
Appeal Decision

Site visit made on 7 February 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 29th April 2022

Appeal Ref: APP/M0655/W/21/3276375

Lymm Truckwash, Cliff Lane, Lymm, Warrington, WA13 0TD

- 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 Alex Achim of Certas Energy UK Limited against the decision of Warrington Borough Council.
 - The application Ref: 2020/37062, dated 29 May 2020, was refused by notice dated 12 February 2021.
 - The development proposed is described as 'the construction of an HGV bunkering site including the installation of a fuel storage tank with dispensers and acoustic barrier. The construction of an HGV queueing area and the retention of an unauthorised 2-storey office building for use by Lymm Truck Wash'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission for a change of use of land to form a truck wash facility including associated office and stores, internal access roads, parking, landscaping and alterations to the access was granted in October 2017¹ (the 2017 Planning Permission). Whilst the majority of this scheme has been implemented, part of the planning permission, namely the office and store building had not been constructed at the time of my site visit.
3. A draft unilateral undertaking provided as part of the appeal confirms that the approved but unimplemented two-storey office and stores building would not be constructed pursuant to the 2017 Planning Permission in the event that planning permission were to be granted for the appeal proposal. However, the legal agreement is in draft and is unsigned. As such, there is no legal safeguard in place to ensure that the approved building would not be built. Therefore, I attach negligible weight to this matter in my consideration of the appeal.
4. At the time of my visit, I observed a number of portacabin buildings positioned between the truckwash facility and the access road. These are used for administrative and support functions associated with the truck wash operation. They do not have the benefit of planning permission and therefore I am considering this part of the application retrospectively.

Main Issues

5. The main issues are:-

¹ Planning Ref: 2017/31204

- i) whether the proposed development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies together with the effect on the character and appearance of the countryside;
- ii) the effect on the openness of the Green Belt;
- iii) the effect of the proposed development on the living conditions of neighbouring occupiers at Coroville with particular regard to noise and disturbance; and
- iv) would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Background

- 6. The appeal site comprises an irregular shaped parcel of land within the Green Belt. Together with additional land now forming part of the adjacent fire station, the site was formerly used as a truckstop. However, the former operation was relocated to other land within the Green Belt on the opposite side of Cliff Lane² and as part of that permission a Section 52 agreement (s.52 agreement) was entered into requiring the exchange land, including the appeal site, to be solely for use for purposes of agriculture.
- 7. The appeal site's front boundary adjoins the A50, Cliff Lane, with which it shares an access. An internal access road runs along the length of the side boundary adjacent to a small number of residential properties and provides access to an existing truckwash facility positioned towards the rear of the site. A telecommunications mast, a pumping station and portacabins also lie within the site. A fire station is positioned to its opposite side boundary. The appeal site is located in close proximity to junction 20 of the M6 with Lymm Moto Services occupying a position on the opposite side of Cliff Lane.
- 8. The appeal scheme proposes to construct a four-bay HGV fuel bunkering site to include the installation of a fuel storage tank with dispensers and acoustic barrier, together with the construction of a HGV queuing area and the retention of a two-storey office portacabin building.

Whether the proposal is inappropriate development

- 9. Paragraph 147 of the National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (VSC). Substantial weight shall be given to any harm within the Green Belt. Paragraph 148 states that VSCs 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.
- 10. Paragraph 149 of the Framework sets out that the construction of new buildings within the Green Belt is inappropriate, save for certain categories of development which may be regarded as not inappropriate.

