The Planning Inspectorate

Appeal Decision

Site visit made on 10 May 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Appeal Ref: APP/P1940/C/20/3265160
Maple Lodge Close, Maple Cross, Maple Cross, Hertfordshire WD3 9SQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Bulk Transfer Ltd against an enforcement notice issued by Three Rivers District Council.
- The notice was issued on 13 November 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land for the parking and stationing of vehicles and trailer bodies.
- The requirements of the notice are: 1. Cease the use of the land for parking and stationing of vehicles and trailer bodies. 2. Remove from the land all vehicles and trailer bodies brought onto the land in connection with the unauthorised use.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (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.

Decision

1. It is directed that the enforcement notice is varied by in paragraph 5 deleting "3 months" in the final sentence and substituting it with "6 months". Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeal. The main parties have had an opportunity to comment on the implications of the Framework in respect of the appeal and I have taken it into account in my decision.

3. At s177(1)(a), the Act provides for the granting of planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. The appellant's use of the land adjacent to the appeal site is not part of the breach, it is beyond the land to which the notice relates and it cannot therefore form part of the deemed planning application arising from the ground (a) appeal.

Ground (a) appeal

Main Issues

4. The site is located in the Metropolitan Green Belt. Therefore, the main issues in this ground of appeal are:

- Whether the unauthorised use constitutes inappropriate development, having regard to the effect on the openness and purposes of the Green Belt, the Development Plan and the Framework.
- The effect on the character and appearance of the site and the surrounding area.
- 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 granting permission for the unauthorised use.

Reasons

Whether inappropriate development

5. The site consists of a lengthy track leading to an expansive, roughly triangular parcel of land which is raised above the level of the adjoining ground by tall concrete retaining walls along most of the boundaries. A private road adjacent to the site leads to a water treatment works, whilst on the opposite side of this road is land allocated for employment purposes[1], with other employment development and housing beyond. Otherwise, the site is largely adjacent to land in open, rural uses, with tracts of woodland and lakes in the wider area.

6. Paragraph 149 (g) of the Framework advises that the redevelopment of previously developed land in the Green Belt is not inappropriate where there is no greater impact on openness than the existing development. I understand that historically, the site had been used for industrial purposes and storage in connection with the nearby treatment works. Even so, the available evidence shows that the site surface was covered with extensive vegetation and had largely been assimilated into the landscape prior to the unauthorised use commencing. Therefore, the site does not fall within the Framework definition of previously developed land.

7. More pertinent is paragraph 150 of the Framework, which advises that certain other forms of development, including at (e) material changes in the use of land, are not inappropriate in the Green Belt where openness is preserved and there is no conflict with the purposes of including land within the Green Belt. Policy CP11 of the Council's Core Strategy (CS) is broadly consistent with the Framework in the above regard. Since Policy DM2 of the Council's Development Management Local Development Document (DMLDD) is silent in respect of changes of use other than in the case of buildings, I give more weight to the Framework.

8. I am not persuaded that paragraph 150 (c) of the Framework is relevant to the unauthorised use. "Local transport infrastructure which can demonstrate a requirement for a Green Belt location" is more likely to refer to development such as new road schemes or public transport improvements. In any event, such development is still required to preserve openness and not conflict with the purposes of the Green Belt.

9. At paragraph 137, the Framework advises that openness is an essential characteristic of the Green Belt. In line with the approach endorsed by the Courts[2], the Planning Policy Guidance[3] advises that openness is capable of having spatial and visual aspects, with other matters that may need to be taken into account including the duration of the development and activity such as traffic generation. When assessing whether a change has a greater impact

[1] The Council's Site Allocations Local Development Document.
[2] *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466; *R* (*oao Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3.
[3] Paragraph: 001 Reference ID: 64-001-20190722.

on openness, the correct approach is to consider the impact or harm, if any, wrought by the change[4].

