers in the UK, it is the only one south of Birmingham and therefore sustainably placed in relation to London and the south of England. In saying this, I acknowledge the appellant's point that vehicle emissions would be less servicing these clients from the appeal site rather than from others which may be more distant. The appellant's evidence is that some 80% of the company turnover is related to servicing the rail network in the widest sense. In my judgement, this is an 'other consideration' which attracts significant weight.
37. The other 20% derives from the transport of abnormal loads for construction sites. Direct access to a highway (the A40) forming part of the Abnormal Loads Route Network is therefore a key locational consideration. This consideration too attracts significant weight.
38. The appeal site provides local employment. There is some confusion in the evidence on how many jobs are provided and for which part of the business. One document listing occupations and home post codes of the employees lists 24 persons (the planning statement says 25 from the same source). Elsewhere in the planning statement it is said that 33 people '...depend on this business for their livelihoods' without further explanation as to what is meant by that. However, the business is clearly an important employer of relatively local people. Nevertheless, given the apparent shortage of qualified HGV drivers at present, it is not clear to me what the impact of the enforcement notice being upheld would be on the employment prospects of those so qualified. This is nevertheless a consideration which attracts some weight.
39. As set out earlier, the appellant has confirmed that in the event of the notice being upheld, the secondary business of Ruislip Plant Hire Limited would continue to operate from the site and an alternative which, because of the less onerous site requirements, would be easier to identify. Nevertheless, the site would retain the building and at least some of the hardstanding. There would therefore still be an effect on the openness of the Green Belt. This carries significant weight in my view.
40. Finally, the appellant has submitted considerable evidence about the lack of available alternative sites which have all the required characteristics. Indeed, this lack of suitable sites was a factor in the appeal site being purchased upon the forced eviction from the previous site due to the landowner wishing to pursue alternative development.
41. The appellant has not indicated how this would affect the employment prospects of those now working for the business. In addition, this seems to me more of an argument for a grant of temporary planning permission to allow the

site search to continue, than something that should weigh heavily in the Green Belt balance. Nevertheless, it attracts limited weight.

The Green Belt balance

42. Framework paragraph 147 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Framework paragraph 148 states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. The same paragraph confirms that substantial weight should be given to any harm to the Green Belt.
43. In this case there is harm to the Green Belt by reason of inappropriateness and limited harm to the openness of the Green Belt. The totality of the harm to the Green Belt must, as a matter of policy, attract substantial weight in the balance.
44. The lack of any harm to the character and appearance of the area attracts neutral weight in the balance.
45. Weighing in favour of the development are the other considerations put forward. Significant weight should be attributed to the fallback position in my view because the cleared site that the Council requires through the notice is not a realistic outcome; built development and some hardstanding will remain with the consequent effect on the openness of the Green Belt. Significant weight too should be given to the specific needs of the appellant's business which are so well satisfied by the location of the appeal site and the unchallenged evidence of the part that the business plays in the provision of essential national and regional transport infrastructure. Some weight is also attributable to the local employment opportunities provided and limited weight to the lack of available alternative sites.
46. I note that almost all of these considerations were factors in the Council's decision to approve the 2008 permission development notwithstanding the Green Belt location. I acknowledge that the decision was made some time ago, but Green Belt policy remains fundamentally the same. Consistent with the Council's previous decision therefore, in my judgement, the other considerations in this case clearly outweigh the harm to the Green Belt that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.
47. The development carried out is therefore acceptable applying Framework paragraphs 147 and 148. As LP policy GB1 does not allow for inappropriate development in the Green Belt to be permitted where very special circumstances exist, it does not appear to me to be consistent with the policies in the Framework. Consistent with Framework paragraph 219, limited weight only may be given to LP policy GB1.

Conditions

48. The Council has suggested three conditions in the event of planning permission being granted and the appellant has commented upon them. I have considered each in the light of the relevant advice in the Planning Practice Guidance (PPG).

49. The first requires a landscaping scheme to be submitted for approval by the Council. The appellant agrees that such a condition is required; that is my view too. Within the appellant's LVIA there is an 'oven ready' landscaping scheme. Given the appellant's recognition that such a scheme is required, I believe a simple condition requiring its formal submission within three months would be sufficient. Should the scheme not be submitted the Council has the power to take whatever enforcement action it considers appropriate. I shall add an implementation condition for certainty.
50. The second proposes to restrict the hours of operation although no reason for doing so is given. In view of the nature of the business, which requires the ability to respond to emergencies 24/7, and the fact that the two closest residential properties are owned by the appellant and subject to applications to replace them with offices, such a condition does not seem to me to meet the tests set out in the PPG. It is not necessary in the specific circumstances of the development and its location and would unreasonably restrict the benefit of the permission in the context of the enterprise.
51. The final condition requires a scheme to be approved prior to the installation of any external lighting. This is agreed by the appellant and necessary to mitigate any light spillage from the site into the surrounding area.

Conclusion

52. For the reasons given above the appeal on ground (a) succeeds and planning permission shall be granted on the deemed planning application.

Overall conclusions

53. It is clear from the representations, that the description of the development in the enforcement notice is incorrect in that it is unnecessary to specify 'agricultural use' as the previous use in this case. It is open to me to correct the allegation in the notice. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice, in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.
54. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. The appeal on grounds (f) and (g) does not therefore need to be considered.

Brian Cook

Inspector



Plan

This is the plan referred to in my decision dated: 14 December 2021

by Brian Cook BA (Hons) DipTP MRTPI

Land at: 20 Smallholding, Oxford Road, Denham, Buckinghamshire UB9 4DG

Reference: APP/N0410/C/21/3266826

Scale: not to scale