² Planning Ref: 88/21164

11. One such exception at paragraph 149(g) provides for the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use. There is dispute between the parties as to whether the land should be considered as PDL; the Council's case seeking reliance upon the s.52 agreement which imposes a positive requirement to use the defined land which incorporates the appeal site for the purposes of agriculture. There appears to be no dispute that the land has not been used for the stated purpose. In addition to the development approved by the 2017 Planning Permission, the Council have also granted permission for a fire station on land forming part of the s.52 agreement. It is the Council's case that as part of the fire station scheme a supplemental deed³ to vary the terms of the s.52 agreement was entered into. The effect of this is said to release the obligations of the s.52 agreement but only insofar as it relates to the fire station site. The Council state that the s.52 agreement remains applicable and in force in relation to the appeal site. The appellant disagrees and draws my attention to an application to discharge the s.52 agreement in September 1988 and a supporting letter to this effect.
12. There is considerable disparity between the parties on this matter and whilst I have had regard to the submitted documents, I am unable to resolve this dispute based upon the limited extracts of evidence that have been provided.
13. In simple terms, the Council suggest that the effect of the s.52 agreement is to remove the PDL status of the appeal site. However, no compelling evidence has been put to me that substantiates this approach. Whilst the agreement is clearly a constraint upon the use of the land, it would be open to the appellant to seek to have the agreement varied or discharged in line with appropriate mechanisms for doing so in relation to a s.52 agreements. On the basis of the submitted evidence and what I have observed at the time of my site visit, I find that it is most likely that the appeal site can be properly regarded as PDL.
14. That being said, paragraph 149(g) is subject to the limitation that any limited infilling or the partial or complete redevelopment of PDL should not have a greater impact on the openness of the Green Belt than the existing development.
15. In assessing the proposal, the appeal scheme would introduce built development where there is presently none save for some remnant hardstanding which was occasionally visible at the time of my site visit. The fuel bunker would occupy a footprint of some 72sqm. Its height and that of the acoustic barrier would be in the region of 4 metres. In addition, sizeable areas of hardstanding together with lighting would be introduced. These changes would be significant and therefore I find that the proposal would have a greater impact on the openness of the Green Belt.
16. The built floorspace and volume from the development would be sizeable and to accommodate the scheme, it would result in the development being spread over large parts of the site that are presently open and unbuilt. Given that not all fuelling trips would have a linked trip to use the truckwash, it is likely in my view that there would be increased activity in terms of vehicles and people, and such activity would continue for large parts of the day and night.

³ Supplemental Deed dated 13 February 2015.

17. In conclusion, there would be greater impact on the openness of the Green Belt over a wider area encompassing open and unbuilt land. Notwithstanding the presence of the existing built form, including neighbouring dwellings, fire station, the existing truckwash operation, roads and nearby service station, the proposed development would increase the prominence of the appeal scheme in the open countryside. When comparing the height, volume, bulk and mass of the appeal scheme to the existing situation, the proposal would clearly have a significantly greater impact on the openness of the Green Belt and the purpose of including land within it. Correspondingly, the appeal scheme would appear as a more dominant and a more built-up form of development encroaching into the countryside.
18. Consequently, I consider that the provisions of paragraph 149(g) are not satisfied. It is not suggested that any of the remaining provisions of this paragraph are relevant and therefore the appeal scheme fails to meet with the exceptional categories of development of paragraph 149 of the Framework.
19. Paragraph 150 of the Framework sets out that certain other forms of development are also 'not inappropriate' within the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. These other forms of development include 'local transport infrastructure' which can demonstrate a requirement for a Green Belt location'.
20. In terms of the fuelling bunker, even if I were minded to accept the appellant's case in relation to it being 'local transport infrastructure', I am not persuaded that a Green Belt location has been demonstrated to be necessary in this instance. In reaching this conclusion, whilst I accept that this type of facility needs to be located close to the highway network, there are other fuelling facilities available nearby at Lymm Services. Whilst I note comments regarding the age and efficiency of those facilities, there is little comprehensive evidence before me to suggest that the existing facilities at Lymm Services are insufficient or inadequate to meet current demand.
21. Albeit the appeal scheme would provide the convenience of linked trips and a faster fuelling facility this is not adequate justification for a Green Belt location. Thus, I find that the proposal fails to demonstrate that the appeal scheme in this particular location is justified.
22. That being said, in terms of the proposed HGV waiting area, I take note of the circumstances that have arisen with regards to the waiting of vehicles within the highway nearby. I note the temporary solution of the use of a banksperson together with signage indicating that the facility is closed/full. Whilst this has had the effect of addressing congestion at times of high demand, I accept that this does not represent an appropriate long-term solution.
23. Observing the commands of signage and staff directing traffic away from the facility is subject to human error and could, despite the appellant's best efforts, result in traffic queuing within the highway due to unforeseen fluctuations in demand. This situation poses a potential risk to highway safety, particularly taking into account the proximity of the adjacent fire station and passing emergency vehicles. In theory, this type of circumstance could amount to local transport infrastructure requiring a Green Belt location.
24. Nonetheless, the Council have advised that the truckwash facility has undergone a recent upgrade to speed up wash programme durations with a

