



Appeal Decision

Hearing held on 9 March 2022

Site visit made on 9 March 2022

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2022

Appeal Ref: APP/V4250/W/20/3265117

Land to the rear of 36-38 Sandy Lane, Lowton WA3 1DR

- 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 & Mrs Pont against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/20/89078/RET, dated 6 May 2020, was refused by notice dated 25 September 2020.
 - The development proposed is the change of use to the storage of fairground rides, vehicles and associated apparatus.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to the storage of fairground rides, vehicles and associated apparatus at land to the rear of 36-38 Sandy Lane, Lowton WA3 1DR in accordance with the terms of the application, Ref A/20/89078/RET, dated 6 May 2020, subject to the following conditions:
 - 1) No loading/unloading or manoeuvring of fairground equipment and other associated paraphernalia on the site shall take place on a Sunday or outside the hours of 0700h to 2300h on any other day.
 - 2) The Rating Level (as defined in British Standard 4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound) shall not exceed background (LA90 +0dB) levels at any time.

Preliminary Matters

2. Although the application was described on the application forms as being '*the change of use from B2 and B8 with partial car sales to B8 with ancillary vehicle and equipment maintenance*', at the Hearing it was agreed the description in the header box above described the development more accurately and with less ambiguity.

Main Issues

3. The main issues in this case are
 - a) whether this is inappropriate development in the Green Belt;
 - b) the effect on the character and appearance of the area;
 - c) the effect on the living conditions of neighbouring residents;

- d) the impact on highway safety, and,
- e) if any harm would be caused by any of the above, whether other considerations exist that would clearly outweigh this harm and amount to very special circumstances.

Reasons

Inappropriate development in the Green Belt

4. This site currently comprises a moderately sized workshop building of a substantial and permanent construction, with a small office block attached to the side and a relatively large outside servicing/parking yard. It sits behind 36-38 Sandy Lane (a single dwelling) and 34 Sandy Lane, and to the side of houses on Green House Close. Access is gained from Sandy Lane to the north of No 36-38. The appeal site as well as the neighbouring Sandy Lane houses lie within the Green Belt, as the Green Belt's boundary runs along the site's southern side.
5. From the cul-de-sac to the south and from Sandy Lane to the west, the site is substantially concealed by housing, though can be seen in between the buildings. From the north, whether approaching on Sandy Lane or on the footpaths, a 2m solid fence is visible along the boundary, while from the footpath to the east, at the end of the adjacent paddock, the absence of fencing means views into the yard are unrestricted.
6. The appellants have occupied the site since 2019, using the yard to store the vehicles, trailers and associated paraphernalia connected with their travelling show business, with the workshop being used for associated maintenance. There is no residential element actually on the site itself, as the appellants live next door in bricks and mortar at No 36-38. As a result, although the appellants meet the definition of travelling showpeople given in Government guidance called *Planning policy for traveller sites* (PPTS), and despite the development's description, it was agreed this should not be defined as a travelling showpeople's site.
7. An enforcement notice against the use was upheld on appeal in 2021. However, the notice was served after a planning application had been submitted for the retention of the development but before the proscribed period for determination of that application had passed. Consequently, as part of that enforcement appeal the appellants were barred from contending that planning permission should be granted for the development. Instead, the Inspector focussed on other matters concerning procedure, the reasonableness of the timeframe and the required steps. As such, the planning merits of the development were not explored and so that decision does not have an appreciable bearing on my reasoning in that regard.
8. The *National Planning Policy Framework* (the Framework) states that keeping land permanently open is a fundamental aim of the Green Belt. It says new development in the Green Belt should be regarded as inappropriate and, by definition, harmful. It then gives various types of development that are not inappropriate. None of those in Framework paragraph 149 are relevant to this case as they concern the construction of new buildings. Paragraph 150 gives further types of development that are not inappropriate, one of which (criterion e) is '*material changes in the use of land*' while another (criterion d)

is 'the re-use of buildings provided that the buildings are of permanent and substantial construction'. However, the types of development in paragraph 150 are only found to be not inappropriate if they preserve openness and do not conflict with the purposes of including land in the Green Belt. Accordingly, in assessing whether or not the development before me is inappropriate the activities need to be compared to what could occur if the appeal were to be dismissed and the site's lawful operation resumed.

9. In making this assessment, I appreciate the site is at the very edge of the Green Belt with nearby factories that are outside the Green Belt. The assessment as to whether or not this is inappropriate development is not influenced by such matters though, and so they have not had a bearing on my findings. I was also told that the offices to the side had been approved as stables, but again that is not something to be taken into account when considering inappropriateness.
10. Before the appellants moved onto the site it had been used for a while for car sales and repairs, but the parties agreed that was not its lawful use. Rather, if this appeal was dismissed, they concurred that the workshop and its associated yard could lawfully revert to a use within Class B2 of *The Town and Country Planning (Use Classes) Order 1987* (as amended) (a B2 use). On the evidence before me I have no grounds to take a different view. Such a use can be broadly defined as an industrial process other than a use that can be carried out in a residential area without detriment to the amenity of that area. Furthermore, a B2 use that operated on the site would be subject to no controls under planning legislation concerning hours of operation, noise, outside storage, outside working, parking and so on.
11. The site has not been used for B2 purposes for a while, and there is nothing to indicate the nature or type of any B2 use that may occupy the site if the appellants' activities were to cease. As such, there is little firm evidence to show how, either historically or in the future, a B2 use did or could affect openness and the purposes of including land in the Green Belt. Clearly though in gauging the effect of such a use on openness, there is the impact of the building to be appreciated. Moreover, while it is reasonable to assume a B2 use would be focussed in the workshop, some activity in the yard would be expected. However, the extent of this, its nature and its visual consequences are difficult to predict as they could vary appreciably between one type of B2 use and another. I consider it would be unreasonable to expect such a use to generate no outside storage or activity, as at the very least there could be parking. At the same time though I cannot assume outside activity would be excessive, as that would be only expected from a minority of operations, and a business that required much outside storage or workspace would probably seek a bigger site. Consequently, for the purposes of my assessment I have assumed the activity associated with a possible B2 use would lie somewhere approaching the midpoint between those extremes.
12. The use of the site by the appellants results in the workshop and office having no greater impact on openness when compared to a possible B2 use, as the building is unchanged. Rather, any difference between the uses revolves around activity on the yard, which is very much the focus of the appellants' operations. Moreover, some of the lorries, vans, rides, trailers and other associated paraphernalia (which, for convenience, I shall collectively refer to as accoutrements) that are stored here have the potential to be tall and, as rides

or equipment intended to enliven a fair or event, they could well be eye-catching with their bright colours and unusual forms.

13. When accoutrements are on the site, they are not generating revenue and so the appellants would naturally wish for them to be there for as short a length of time as possible. I was also told that the accoutrements of the appellants' business are often taken directly from one event to the next, and it may be some time and a number of events before they are returned to the site. Overall, a general pattern therefore appears to be for more external storage in the winter months when there are few events, and less in the spring, summer and autumn when events are more common. Since the appellants acquired the site, the various lockdowns have meant more accoutrements have been there than would normally be expected, but with the passing of the pandemic such situations will not be expected as often in the future.
14. At the Hearing I was told this was a quieter time, as much of the appellants' equipment was away at events or fairs. However, nothing that was said by the parties indicated that at such a time the yard would be totally empty. This was borne out on my visit, when in the yard was a trailer for an articulated lorry, 2 smaller trailers with tall, pitched roofs giving them the appearance of cabins, some vans, a ticket booth and a number of pieces of other ancillary equipment. Much of this was visible over the boundary fencing when on the footpaths to the north, and in the unimpeded view from the footpath to the east. Whilst what is on site may ebb and flow, the accoutrements present even at this quieter time still had a noticeable effect on the openness of the Green Belt, due to their height, bulk, appearance and eye-catching nature. Moreover, there will clearly be instances when the effect on openness would be greater as more rides, lorries, trailers and so on returned to the yard, and indeed this was reflected in photographs I saw that were taken at other times showing the site much fuller.
15. Mindful of the wording of paragraph 150 in the Framework, the possible effect on openness of a B2 use on the site could vary greatly, given the diversity of such an activity. Moreover, the changing extent of the appellants' on-site storage means the effect of the use before me on openness also varies. On balance though, and having regard to the evidence, I find that at this quieter time the effect of the appellants' operations on openness would be comparable in this regard to what could be expected when making a reasonable assessment of the impact of a B2 use. Therefore, the periods of increased on-site storage would have a greater effect, when compared to a possible B2 use, and so, because of those times, the development would fail to preserve the openness of the Green Belt. Furthermore, this external storage would also result in additional encroachment of activity into the Green Belt, so undermining one of its purposes.
16. In coming to this view, I accept that the increased effect on openness and the sense of encroachment is limited by the possibility of a B2 use on the site instead, and by the housing immediately adjacent. I nonetheless find increased harm in these respects.
17. Accordingly, I conclude this scheme fails to preserve the openness of the Green Belt and conflicts with the purposes of including land within it. As such, whether assessed against criterion (d) or criterion (e) of paragraph 150 in the Framework I conclude this is inappropriate development in the Green Belt.