10. The unauthorised use has given rise to an accumulation at the site of significant numbers of vehicles, including tractor units and trailer bodies, where there were none previously. The tractor units and trailer bodies are of substantial size. The appellant estimated that up to twenty such vehicles could be parked up at the site on weekday evenings, with around twenty eight vehicles being parked there at weekends. It is unclear whether the movement survey supplied is inclusive of all vehicular comings and goings to the site. As the most recent operator's licence refers to thirty vehicles and thirty trailers being based at the site, it is not unreasonable to assume that levels of parking at or close to the maximum capacity will occur at times. Whilst a limited number of tractor units and trailers were present when I visited, a significant number of cars, which I understand belong to employees of the firm, were also parked at the site.

11. The above contrasts with the situation prior to the unauthorised use commencing, when the site would have had an open character, similar to that of adjoining and nearby undeveloped land. The presence of substantial numbers of vehicles and trailer bodies has meant that extensive areas within the site are covered by or adjacent to man-made features for considerable periods of time. In spatial terms, the unauthorised use has therefore led to a significant and appreciable reduction in openness at the site. Limiting the maximum number of vehicles and trailers parked at the site would not overcome the adverse effects on openness identified above.

12. The tractor units and trailer bodies are of considerable length, width and overall height above ground. They have box-like, angular profiles and reflective external finishes, as do the cars. The vehicles and trailers are arranged reasonably close together in groups adjacent to the site boundaries. Extensive gaps in planting along the west boundary affords views of several vehicles at the site from the private road. Maturing trees on the opposite side of the road are unlikely to screen the site effectively in views further to the west during the winter months. There is little planting adjacent to the other site boundaries. As a result, the vehicles and trailer bodies are evident from adjacent land, their visual impact being exacerbated by the raised ground levels of the site. The visual presence of the vehicles and trailer bodies has created an appreciable sense of enclosure by obviously man-made features of varying size over extensive parts of the site. The frequency with which vehicles are present at the site means that the visual consequences of the use are likely to be evident for long periods. This is appreciably and noticeably different to the pre-existing situation, where there would have been an absence of man-made features above the site surface level in views from the surroundings.

13. As a result, the unauthorised use has also given rise to a significant and appreciable diminution in openness in visual terms. Illumination of parts of the site when vehicles are arriving, departing or manoeuvring in the hours of darkness, for example during the winter months in the early morning and late afternoon, is highly likely to add to the adverse visual impact of the unauthorised use in relation to openness. Limiting numbers of vehicles and trailers at the site, provision of earth bunds along the boundaries and landscape planting would not adequately offset the adverse visual effects of the unauthorised use in relation to openness identified above. Moreover, landscaping would make little difference in relation to the adverse effects of the unauthorised use on the spatial aspect of openness.

[4] *Euro Garages Ltd v SSCLG & Anor* [2018] EWHC 1753 (Admin).

14. Furthermore, when compared with the pre-existing situation, there has been a significant increase in the number of daily vehicular comings and goings at the site. Therefore, the unauthorised use has also resulted in a considerably greater sense of urbanisation at the site and in its environs, adding to the adverse effects on openness. In addition, by introducing an inherently urban activity to a location where open countryside separates the built-up part of Maple Cross from nearby settlements, the unauthorised use has also contributed to urban sprawl, it has resulted in encroachment into the countryside and there is failure to prevent neighbouring towns from merging. This conflicts with three of the purposes of including land within the Green Belt set out in paragraph 138 of the Framework.

15. For the above reasons, the unauthorised use constitutes inappropriate development in the Green Belt, being inconsistent with the Framework at paragraph 150 and failing to accord with CS Policy CP11. At paragraph 147, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I attach substantial weight to the harm to the Green Belt, in accordance with the Framework at paragraph 148.

Character and appearance

16. There are notable visual intrusions from urban forms of development and infrastructure in the vicinity of the site. Even so, the predominantly open and rural character of adjoining land, particularly to the east and south, where a wide valley slopes down towards the river Colne with woodland and lakes flanking its course, give the site and its environs definite rural visual qualities. The site surface possessed largely open and vegetated characteristics prior to the unauthorised use commencing. This meant that in both a visual and physical sense the site related well to its rural setting, the substantial boundary retaining walls notwithstanding. I understand that the site falls within the Maple Cross Slope Landscape Character Area (LCA), whilst land to the east is in the Colne Valley Gravel Pits LCA[5]. The LCA assessments reinforce my findings regarding the key visual qualities of the site and its surroundings.