consequent reduction in vehicle waiting times⁴. Little evidence regarding the impact of this efficiency upgrade has been provided and therefore I cannot be certain that the issues in relation to highway safety continue to exist. At the time of my site visit I noted that the truckwash operation was in regular use with some HGVs waiting within the site. The facility appeared to be well-managed and operating efficiently such that there was spare capacity along the access road to accommodate several more HGVs and there were no stationary vehicles within the highway. Whilst I accept that my site visit provided only a snapshot of conditions, there is very limited information before me regarding the impact on highway safety since the facility upgrade has been undertaken. In the absence of clear information that such an issue is still in existence, I cannot be satisfied that the HGV waiting area would amount to local transport infrastructure for which a Green Belt location is required. The appeal scheme does not amount to a form of development envisaged by paragraph 150 of the Framework.

25. Consequently, the exceptions set out in paragraph 149 and 150 have not been met and the proposal would amount to inappropriate development. The Framework states that such development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
26. In addition, the proposal would fail to accord with Policies CS1, QE6, QE7, CS5 and CC2 of the Warrington Local Plan (2014)(LP) insofar as these policies require development to afford priority to the protection of the Green Belt and the character of the countryside.

Openness

27. For the reasons given above, I find that the proposal would have a significant effect on openness such that it causes harm to the Green Belt and conflicts with the purposes for including land within it.
28. The Government attaches great importance to Green Belts, noting that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The Framework establishes that substantial weight should be given to any harm to the Green Belt.

Living conditions

29. The appeal site shares a common boundary with a detached dwelling (Coroville) together with its large side and rear garden. The dwelling is positioned some distance from the common boundary which is presently defined by a vertical close boarded timber fence in the region of 3 metres in height beyond which the appeal site internal access road is positioned.
30. The fuelling facility would be unmanned and therefore a continuous 24-hour usage of the fuelling bunker is sought by the appellant. Although the appellant's submitted Acoustic Report Rev 3.1 dated March 2020 (the Original Report) details the level of anticipated noise and disturbance likely to be experienced by the occupants of Coroville with the inclusion of a 4 metre high absorptive noise barrier to contain stationary vehicle noise being erected along the edge of the fuelling bunker, its assessment and conclusion were based upon anticipated use figures rather than figures based upon its full operational

⁴ LPA Statement of Case paragraph 5.24

capacity. In the absence of any control to limit the through-put of HGVs and given the popularity of the location for the nearby motorway and the demand for the truck wash facility, the findings of the Original Report are flawed.