Character and appearance

18. When compared to the reasonable visual impacts of a B2 use, I consider times of the intensive external storage of the appellants' large and eye-catching vehicles and equipment would detract unacceptably from the character and appearance of the countryside when seen from the surrounding footpaths. It would also appear discordant when seen from the cul-de-sac to the south. Although fencing partly screens the storage from the north and the south, the vehicles and trailers would project above that and, from the footpath to the east, no such barrier would exist.
19. Accordingly, I conclude that the scheme detracts from the character and appearance of the area in conflict with Policy CP10 in the *Wigan Local Plan Core Strategy* that requires development to have regard to the character and appearance of the area.

Living conditions

20. Irrespective of how they have operated to date, the appellants said that with this scheme they have no intention of undertaking any works or repairs on site beyond what could be defined as ancillary to the storage use. Moreover, they suggested a condition preventing loading/unloading and manoeuvring on the site between 2300h one day and 0700h the next, so avoiding this noise source at night-time.
21. If the appeal is to be dismissed and there is compliance with the enforcement notice, the neighbouring houses would be next to a site that could be used for B2 uses. By definition, any such use undertaken here would be one that could be detrimental to the amenity of residential accommodation. It would also be unfettered under planning legislation, with no restrictions on its nature or its hours of working and so on, and it is reasonable to assume the activity connected with such a use would probably be relatively constant throughout the year. In contrast, the loading or manoeuvring of paraphernalia at the appellants' business would not be allowed during the night, while it is primarily a storage activity that, for lengthy periods, is relatively quiet when the accoutrements are at events. Therefore, although the scheme could well generate some noise, this development would have benefits when compared to the possible fallback usage.
22. I have no reason to consider the effect of the appellants' scheme on the privacy of neighbours would be unacceptable, while the effect on the outlook from the rooms and private garden areas of 34 Sandy Lane or the Green House Close houses would not be unacceptable, due to their orientations.
23. Accordingly, with the condition preventing loading, unloading and manoeuvring at night-time, I conclude the appeal scheme would not unreasonably harm the living conditions of adjacent residents, and so would not conflict with Core Strategy Policy CP17, which seeks to protect the amenity of existing uses.

Highway safety

24. The use involves sizeable vehicles associated with the carrying of fairground equipment entering and leaving the site. While it would be possible for even relatively large lorries to turn around in the yard that could only be done if the area was free from storage, which is an unrealistic and unreasonable expectation or requirement given the appellants' stated operation. Therefore, it is

inevitable that the larger vehicles would have to reverse off or (more probably) onto the site, and this would involve blocking Sandy Lane for periods of time.

25. I have no specific details of how regularly this has occurred. However, given the nature of the use discussed above, I anticipate it would be relatively occasional. Furthermore, at this point Sandy Lane is straight with very good forward visibility and a 20mph speed limit, so when a lorry undertaking such a manoeuvre was blocking the road, approaching drivers would see it well in advance and would have ample time to respond accordingly. Consequently, I consider this arrangement, although disrupting the free flow of traffic, would not compromise highway safety unacceptably.
26. Moreover, a B2 use would also attract delivery lorries, and even if the business operating from there did not use large vehicles itself, such vehicles could be used by its suppliers. In such a situation, and depending on the goods they were delivering or collecting, the lorry drivers may opt to drive onto the site which could well involve reversing onto or off Sandy Lane. Such an event would have a comparable impact on highway safety to the scheme before me. Alternatively, they may choose to unload/load at the kerbside, which again would disrupt the free flow of vehicles along Sandy Lane. Once more the extent of such operations is unknown, but I find it reasonable to assume these events would occur in connection with a B2 use at least as often as they would occur with the use before me and so the effect of the appeal scheme is no worse.
27. Accordingly, I conclude that the development does not compromise highway safety unacceptably, and so does not conflict, in this regard, with Core Strategy Policy CP7, which seeks to maximise the safety and effectiveness of the road network.

Other Considerations

28. The Framework states that inappropriate development should not be approved except in very special circumstances. In paragraph 148 it confirms that these circumstances will not exist unless the development's harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Moreover, section 38(6) of the *Planning and Compulsory Purchase Act 2004* says development should be in accordance with the development plan unless material considerations indicate otherwise. In this regard I have had a number of different considerations put before me.
29. Firstly, attention has been drawn to the shortfall in travelling showpeople's sites in the Greater Manchester area in general and in the Borough in particular. The Council considered it to be only a shortfall of 3 yards in the Borough, as there are a number of recently approved yards that are unoccupied. The appellants contended that the owners of some of the existing empty yards will not let them on, and so the Council's position did not therefore reflect the reality of the situation. Furthermore, they have tried unsuccessfully to secure storage in existing commercial buildings and yards in the area, and I fully appreciate that spreading their accoutrements amongst other sites could introduce difficulties in their operation. I have no reason to question the appellants' contentions on these matters.
30. This is not an appeal for what could be defined as a travelling showpeople's yard under the terms of the *Gypsy and Traveller Accommodation Assessment* (GTAA). However, it is nonetheless a yard to be used by people who are

economically and culturally travelling showpeople. Therefore, I consider this issue of supply to be a material consideration, because it highlights the difficulties the appellants are potentially facing in seeking a yard for their business. This supports their assertion that they have a need for premises that they are unable to satisfy.

31. Moreover, whether I adopt the Council's position or accept the appellants' contentions, either way it appears there is a shortfall in provision to some extent. Therefore, although the site would not directly reduce the stated shortfall in the GTAA, it would mean there was one less family of travelling showpeople needing a yard. These points are to be weighed in favour of the scheme.
32. Secondly the appellants have drawn my attention to their personal circumstances. They have stated that they would want to live next to their accoutrements for security purposes and cultural reasons. As a result, the effect of dismissing this appeal is that, given the outstanding Enforcement Notice, the use of the site for the appellants' operations would have to end, and so an indirect consequence of such a decision is they would have to leave their home next to the appeal site. It is therefore credible that, without an alternative yard to go to, they could be forced to adopt a nomadic lifestyle to some degree. Once more this is a matter I weigh in favour of the appeal.
33. I also do not question that there could be some financial hardship resulting from a dismissal of the appeal, but that often occurs when unauthorised development has been undertaken and so is not afforded significant weight.
34. A further consideration cited is the need to take into account the best interests of the appellants' 2 children. At the outset I have regarded no other consideration as more important or, in advance of the subsequent assessment of the circumstances, I have given none greater weight. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment. In reaching my decision I have nonetheless kept the best interests of the children at the forefront of my mind.
35. By facilitating a settled base and allowing the family to continue living at No 34-36, the proposal would enable the children to have stability and consistent access to general health care. It would also allow for continuity in their education, as they could each remain at their existing school. These benefits would be indirectly compromised if the appeal was dismissed, the use ceased and the appellants forced to move. This is a further matter that weighs in favour of the scheme.
36. Finally, I have given weight to the benefits to living conditions arising from the scheme preventing the resumption of a B2 use, unfettered under planning legislation, next to housing.
37. In Policy E of the PPTS it says,

'subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.'

Even if I were to take this into account despite it not being a travelling show-people site, I find that their personal circumstances and the unmet need, when

taken together, are not so significant as to constitute one of the '*unlikely*' instances where an exception to the general thrust of this guidance is justified.

38. However, it does not follow from the wording of Policy E that personal circumstances and unmet need should play no part in the weighing exercise required by paragraph 148 of the Framework. Rather, when taken with the best interests of the child and also the benefits from the replacement of the unfettered B2 use, I consider these material considerations clearly outweigh the harm arising from inappropriateness and other harm, and so amount to very special circumstances. As such, the scheme does not conflict with policies in the Framework relating to development in the Green Belt, or Core Strategy Policy CP8, which says Green Belt development will be considered in line with national policy. Moreover, these other considerations indicate the appeal should be determined otherwise than in accordance with the conflict with Core Strategy Policy CP17.

Conditions

39. The Council suggested 4 conditions that could be imposed if I decided the appeal should be allowed. One required on-site turning facilities to be available while another required the development to be in accordance with plans showing those turning facilities. Given the intention of the use and the extent of cleared area that would be required to ensure on-site turning, conditions requiring that would be unreasonable as they would unduly restrict the development for which permission is sought. A third suggested condition involved preventing certain activities during the night which, as stated, safeguards neighbouring living conditions, whilst the appellants raised no objection to the fourth condition that again would impose a control on noise. Given my findings, a final condition suggested at the Hearing to make the permission temporary is not justified. No other conditions were suggested, and I consider none to be necessary.

Conclusion

40. Accordingly, I conclude the appeal should be allowed.

JP Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr G Clark	Planning Consultant
Mrs J Clark	Planning Consultant
Mrs B Gaskell	Local resident
Mr T Morley	Chairman of Showmen's Guild
Mr K Mulhearn	Elected Officer of Showmen's Guild
Mrs C Pont	Appellant
Mr N Pont (Snr)	Appellant's father
Mr N Pont	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Lamb	Principal Planning Officer
Mr D Rawsthorne	Principal Planning Officer – Development Management

INTERESTED PARTIES:

Mr Brady	Local resident (participated by telephone)
Ms A Farrell	Local resident

SUBMISSIONS AT OR AFTER THE HEARING

Video of lorry movements from Ms A Farrell