17. The tractor units and trailer bodies, on account of their substantial size and overall height, together with their angular lines and often brightly coloured and reflective external finishes, are visually assertive features that individually and cumulatively fail to assimilate with the softer profiles and more muted, naturalistic colours associated with the largely rural background. Whilst the cars are smaller, similar considerations apply. The raised ground levels at the site further emphasise the visual impact of the vehicles and trailer bodies. As a result, the vehicles and trailer bodies appear as obvious, alien features and contribute significantly to the undermining of the visual qualities of the site and its environs. Although public views from beyond the site might be limited, that does not equate to an absence of adverse visual consequences.

18. Limiting the numbers of vehicles and trailers at the site would not sufficiently mitigate the visual harm identified above. Landscape planting and earth bunding adjacent to the boundaries would have the opposite effect of what is intended, by drawing attention to the unauthorised use and so would also not address the visual harm caused. In any event, the ability to screen an otherwise unacceptable development is not a good reason for granting permission, as it could be repeated too often.

19. Consequently, the unauthorised use significantly and harmfully detracts from the character and appearance of the site and that of the surrounding area. By not protecting the natural environment, the unauthorised use does not accord

[5] South Hertfordshire Landscape Character Assessment.

with criterion in CS Policy CP1, whilst the failure to have regard to the local context, to conserve the character and qualities of the area, or to conserve natural assets, does not accord with criteria in CS Policy CP12. By unacceptably harming the character of the landscape in terms of its siting, scale and external appearance, the unauthorised use also fails to accord with criterion in DMLDD Policy DM7. Moreover, by not conserving the natural environment, the unauthorised use is inconsistent with the Framework.

Other considerations

20. The site is located away from residential areas and is well-related to the primary road network. At paragraph 109, the Framework encourages provision of adequate overnight lorry parking facilities, taking into account any local shortages, to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance. The site is used solely for parking lorries operated by the appellant. The unauthorised use does not contribute towards meeting wider demand, locally or nationally, for lorry parking facilities. Any benefits offered by the unauthorised use in terms of providing parking and associated facilities for lorry drivers are in all probability limited. Consequently, this matter weighs only slightly in favour of granting permission.

21. The appellant, who specialises in the collection and delivery of soil, hardcore and other waste materials generated by construction activity, also operates from part of an adjacent compound. The appellant clearly plays a significant role in supporting the construction sector as well as generating a substantial amount of local employment. There are operational efficiencies in the appellant parking their vehicles and trailers adjacent to other land that they use. However, there is no firm evidence to indicate that the future viability of their business largely or solely depends on the proximity of the unauthorised use to the compound. In any event, as the business does not currently benefit from planning permission to use the compound, there is little certainty that it will continue to operate from there in future. Consequently, I attach limited weight to any economic benefits arising from the unauthorised use.

22. Other sites that are suitable and available to accommodate the unauthorised use might well be in limited supply. However, it is unlikely that the three alternative sites, which the appellant had all deemed unsuitable, represent the sum total of the commercial land that might be available for sale or rent in the immediate or wider area. No thorough, systematic assessment of such land being marketed throughout the wider area, which established its suitability or otherwise in terms of accommodating the unauthorised use, either separately or together with the rest of the business, has been undertaken. The licenced address of the vehicle operating centre and the proximity to employees' homes are not the only factors which should determine whether a site is suitable. As a result, based on the available evidence I am not persuaded that there are no suitable alternative locations available, or that none might reasonably become available, to accommodate the unauthorised use. It follows that this matter also carries limited weight.