31. As a result, it is the Council's case that night-time noise would be problematic if the fuelling facility were to operate at full capacity, nor was any consideration given to the expected quantity of chiller equipped vehicles, which by their nature are a more noisy type of transport. Given the deficiencies within the Original Report, I concur with the Council's view that, notwithstanding the considerable existing background noise level, the appeal scheme would be capable of generating a level of noise and disturbance above existing background levels which would materially compromise the living conditions of neighbouring occupiers at Coroville and therefore unduly harm their living conditions.
32. Albeit not submitted by the appellant, a further Acoustic Report Rev 4.1 was commissioned by the appellant dated Sept 2020. I have been provided with a copy of this report by the Council. Its findings are assessed on the basis of a greater operational capacity being utilised than within the Original Report. As a result, in addition to the proposed acoustic fencing to be erected adjacent to the fuelling bunker a further acoustic barrier in the region of 4 metres in height to the side of the access road is stated to be necessary to safeguard the neighbouring occupiers from adverse harm.
33. Despite this, the submitted plans make no provision for the additional acoustic barrier and whilst I accept that matters relating to boundary treatments are commonly dealt with by an appropriately worded planning condition, in this instance, given the appeal site's Green Belt location and the requirement to assess the impact on openness together with the potential impacts of such fencing being in close proximity to a neighbouring dwelling, the use of a condition is not suitable. The appellant also makes reference to alternative solutions being found for the fencing, its location and additional treatments. However, little detail is provided to make a considered assessment of these matters.
34. Based upon the plans and evidence before me, I consider that the appeal scheme fails to demonstrate that the proposal would provide an adequate standard of living conditions for neighbouring occupants with regards to noise and disturbance. Thus, the proposed development would conflict with LP Policies CS1, QE6 and QE7 insofar as these policies require high quality sustainable development that respects the living conditions of existing neighbouring residential occupiers.

Other considerations

35. My attention has been drawn to a fallback position that exists with regards to the extant planning permission at the appeal site. I accept that it would be open to the appellant to implement that permission in full and construct the office and stores building. However, in my view, the effect of doing so would have a less harmful effect than what is currently proposed within the appeal scheme and therefore the fallback position does not provide adequate justification for the appeal scheme. Albeit it has been put to me that the proposed fuel bunker would occupy a similar footprint to the approved office and stores building, from my consideration of the plans and documents provided, these do not appear to overlap, albeit I accept there would be

problems in accessing the fuel bunker if the office and stores were to be built in their intended position. In the absence of a proper safeguard, there would be nothing to prevent the two-storey office and stores building being constructed in addition to the appeal scheme which would have the effect of having a greater impact on the openness of the Green Belt.

36. I have had regard to the numerous letters and petition of support for the appeal scheme. I am cognisant of the importance of providing modern and high-quality HGV facilities and its consequent support for the road transport industry, including helping to attract more HGV drivers, and the assistance for the local and national economy.
37. Albeit the fuelling facility would be unmanned, a number of additional jobs would be generated in terms of supplying the facility and its maintenance. Additional jobs would arise during construction albeit these would be for a temporary period.
38. Reference is made to disruption to the industry through the retraction of red diesel and the benefit of the appeal scheme providing HVO as a green alternative for diesel powered vehicles, which I am advised is not available elsewhere on the network. As a green alternative there would be environmental benefits, albeit these have not been quantified and therefore this limits the weight I attach to this benefit of the appeal scheme.
39. My attention has been drawn to a previous appeal decision at Cobham Motorway Service Area⁵. However, there are clear differences between the schemes which resulted in the Inspector taking a different view regarding the applicability of paragraph 145(c) of the 2019 Framework (now paragraph 150(c) of the Framework). Those circumstances are not therefore comparable to the appeal proposal and a comparison is of limited relevance. Similarly, reference has been made to the Council recommending planning permission for a large motorway service area on land within their control⁶. However, there is little substantive evidence relating to the particular circumstances of this development and whether these are comparable. I have therefore considered the appeal before me on its individual planning merits.

Conclusion

40. The proposal would be inappropriate development in the Green Belt which is by definition harmful. There would also be a loss in the openness of the Green Belt. I find that the other considerations in this case, including the fallback position, do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and other harm. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal would be contrary to LP Policies CS1, QE6, QE7, CS5 and CC2 of the development plan and conflict with the aims of the Framework. There are no material considerations of sufficient weight or importance that determine that the decision should be taken otherwise than in accordance with the development plan and therefore for the above reasons, having regard to all other matters raised, I conclude that the appeal is dismissed.

E Brownless - INSPECTOR

⁵ APP/K3605/W/17/3187505

⁶ Planning Ref: 2019/35726