



Appeal Decision

Site visit made on 16 August 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

Appeal Ref: APP/W1525/C/21/3277776

Land adjacent to Redwings, Woodham Road, Battlesbridge, Wickford, Essex SS11 7QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made Trade Price Cars Limited against an enforcement notice issued by Chelmsford City Council.
- The enforcement notice was issued on 18 May 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land for the sale and storage of motor vehicles with associated development comprising the construction of a hard surface, earth bunds, perimeter fence and entrance gates.
- The requirements of the notice are to:
 - 1) Cease use of the land for the sale and storage of motor vehicles.
 - 2) Remove from the land all motor vehicles, machinery, plant, portakabins and any other item not used in connection with the lawful use of the land for agriculture.
 - 3) Break up and/or scrape clear from the earth the hard surface that has been constructed.
 - 4) Remove the earth bunds that have been formed along the boundaries to the land.
 - 5) Demolish the perimeter fence and entrance gates.
 - 6) Remove from the land all debris and materials resulting from the works carried out in steps 2), 3), 4) and 5).
 - 7) Restore the land to its pre-development condition by seeding it with grass seed.
- The period for compliance with the requirements is within six months from the effective date of the notice.
- The appeal is proceeding on the ground set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of Decision

1. The appeal is dismissed, the enforcement notice is varied, but upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Matters concerning the enforcement notice

2. Requirement 7, whilst its purpose is clear, is too vague. The wording "*seeding it with grass seed*" without anything more specific may go beyond what would be the land's restoration to its pre-development condition. Besides, grass seed comes in many varieties and the legislation stipulates that an enforcement notice cannot impose a positive requirement on the recipient. As the requirement, therefore, does not and cannot take the form of a planning condition with the approval of details I shall delete the said wording at issue.

Background

3. The site, formerly a piece of agricultural land, lies within the Metropolitan Green Belt. The appeal site is sandwiched between the Ivanhurst Industrial Estate to the east and a commercial cattery to the west. In addition to a number of residential dwellings there are also some horticultural uses present in the locality.
4. For some eight years, up until January 2021 Daniel Kirby, trading as Trade Price Cars Ltd (the appellant), had been trading lawfully from the neighbouring site, Ivanhurst which is a piece of land in a longstanding use for business/commercial purposes. I understand that, due to a dispute with the landlord, the firm then had to vacate the site.
5. The Council indicates that until early 2021, the appeal site was an undeveloped green field. A pre-application advice request was then made to the Council in March 2021 regarding the use of the land for car sales. In responding, the Council discouraged the car sales uses saying that the intended use was unacceptable and could not be supported.
6. However, notwithstanding the advice given, in order to ensure the continuation of the business, Mr Kirby purchased the appeal site, laid an extensive area of gravelled hard-core, erected a series of portacabins on the land, and commenced using the open land for the storage and parking of motor vehicles. Initially there were approximately 150 cars stationed on the land, but this appears to have now increased.
7. In the circumstances the Council saw fit to issue an enforcement notice and, although it is not necessarily material to this appeal, served a Temporary Stop Notice in an attempt to secure the cessation of the use.
8. From my site visit observations it is clear that the use is an intensive one, with over 50 staff employed at the site. There are also a number of direct suppliers who rely on the business.

The Appeals on Ground (a) and the Deemed Planning Application

Main Issues

9. The main issues in this appeal are:
 - 1) whether the development constitutes inappropriate development in the Green Belt and, if so, the effect on the Green Belt's openness;
 - 2) the effect of the development on the character of the land and the surrounding landscape; and
 - 3) if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Whether inappropriate development, and the Green Belt's openness

10. Accessed directly off Woodham Road, the site is securely gated. The cars are largely stored throughout the centre and towards the right hand side of the site with a series of customer/staff parking bays against the common boundary

with the cattery to the site's left. A cleared area between serves as a driveway to the rear of the site, which opens up into a L-shape. The portacabins are set back some distance into the site, but are visible to passers-by along Woodham Road.