23. There is no firm evidence to indicate that vehicles and trailer bodies would be parked along the private road if the use of the site ceased. Such parking is unlikely to be tolerated by the road owner. There might be an increase in incidences of such parking on other local roads, but for the most part this is likely to be impractical due to physical factors including the size of the vehicles and trailer bodies, the width and alignment of local roads and waiting restrictions. Also, the inherent lack of security in roadside parking is likely to make it an unattractive option. Consequently, this eventuality carries limited weight as a 'fallback' position.

24. The unauthorised use may well have discouraged other undesirable activities from occurring at the site, for example incidences of illegal encampments or fly tipping. Even so, this could apply equally in relation to almost any open land on the fringe of an urban area. There is no firm evidence of a significant increase in the risk of such activities occurring at the site. In particular, no recorded incidences of similar activities taking place at the site were drawn to my attention. Erecting enclosures or CCTV cameras is highly likely to afford a similar or greater level of deterrent as the unauthorised use, without the associated planning harm. As a result, any benefit offered in this respect carries little weight.

25. Nature conservation enhancements would provide a benefit but in the absence of further details and having regard to their likely relatively small scale, cannot be afforded more than limited weight. The absence of unacceptable harm to highway safety is a neutral factor which neither weighs in favour nor against granting permission.

Planning Balance

26. The unauthorised use constitutes inappropriate development in the Green Belt. The contribution to lorry parking facilities, to the local and wider economy and the other benefits are limited in scale, individually and in accumulation. Together with the other considerations, such benefits do not clearly outweigh the totality of the harm to the Green Belt and the harm to the character and appearance of the site and its surroundings. Accordingly, the very special circumstances necessary to justify granting permission for the unauthorised use do not exist.

Ground (a) conclusion

27. The unauthorised use does not accord with the Development Plan and is inconsistent with the Framework. Therefore, I conclude that the ground (a) appeal should not succeed.

Ground (f) appeal

28. The ground of appeal is that the requirements of the notice are excessive.

29. An enforcement notice can have two purposes. Firstly, it can seek to remedy the breach of planning control, including by restoring the land to its condition before the breach took place. Secondly, the notice can seek to remedy any injury to amenity caused by the breach. The notice requires nothing less than the total cessation of the unauthorised use and the removal from the site of all incidences of that use. Therefore, although it does not state as such, the purpose of the notice must be to remedy the breach.

30. Limiting vehicle numbers together with landscape planting, bunding and nature conservation enhancements are all matters dealt with on ground (a). Not removing all the vehicles and trailer bodies would mean that incidences of the unauthorised use would remain at the site. Therefore, the breach would not be remedied in its entirety, as the site would not be restored to its condition prior to the breach taking place. No alternatives that would remedy the breach whilst stopping short of what the notice requires were drawn to my attention and to my mind, there are none.

31. The notice requirements are therefore the minimum necessary to remedy the breach. The requirements are proportionate and are not excessive having regard to the purpose of the notice. The ground (f) appeal fails.

Ground (g) appeal

32. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.

33. The period between the issuing of the notice and the determination of this appeal has little bearing on the reasonableness of the time for compliance. What is relevant in this respect is the time after the notice takes effect. The appellant is entitled to assume that their ground (a) appeal will succeed. Therefore, in the context of the ground (g) appeal, whether any detailed search for alternative premises to accommodate the unauthorised use has previously been undertaken is of limited relevance.

34. Three months affords the appellant relatively little time in which to search for and secure alternative premises for the unauthorised use or, also bearing in mind the appellant's use of part of the adjacent compound, to relocate their operations as a whole. The appellant may need to obtain any necessary permissions or licences, whilst also continuing to fulfil any existing longer-term contracts and otherwise trying to maintain business and ensuring continuity of employment for a significant number of people. Six months strikes a more appropriate balance between ensuring that the planning harm identified is remedied as soon as is practicable whilst also minimising the disruptive effects on the business as far as is reasonably possible, thus avoiding imposing a disproportionate burden on the appellant.

35. Consequently, I conclude that the three month period specified in the notice is unreasonably short and that a reasonable period for compliance would be six months. The appeal under ground (g) succeeds to that extent.

Conclusion

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR