The Planning Inspectorate

Appeal Decision

Site visit made on 30 August 2022

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 28th September 2022

Appeal Ref: APP/M0655/C/22/3297338
Land to the south of Tughill Farm and Tughill Cottage, Laburnum Lane, Penketh, Warrington WA5 3AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr Rodney Owen of The Hayloft against an enforcement notice issued by Warrington Borough Council.
- The notice was issued on 11 March 2022.
- The breach of planning control as alleged in the notice is:
  Without planning permission, the material change in use of land from agriculture to a car park including the formation of hardstanding to facilitate the use.
- The requirements of the notice are:
  a) Cease the use of the land within the site edged red as a car parking area.
  b) Remove all areas of hardstanding within the approximate area shaded blue within the site edged red.
  c) After completion of requirement b) reinstate the area of land subject to removal of the hardstanding by spreading a layer of topsoil and seeding it with a suitable grass seed mix so as to achieve a vegetated cover.
- The period for compliance with the requirements is:
  a) and b) -one calendar month
  c) – two calendar months
- The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act. 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 1990 Act.

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

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.

2. The scope of the requirements of the enforcement notice is limited by section 173(4)(a) and (b) of the 1990 Act. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition.

3. Taking into account the above, the wording *'by spreading a layer of topsoil and seeding it with a suitable grass seed mix so as to achieve a vegetated cover'* of requirement c) could result in an improvement to the previous condition. The aerial photographs submitted by the Council indicate that the area where the breach of planning control has occurred was planted with crops in 2016. I have little evidence to clarify what the condition of the land was immediately prior to

the breach occurring. However, the appellant would be likely to have the best knowledge of what that condition was. As such, to ensure clarity and that this requirement does not extend beyond the limits of section 173(4)(a) and (b) of the 1990 Act I intend to delete the words '*spreading a layer of topsoil and seeding it with a suitable grass seed mix so as to achieve a vegetated cover'* and substitute it with *'by restoring it to its previous condition prior to the breach occurring*'. I am satisfied that I can make these corrections without injustice to either of the parties since the terms and effect of the enforcement notice would be unchanged.

Preliminary Matters

4. The appellant has only made an appeal on ground (a) that planning permission ought to be granted for the development. However, within his final comments he has stated that *'the principal use of the hardstanding is to support the agricultural use of Tughill Farm'.* That statement could be treated as being pertinent to a ground (c) appeal, those matters (if they occurred) do not constitute a breach of planning control. However, other than that statement there is no evidence before me to indicate that the development does not constitute a breach of planning control. As such, I do not consider that it is reasonable to treat it as constituting a ground (c) appeal.

The ground (a) appeal and deemed planning application

Main Issues

5. The main issues are:

- Whether the development constitutes inappropriate development in the Green Belt, having regard to the effect on the openness and purposes of the Green Belt, the development plan and the National Planning Policy Framework (the Framework);
- The effect of the development on the character and appearance of the area;
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, whether this amounts to the very special circumstances required to justify the development.

Reasons

6. The appeal site comprises an irregular shaped piece of land between Sandy Lane and Laburnum Lane. Sandy Lane changes to Laburnum Lane after 2 approximately 90-degree bends close to the appeal site. A roughly rectangular area has been formed by the laying of a hardstanding within the appeal site (the appeal site hardstanding). This hardstanding appears to comprise consolidated hardcore and is part of a larger hardstanding that is adjacent to The Hayloft, a café and events venue. The Hayloft and the remainder of the hardstanding is not within the boundary of the Council's area as it is within that covered by St. Helen's Borough Council (the adjoining Council). There is a small group of properties near to the bends in the lanes.

Whether the development constitutes inappropriate development

7. Policy CS5 of the Local Plan Core Strategy (2014) (the CS) states, amongst other things, that development proposals within the Green Belt will be approved where they accord with relevant national policy. Paragraph 150 of

the Framework states that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. It goes onto state that these are b) engineering operations and e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). There is no dispute that the creation of the hardstanding constitutes an engineering operation. I acknowledge that the use as a carpark is not highlighted within paragraph 150 e) of the Framework. However, in my judgement, the words *'such as'* indicate the cited list is not inclusive and that other changes of use may be treated as not being inappropriate development if they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

8. The evidence before me indicates that prior to the car parking use commencing the area where the appeal site hardstanding has been laid formed part of an agricultural field. There is little evidence to indicate that the contours and ground levels of the appeal site have been substantially altered by the development. Consequently, due to the nature of the physical changes to the appeal site in these respects the laying of the appeal site hardstanding has a limited spatial impact on the openness of the Green Belt.

9. The appellant has stated that the appeal site hardstanding has been constructed to provide an overflow parking area and that it is only used intermittently when required due to a seasonal event on limited days in the year. Nevertheless, I observed that there is no boundary treatment within the overall carparking area to demarcate or restrict entry to any parts of that car park. Additionally, at the time of my site visit (middle of the day) there were around 30 vehicles within the overall carpark – some of those vehicles being parked on the appeal site hardstanding. There did not appear to be a specific event on at The Hayloft during my visit but there was a miniature railway running, a maize maze was adjacent to it and the café appeared to be open. I acknowledge that my observations only provide a snapshot in time and that the visit was undertaken during the summer school holidays. But the aerial photographs submitted by the Council also indicate that in September 2019 and April 2021 the appeal site hardstanding had a number of cars parked on it.

10. As such, it is highly likely that vehicles are parked on the appeal site hardstanding, when the Hayloft is open for business, for large parts of the day. Parking spaces are not formally laid out on any parts of the overall carpark but a significant number of cars can be parked, on the appeal site hardstanding, with circulation space around them. The parking of that many vehicles for large parts of the day will have had a spatial impact on the openness of the Green Belt as a matter of fact.

11. However, openness also has a visual dimension. I accept that the appeal site hardstanding is viewed as part of the overall hardstanding that is associated with The Hayloft and that a planning application[1] *for 'external alterations and change of use of existing barn to a wedding ceremony, retrospective consent for the change of use of the café to a mixed use café and events reception, along with alterations to car parking to include additional parking spaces (change of use land) and associated planting'* has been submitted to the adjoining Council. But the evidence before me indicates that this planning application (the 2021 application) has yet to be determined. In addition

[1] Ref No: P/2021/0070/FUL

planning permission was granted in 2015 and 2018 for the use of The Hayloft as a café, the change of use of the farmyard for visitor's car park and an extension to that café.

12. There is built development, close to the bends in the lanes, that bounds the appeal site and there are substantial building developments visible, in the distance, from the appeal site. Nevertheless, in the immediate vicinity of the development there are fields/paddocks and Sandy/Laburnum Lanes are mainly bounded by hedges and trees. In combination those hedges and trees, the fields/paddocks and the narrow width of Sandy/Laburnum Lanes impart a rural, countryside character to this part of the Green Belt.

13. I accept that, the appeal site hardstanding is an appreciable distance from Sandy/Laburnum Lanes and that there are a number of mature trees adjacent to the nearest bend, to that hardstanding. These trees help to soften the visual impact of the development from those lanes when approaching from a northerly direction. Moreover, the buildings associated with The Hayloft largely screen views of the development from Sandy Lane when approaching from the west. Nevertheless, I observed that when approaching The Hayloft along Laburnum Lane the vehicles parked on the appeal site hardstanding are readily apparent in views from that lane. I acknowledge that, when approaching from that direction the hardstanding and vehicles are seen in the context of the remainder of the carparking area and buildings associated with The Hayloft. Still, the laying of the appeal site hardstanding and the cars parked on it to the rear of the properties on Laburnum Lane noticeably draws attention to this parking area and emphasises its urbanising effect to pedestrians and occupiers of vehicles when approaching from the east. Furthermore, as stated, previously it is highly likely that vehicles are parked on the appeal site hardstanding, when the Hayloft is open for business, for large parts of the day.

14. Consequently, the development has had a harmful visual impact on the openness of the Green Belt. Whilst, that visual impact is limited and localised, I have also found that there has been a spatial impact. Overall, in my judgement, there has been a limited harmful impact on the openness of the Green Belt, therefore that openness is not preserved. As a result, the development amounts to inappropriate development in the Green Belt when considered against paragraph 150 of the Framework. Given the urbanising effect of the development I further find that the development conflicts, to a limited degree, with the purposes of including land within the Green Belt which include assisting in safeguarding the countryside from encroachment.

The effect on the character and appearance of the area

15. I have found above that the combination of a number of factors including hedges and trees bounding the lanes, the narrow width of those lanes and fields/paddocks imparts a rural, countryside character to the immediate vicinity of the development. Moreover, taking into account all of the above, the laying of the appeal site hardstanding and the cars parked on it to the rear of the properties on Laburnum Lane noticeably draws attention to this parking area and emphasises its urbanising effect to pedestrians and occupiers of vehicles when approaching from the east. Furthermore, as stated, previously it is highly likely that vehicles are parked on the appeal site hardstanding, when the Hayloft is open for business, for large parts of the day.

16. There is no evidence before me to indicate whether additional landscaping in the form of hedges and/or trees would be appropriate to soften/mitigate the

urbanising effect of the development. Moreover, when that landscaping was not in full leaf the parking area would be visible from Laburnum Lane.

17. Therefore, the change of use to a carpark facilitated by the laying of the appeal hardstanding has had a limited and localised harmful effect on the character of the surrounding area. It follows that it conflicts with CS Policy QE7 which, amongst other things, states that the Council will look positively upon proposals that are designed to enhance the character and appearance of the local area.

Other considerations

18. The appellant considers that the development supports agriculture and the diversification of the rural economy for business and leisure uses. I acknowledge that The Hayloft as a café and events venue appears to diversify and support the local rural economy. I also agree that if excessive parking occurred on the unrestricted grass verges of Sandy and Laburnum Lane that this could impact negatively on local residents and obstruct traffic to some extent. Yet, there is little evidence before me to indicate that, without the car parking area on the appeal hardstanding, excessive parking would occur on those lanes and verges. Moreover, the evidence before me indicates that the 2021 application submitted to the adjoining Council does not include the appeal hardstanding within its application site. As such, these considerations have modest weight in support of the development.

19. The appellant has also stated that the principal use of the hardstanding is to support the agricultural use of Tughill Farm and that the removal of the hardstanding would negatively impact on the operations of the farm. However, there is no evidence before me that the appeal site hardstanding is reasonably necessary for the purposes of agriculture and/or how its removal would negatively impact the operations of the farm. Additionally, I cannot be satisfied that if the appeal is dismissed that a hardstanding for the purposes of agriculture is likely to be constructed on the appeal site. Consequently, this matter attracts little weight in support of the development.

20. It is reasonable to consider that the reference, by the appellant, to a restriction on the use of the hardstanding for overflow carparking is suggesting that a condition, could be attached to the deemed planning permission, restricting its use. However, the deemed planning application is *for 'the material change in use of land from agriculture to a carpark'*. Whilst it also includes *'the formation of hardstanding'* the description makes it apparent that the latter is to facilitate the material change in use. Therefore, such a condition would effectively nullify the granting of the planning permission and it would not meet the test of reasonableness. As such, this matter has little weight.

Other matters

21. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.

Planning balance

22. 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. Paragraph 148 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other

harm are clearly outweighed by other considerations. I acknowledge that other considerations do not have to be rare or uncommon to be special.

23. I have found that the development results in limited harm and does not preserve the openness of the Green Belt, that it is in conflict with one of the purposes of including land within the Green Belt and that it is inappropriate development. I attach substantial weight to that harm. I have also found that the development results in limited and localised harm to the character and appearance of the area.

24. Against the totality of this harm there are other considerations which I have set out above and carry weight in support of the development. For the reasons given above, I find that the other considerations do not, either individually or cumulatively, clearly outweigh the totality of the harm to the Green Belt and the other harm identified above. Consequently, the very special circumstances necessary to justify the development do not exist. Furthermore, the development conflicts with CS Policies CS5 and QE7. It also conflicts with CS Policies CC2 and CS1 which, amongst other things, state that development proposals in the countryside which accord with Green Belt policies set out in national planning policy will be supported and to be sustainable, development must accord with national and local planning policy frameworks, taking into account other material considerations, and must, have regard to the priority afforded to the protection of the Green Belt and the character of the countryside. With regard to paragraph 219 of the Framework these policies are consistent with the Framework and the conflict with them has full weight. The development is contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined other than in accordance with the development plan.

Conclusion

25. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed. I shall refuse to grant planning permission on the deemed application.

Formal Decision

26. It is directed that the enforcement notice is corrected by:

    - deleting the words '*spreading a layer of topsoil and seeding it with a suitable grass seed mix so as to achieve a vegetated cover*' and substitute them with '*by restoring it to its previous condition prior to the breach occurring*'.

    Subject to the corrections 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.

D Boffin

INSPECTOR