11. Paragraph 147 of the National Planning Policy Framework (the Framework) says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 150 of the Framework says that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within the Green Belt. In terms of new buildings erected, paragraph 149 indicates that the construction of new buildings in the Green Belt is inappropriate development, unless it is for one of a number of specified purposes, as set out in the paragraph; one of these being *'limited infilling in villages'*.

12. The appellant's representations have targeted this exception, suggesting that the site falls within a "village" or rather *"has the characteristics of a village"*, and the site represents a small gap in an otherwise built-up frontage. In paragraph 5.9 of the appellant's Written Statement it is stated:

"Infill development need not be residential, and can take its cue from other developments which characterise the area."

13. Further, the appellant goes on to assert that engineering operations such as hardsurfacing would not be inappropriate development where openness is preserved, and also that the buildings on the site are *'modestly scaled'*.

14. Firstly, due to the classified Woodham Road and the pattern of development alongside, I am not convinced that the appeal site lies within a village. It is also clear from the above that the appellant does not wish to address the purpose of the hardstanding and portacabins brought onto the land. These developments exist to facilitate the storage and sale of motor vehicles, of which there are many parked in rows within this substantially sized site.

15. Relating to the above the explanatory text to policy DM9 of the Chelmsford Local Plan (LP) says infilling is defined as filling the small gaps within existing groups of dwellings or buildings. It goes on to say that the Council will carefully assess the impact of any proposals for residential infilling to ensure that gaps in the development pattern which positively contribute to the existing setting of a hamlet or group of dwellings are not lost. Within the Green Belt, the proposal should be within a village in order to be consistent with the Framework, and the site context may only be considered as a village where there is a consolidated group of residential properties and not a dispersed settlement pattern.

16. With the above in mind, and the fact that the site opens out into a substantially sized L shaped plot of land, I must disagree with the appellant's stance that the appeal development could be considered as a form of infilling which might constitute development that would not be inappropriate within the Green Belt. To illustrate this further policy DM9 itself says that planning permission will be granted for infilling in the Green Belt, subject to a series of provisos, which must all be satisfied if the policy is to be met. These are that the site should be within a village, it must be a small gap in an otherwise built-up frontage, the infilling should be limited so as not to impact unacceptably on the function

and purpose of the Green Belt and the development does not detract from the existing character or appearance of the area.

17. In this context, although I acknowledge the two examples provided by the appellant of infilling along Woodham Road, these relate to a few new housing units at the nearby sites of Oaks Cottage and land adjacent to Highview. For the reasons stated, the appeal use and its associated development cannot be so categorised.
18. The aims and requirements of policy DM9 are clearly not met by the appeal use and the current use of the land and the associated buildings erected do not fall within any of the stated exceptions in paragraphs 149 and 150. In light of the circumstances I have described, the development does not meet any of the exceptions set out in the Framework. Given this, I conclude that the use, the facilitative office buildings and hard-surfacing laid all constitute inappropriate development, which is, by definition, harmful to the Green Belt.
19. Paragraph 148 indicates that the decision maker should ensure that substantial weight is given to any harm to the Green Belt. Also, the very special circumstances that must be demonstrated will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting, is clearly outweighed by other considerations.
20. The next point to examine is whether the development at appeal is harmful to the openness of the Green Belt. The Framework states that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land within them permanently open.
21. Openness in terms of the Green Belt, which is recognised as relating to the absence of built form, can have a spatial as well as a visual aspect, although the Supreme Court has held that a consideration of openness is essentially a matter for the decision maker on a case by case basis. The open storage of vehicles on such a sizeable site has resulted in a significant change of character, and this is only accentuated by the portacabin buildings and also the swathe of gravelled hard-surfacing.
22. To illustrate, in the judgement of *John Turner v Secretary of State for Communities and Local Government*, heard in the Court of Appeal, it was said that the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if development occurs and also factors relevant to the visual impact on the aspect of openness which the Green Belt presents. A 2020 judgement (*Samuel Smith Old Brewery and others v North Yorkshire CC*) concluded that matters relevant to openness in any particular case are a matter of planning assessment, so whilst visual impact can be relevant to openness it is not necessarily relevant in all cases.
23. The appellant has provided a Landscape and Visual Impact Appraisal (LVIA), but this does not relate to maintaining the openness of the Green Belt, as it is instead more concerned with vegetative screening which does not itself mitigate against the use's adverse impact on the Green Belt's openness.

24. In both spatial and visual terms the development has a significant impact on the openness of the Green Belt. As such, the proposal fails to safeguard the countryside from encroachment, one of the five purposes of the Green Belt, and does not comply with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open.
25. A vehicle sale and display use along with its attendant ancillary activity is difficult to regulate in terms of an ordered arrangement. Such an operation represents an intensive use of the land, with the open storage being visually intrusive, uncharacteristic and contrary to the purposes of the Green Belt. No proposals in this regard are before me as regards the potential for effective mitigation.
26. Reinforced by examining the aerial photographs provided I therefore find that the development enforced against has given rise to a material loss of openness to the Green Belt, with a greatly increased deleterious impact from that which was previously was the case. Such consequential harm to the Green Belt is further compounded by the associated buildings and gravelled hardsurfacing.
27. As it stands the cessation of the use and the removal of the associated development would allow for a marked difference in the character of the land, irrespective of other established commercial operations in the locality. Indeed, existing lawful commercial uses, or perhaps those now immune from enforcement action, whilst material considerations, do not give significant weight to the development securing a retrospective planning permission. In essence, such a use is much more suited to an urban location or rather, as the Council indicates, an industrial estate.
28. I therefore conclude that the use, its associated buildings fixtures and fittings, constitute inappropriate development in the Green Belt. Further, it cannot be seen as preserving the openness of the Green Belt. Accordingly, I find the development to be in material conflict with the Framework's objectives and harmful to the openness of the Green Belt

Landscape and Character

29. As mentioned, this stretch of Woodham Road is of mixed residential and commercial character. The LVIA mentions a belt of dense vegetation on the site's southern boundary and refers to different viewpoints along Woodham Road with what it considers are views with moderate value and a medium susceptibility to change where it forms part of the immediate area's setting. The assessment recommends the implementation of a landscaping and planting scheme comprising native tree and hedgerow planting and, on this basis, concludes there would be no notable change to these views from the development. Whilst I acknowledge the above assertions, supported by the illustrative photographs, the use is still visible from the point of access. Besides any such screening measures employed do not circumvent the impact on the Green Belt's openness, which I consider is the overriding factor here.

Other considerations

30. The appellant has drawn to my attention policy S8 'Delivering Economic Growth' of the Local Plan. This says that the Council will make provision for flexible and market responsive allocations of employment land to assist the Council's economic prosperity. However, the appeal site is not an allocated

employment site and I have seen no compelling evidence to suggest that this former agricultural site could be considered as a pocket of previously developed, or brownfield, land.

31. I note the appellant's point that there was no alternative, at least in the short term, to moving the business from the neighbouring Ivanhurst site, to the appeal site in order to ensure the business' continuation. I also sympathise in that, despite contact made with the Council's Economic Development Department, it did not prove possible to assist with relocation.
32. The appellant has provided letters of support and also a petition with many signatories to this effect, and I have given these due regard which, I discuss in the Planning Balance section and also text under the Ground (g) appeal along with the employment implications.
33. I note that the appellant has provided e-mails detailing dialogue with the Council subsequent to the use commencing. However, procedural issues and grievances in this regard must remain a matter between the two main parties. My remit is limited to assess the development with respect to the planning merits and/or impacts resulting from the development.

Planning Balance

34. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
35. I have taken into account that Trade Price Cars employs some 54 persons and there are additional staff from suppliers who would be implicated should the business be discontinued. Clearly, therefore, the use holds economic benefits, and there is considerable support for its continuation. The letters received and the number of signatories on the petition is testament to this.
36. The current use is inappropriate development within the Green Belt which is greatly compounded by such an intensive degree of vehicle storage at the site. Indeed, I feel that the requirements of the operation go beyond what is proportionate to the size of the site and its particular constraints.
37. Accordingly, whilst I have balanced the economic factors with the harm to the Green Belt I am not convinced from the evidence and the business's nature that the use could be effectively conditioned so as to restrict the number of vehicles stored without what would effectively amount to a restraint of trade. It is a difficult use to regulate or thereafter enforce, and any Council officials monitoring the use's intensity would be inhibited by the site being gated and fenced. Given this, I consider that a temporary permission, which would require a series of restrictive conditions to be satisfied, would necessitate considerable short term expense with no long term gain to the business.
38. I conclude that this inappropriate development in the Green Belt, for the purposes of the Framework, with the consequent adverse effects of the use and its facilitative buildings on the openness of the Green Belt, would not help secure the objectives of improving the Green Belt, as set out in national guidance and is thereby unacceptable. As such, the development is in material

conflict with the relevant advice in paragraphs 147, 148, 149 and 150 of the Framework and LP policies S1, S11, DM9, DM10 and DM23.

39. For the above reasons, and the fact that the very special circumstances necessary to outweigh the policy objection have not been demonstrated, and having also had regard to all matters raised, the appeal fails and the planning application deemed to have been made under section 177(5) of the 1990 Act as amended is refused.

The Appeal on Ground (g)

40. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The enforcement notice, as corrected, requires amongst other things, the cessation of the use and the removal of all facilitative buildings, structures and associated installations within six months of it taking effect. The appellant considers instead that a period of twelve months would be more reasonable.
41. Given the fact that Trade Price Cars employs over 50 persons at the site, being mindful of the current precarious economic situation, and the extent of the remedial works involved I find the stated period of six months is unreasonable and unrealistic, and without full forethought as to the implications of such, both practicably and humanely. The firm's survival could be at risk along with the livelihoods of all its employees threatened, and not just those employed at the site itself.
42. In appealing the enforcement notice issued the appellant must reasonably have had some expectation that the appeal would be successful in that the economic consequences might have outweighed both national and local planning policies. I have found otherwise and, although I accept that the use has already continued at the site since the spring of 2021, I shall extend the compliance period from six to nine months. This might allow for further meaningful dialogue to take place between the two main parties as to possible relocation to a better suited site, for other enquiries that might prove necessary, and also in the interests of the welfare of the staff employed at the site.
43. In extending the compliance period I have taken into account that, apart from vehicles at seemingly infrequent times entering and leaving the site, the business is by and large a passive use. In this respect, although neither highway safety nor impact on the living conditions of neighbouring occupiers were put forward by the Council as particular reasons for issuing the enforcement notice, the Council's representations in response to the appeal, indicate that the commercial use is not compatible with neighbouring residential uses. However, as mentioned, although there are a number of houses set in large plots set back off this stretch of Woodham Road, the immediate neighbours are commercial in nature, and there are other such business uses on both sides of the road.
44. At my site visit I did not witness any external lighting columns that might give rise to light pollution to the potential detriment of neighbouring occupiers. I have given due regard to the various concerns raised in this respect and, in reaching my decision on this particular ground, I have weighed up and balanced the particular arguments. In the circumstances I am satisfied that such an extension is justified in this instance.

45. Accordingly, I consider that the appeal on ground (g) should succeed to that extent and I shall vary the terms of the notice to allow a compliance period of nine months from the date the notice takes effect.
46. Should the appellant secure alternative premises, but perhaps find it contractually necessary to slightly extend the compliance period then the Council does hold discretionary powers in this respect. However, that would be a decision for the Council to make should such a scenario arise.

Overall Conclusion

47. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation, as described, and refuse to grant planning permission on the deemed application.

Formal Decision

48. It is directed that the enforcement notice be varied by, in Requirement 7, deleting the wording "by seeding it with grass seed" and increasing the period for compliance from six to nine months. Subject to these variations 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 mended.

Timothy C King

INSPECTOR