



Appeal Decisions

Site visit made on 18 January 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2022

Appeal A Ref: APP/V1260/C/21/3282092

The Oaks Garden Centre and Nursery, Queen Anne Drive, Wimborne, BH21 3BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ian Nutting against an enforcement notice issued by Bournemouth Christchurch and Poole Council.
- The notice was issued on 6 August 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of land from a retail garden centre site to a mixed use of garden centre and (i) land used for unauthorised vehicle sales and associated parking/storage of vehicles, including those for sale; and (ii) use of single storey buildings used in association with the vehicle sales for office administration in connection with the vehicle sales; and (iii) the erection within the land of a building for preparation (washing) of cars.
- The requirements of the notice are: (i) Cease the use of the land for vehicle sales, together with vehicle parking/storage of vehicles, including those for sale; (ii) Cease the use of single storey buildings used in association with the vehicle sales for office administration in connection with the vehicle sales; (iii) Remove all vehicles and all business equipment from the land; (iv) Remove any plant, machinery and vehicle paraphernalia, used in connection with the vehicle sales, from the land; (v) Dismantle the building erected for vehicle washing and remove all materials from the land to which the notice relates.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B Ref: APP/V1260/W/21/3282081

The Oaks Garden Centre and Nursery, Queen Anne Drive, Wimborne, BH21 3BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Ian Nutting against the decision of Bournemouth Christchurch and Poole Council.
- The application Ref APP/20/00399/F, dated 3 April 2020, was refused by notice dated 24 June 2021.
- The development proposed is described on the application form as: *"Temporary change of use of part of the site for the purposes of car sales, for a period of three years from the date that a planning permission is granted. Thereafter, reverting to the established lawful garden centre use."*

Summary of Decision: The appeal is dismissed.

Appeal A, Ground (a) appeal and Appeal B

Main Issues

1. The appeal site is located in the South East Dorset Green Belt. Therefore, the main issues in these appeals are:
 - Whether the use of the site for vehicle sales constitutes inappropriate development, having regard to the effect on the openness and purposes of the Green Belt, the Development Plan and the revised National Planning Policy Framework (the Framework).
 - The effect on highway safety.
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development-effect on Green Belt openness and purposes

2. The site is a reasonably expansive, roughly rectangular area of land located in the north-east corner of the garden centre grounds. Apart from three modest-sized timber cabins, the site is free from upstanding structures and laid to a hardsurface. Vehicular access from the A341 is via a field gate in the north east corner of the site.
3. At paragraph 150, the Framework advises that a material change of use is not inappropriate development where it preserves openness and does not conflict with the purposes of including land within the Green Belt. Similar considerations apply in paragraph 149 in respect of sites which, as in this case, fall within the Framework definition of 'previously developed land'. Policy PP2 of the Poole Local Plan (LP) requires the Green Belt to be managed in accordance with the Framework.
4. As far as I have been made aware, the use of the site for vehicle sales has not involved an increase in the extent of the hardsurface. The enforcement notice does not attack any hardsurface as integral to the unauthorised use. Neither does it attack the cabins, previously lawfully stationed on the site in connection with the garden centre, at least one of which is now in use for purposes ancillary to the sale of vehicles. The vehicle washing building appears to have been removed since the notice was issued. Accordingly, there has been limited permanent physical change to the site arising from the use.
5. Be that as it may, the use for vehicle sales has given rise to an accumulation of significant numbers of vehicles, including light vans as well as cars, at the site. During my visit, I saw that the vehicles were positioned close together and arranged in rows, with some space for vehicle access and manoeuvring. The layout was not dissimilar to that shown on the drawing which accompanied the application in Appeal B. The main parties agreed that just under 60 vehicles were present when I visited; this is in line with the appellant's estimate of between 50 and 75 vehicles typically being on the site at any one time. Being stored, the majority of vehicles are likely to

remain at the site for relatively long periods, with any vehicles sold and removed being replaced with new stock fairly rapidly. Therefore, as a result of the use substantial parts of the site surface are likely to remain covered by vehicles at most times.

6. I am given to understand that the site was previously used for customer parking in association with the garden centre. In my experience, such parking typically fluctuates widely and continuously depending on the pattern of trading and the number of customers present. This can be influenced by factors including whether it is a weekday or weekend, the time of day, weather conditions and the season. Also, at a garden centre there are likely to be few vehicles present outside of business hours, leaving parking areas more or less vacant for considerable periods, i.e., during evenings, at night and in the early morning. In my view, the use for vehicle sales is therefore likely to have resulted in vehicles covering the site to a much greater extent and for considerably longer periods, compared with the more 'transient' characteristics of any prior use for garden centre customer parking.
7. Furthermore, I note that elsewhere in the grounds the garden centre has an ample-sized, macadam surfaced customer parking area, in proximity to a main pedestrian entrance to its principal buildings and served by a separate, formal vehicular access from the A341. To my mind, this suggests it is likely that any prior use of the site for parking by garden centre customers was in any event only on an 'overflow' basis when the other parking area was full, and as such was generally infrequent and limited to busy periods. An interested local resident, who recalled that garden centre customers mostly used the other parking area, not the site, lends support to this finding. There was no firm evidence to indicate that the garden centre customer parking did not occur as set out above, or that it would not continue in future along similar lines. This reinforces my findings concerning the significant differences between the extent and duration of the vehicle sales use and any prior use of the site for garden centre parking. In addition, it casts significant doubt on whether levels of vehicle activity at the site have actually reduced following the vehicle sales use commencing.
8. It was also suggested that the site had been used for open storage of items in association with the garden centre. Whilst that might well have been the case, there is little firm evidence of the scale of such storage. In my experience, open storage at garden centres is often at a limited height and is generously spaced, to facilitate ease of access and movement. These characteristics are reflected in an interested local resident's recollection of the site being used for a display of shrubs and garden ornaments. Therefore, I remain unconvinced that any open storage had taken place at a similar or greater extent at the site compared with the use for vehicle sales, or that it might do so in future.
9. Given all of the above factors, in my view any prior use of the site for customer parking or open storage associated with the garden centre is unlikely to have been materially similar, in terms of either its extent or duration, to the vehicle sales use. This leads to the conclusion that in spatial terms, the use of the site for vehicle sales has caused a substantial reduction of openness. Removal of the modest vehicle wash building has done little to offset the adverse effect on openness arising from the use.

10. The Planning Practice Guidance points out that openness is capable of having a visual as well as a spatial aspect¹, whilst recent case law confirms that the visual qualities of the land may be an aspect of the planning judgment when applying the concept of openness². The site has an extensive frontage onto the A341. The principal form of frontage enclosure is a post and wire mesh fence set back behind a grassy roadside verge, also populated by some maturing trees positioned at intervals. As a result, whilst there is no sales display as such, substantial numbers of vehicles covering extensive portions of the site are readily apparent to passing pedestrians and drivers. On account of their obviously man-made attributes, including the angular profiles and shiny metallic finishes, the vehicles are essentially urban features. The linear arrangement of the vehicles and their significant numbers provide the site with an appearance which would not be out of place at a commercial garage premises or on a trading estate, thus having a definite urbanising influence on the surroundings.
11. The above is all in marked contrast with the more limited visual consequences, having regard to the wide fluctuation in vehicle numbers and comparatively long periods of vacancy, likely to be associated with the garden centre customer parking. It is also likely to be appreciably and noticeably different visually from the limited height and more spacious characteristics of any open storage associated with the garden centre. As a result, the visual effects of the use are materially different from activity associated with the garden centre and have led to an obvious and significant diminution in openness in views from the A341. Planting a hedge adjacent to the site frontage might partially screen views of the vehicles. However, the hedge proposed would not be continuous, having wide gaps around the vehicular access and adjacent to the A341 junction with Rempstone Road. As a result, the hedge would not adequately offset the adverse visual effects of the use in relation to openness. Moreover, planting a hedge would make little difference to the adverse effects of the use on the spatial aspect of openness.
12. Although the site is located opposite a modern housing estate, it is otherwise in an area of loose-knit development beyond the more built-up part of town. Extensive groups of trees lining the A341 and alongside the eastern site boundary as well as in the wider surroundings assist in breaking up views of development in the vicinity and contribute to a distinctly rural feel. By introducing an inherently urbanised activity into the above context, the use has also therefore amounted to urban sprawl and encroachment into the countryside. This is in conflict with two of the purposes of including land within the Green Belt set out in paragraph 138 of the Framework.
13. For the above reasons, the use does not preserve the openness of the Green Belt and conflicts with two of the purposes of including land within it. Therefore, the use amounts to inappropriate development in the Green Belt, being inconsistent with the Framework paragraphs 149 and 150 and failing to accord with LP Policy PP2. At paragraph 147, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and

¹ Paragraph: 001 Reference ID: 64-001-20190722.

² R (*on the application of Samuel Smith Old Brewery (Tadcaster) and others*) (*Respondents*) v North Yorkshire County Council (*Appellant*) [2020] UKSC 3.

should not be approved except in very special circumstances. I attach substantial weight to the harm to the Green Belt.

14. The appellant sought a three-year temporary permission for the use. The harm to the Green Belt from a use lasting three years would inevitably be less than that associated with one of more permanent duration. Nevertheless, the harm would still be perpetuated for an unduly extended period of time. Moreover, as there was little firm evidence to indicate that the planning circumstances at the site will have changed by the end of the period, it is entirely possible that a further application would be made to continue the use in future. Consequently, in the absence of substantive evidence to indicate why the harm identified above should be allowed to continue, granting a temporary permission would not be justified.

Highway safety

15. The reasons for issuing the notice included reference to the use having an adverse effect on highway safety. However, this was not a reason for refusal in Appeal B. The Council did not seek to elaborate on their highway safety objection in response to Appeal A. I have therefore assumed that this objection would be overcome if the vehicle layout were to conform to the drawing in Appeal B, including the provision of sufficient manoeuvring space to allow vehicles to access and egress the site in forward gear together with improvements to the surfacing. That being the case, and in the absence of anything to suggest otherwise, there is no sound reason why I should form a contrary view. Suitable planning conditions could have been imposed to secure implementation and maintenance of the drawing layout together with surface improvements, had I been minded to allow these appeals and grant permission.
16. Consequently, the use does not cause unacceptable harm to highway safety and it accords with criterion 1(b) of LP Policy PP35, as safe access to the highway would be provided.

Other considerations

17. Few details were provided regarding economic benefits, such as any local employment generated, arising from the use. In any event, as it is likely that such benefits would apply equally if the use operated from another location, for example on a trading estate in the surrounding area, they are not site-specific. As a result, this is a factor to which I attach only modest weight.
18. Interested local residents also raised a number of other matters. However, in the light of my findings on the main issues none of these matters warrant more detailed consideration.

Planning Balance

19. The use of the site for vehicle sales has resulted in inappropriate development in the Green Belt. Any economic benefits do not clearly outweigh the totality of the harm to the Green Belt. The absence of harm to highway safety is a neutral factor which weighs neither in favour nor against granting permission for the use. Accordingly, the very special circumstances necessary to justify permitting the development do not exist.

Conclusion-Appeal A Ground (a) & Appeal B

20. The use of the site for vehicle sales is inappropriate development in the Green Belt, it does not accord with the Development Plan and is inconsistent with the Framework. Therefore, I conclude that these appeals should not succeed.

Appeal A

Ground (f) appeal

21. The ground of appeal is that the requirements of the notice are excessive.
22. An enforcement notice can have two purposes. Firstly, it can remedy the breach of planning control, including by restoring the land to its condition before the breach took place. Secondly, it can remedy any injury to amenity caused by the breach. The steps set out in the notice require the vehicle sales use to cease in its entirety, together with the removal of all incidences of that use. The steps do not require anything less than the total cessation of the offending use and its associated activity. Therefore, the purpose of the notice must be to remedy the breach.
23. Whether conditions could be imposed to overcome the harm identified in the notice is relevant to the planning merits rather than ground (f) and thus has already been dealt with above. The failure to cease the vehicle sales use would not restore the site to its condition prior to the breach occurring and therefore would not achieve the purpose of the notice. The appellant did not suggest any alternative that would restore the site to its pre-breach condition whilst stopping short of complying with the steps set out in the notice and in my view, there is none.
24. For the above reasons, the ground (f) appeal fails.

Ground (g) appeal

25. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.
26. The period between the Council refusing to grant the application in Appeal B, the issuing of the notice and the determination of these appeals is not relevant for the purpose of assessing the reasonableness of the time for compliance. What is relevant is the time after the notice takes effect. Moreover, the appellant is entitled to assume that these appeals would succeed on their planning merits. Therefore, when assessing whether the time for compliance should be extended, the appellant should not be put at a disadvantage simply because they awaited the outcome of the appeals before searching for an alternative site. I cannot rely on the Council subsequently agreeing to an extension of time, due to the uncertainty involved.
27. Nevertheless, on the basis of how the use currently operates in my view it is unlikely to require much more than a suitably-sized area of open, preferably hardsurfaced land with some small-scale buildings and facilities, in order to commence trading from another location in the surrounding area. In my view, there are likely to be a sizeable number of locations, for example on trading estates in the local or wider urban area, where such premises might

be suitable and available at relatively short notice. No firm evidence was put forward which might suggest that such premises were in especially short supply locally. Removing the vehicles and other incidences of the use from the site is unlikely to take much longer than a couple of weeks at most.

28. To my mind, four months therefore provides the appellant with ample time to search for and secure alternative premises, to obtain any necessary permissions required to operate from those premises and to relocate the vehicle stock and operations from the site, whilst also ensuring business continuity as far as is reasonably practicable. It follows that extending the time for compliance to nine months would achieve little beyond perpetuating the breach and the planning harm caused.

29. As the time for compliance with the notice requirements is reasonable, the ground (g) appeal also fails.

Conclusion

30. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. For similar reasons, I conclude that Appeal B should be dismissed.

Formal Decisions

31. Appeal A is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

32. Appeal B is dismissed.

Stephen Hawkins

INSPECTOR