
Appeal Decision

Hearing held on 7 February 2023

Site visit made on 7 February 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Appeal Ref: APP/U5930/C/21/3272402

Land to the north-east side of Harbet Road, London E4 8QB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by A2Z Building Supplies Limited against an enforcement notice issued by Waltham Forest London Borough Council.
- The notice was issued on 5 March 2021.
- The breach of planning control as alleged in the notice is without planning permission:
(1) The material change of use of the land from open scrub and grass land on undeveloped Green Belt land to use as a depot for parking motor vehicles including (HGVs) heavy goods vehicles (Use Class sui generis); and (2) The following operational development which facilitates the unauthorised material change of use: The erection of a single storey portacabin and the laying of a hardstanding.
- The requirements of the notice are to: (1) Cease the use of the land as a depot for parking all types of motor vehicles, including HGVs (sui generis use); (2) Remove all types of motor vehicles and HGVs parked on the land to facilitate the sui generis use; (3) Permanently remove (or demolish) the single storey portacabin which facilitates the unauthorised change of use from the land; (4) Remove all resulting fixtures and fittings, materials and general detritus from the land following compliance with 1–3; (5) Remove the hardstanding from the land; (6) Following compliance with 5, remove all of the hard-core aggregate and materials used to form the hardstanding; (7) Following compliance with 6, reseed the entire area of land with grass seed; (8) Remove all associated structures which facilitate the unauthorised change of use such as the three boundary lamp posts, one tank, stand-alone storage containers, an on-site temporary light stand, four fixed CCTV cameras and six fixed lights attached to the portacabin; and (9) Restore the land to its authorised use and condition before the breach took place.
- The period for compliance with the requirements is: Within 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the 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 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation in the terms set out below in the Formal Decision.

The Notice

1. The allegation is a material change of use from "open scrub and grass land on undeveloped Green Belt land" but it is agreed that this does not describe a use of land. While it may be helpful for a notice alleging a material change of use to identify the previous use of that land, it is not essential, and I am satisfied the notice may be corrected accordingly without injustice.
2. For the same reason, step (9) should be varied to only require restoration of the land to its condition before the breach took place.

The appeal on ground (d)

3. To succeed on this ground, an appellant must demonstrate, on the balance of probability, that development the subject of the notice is immune from enforcement action by reason of passage of time. No such claim is made in respect of the use of the land, so this ground of appeal is restricted to the erection of a single storey portacabin and the laying of a hardstanding.
4. The appellant contends those aspects of the breach should be considered as operational development independent of the change of use. If that were so, either would be immune from enforcement action if it can be shown that it was substantially completed on or before 5 March 2017, 4 years before the notice was issued.
5. The Council accepts the portacabin was erected in 2016 and considers the hardstanding was laid in the same year. However, it contends that the notice may reasonably require both to be removed because they facilitate the unauthorised material change of use.
6. The material change of use to a depot for parking motor vehicles including HGVs ("depot use") was instituted in 2016 by Pointbid Logistics Services Limited ("PLSL"). It is agreed the depot use is not immune from enforcement action because it was not instituted on or before 5 March 2011, 10 years before the notice was issued.

The hardstanding

7. PLSL had 580 tonnes of hardcore laid on the land in March 2016 and the appellant describes this as a repair to a hardstanding that already existed. While the appellant contends that laying this material was not the formation of a hardstanding, that seems to be a reasonable description of what might be achieved when a large quantity of hardcore is spread and compacted. Nevertheless, it will be necessary to consider whether a hardstanding, which may have needed repair, already existed at that time.
8. The courts have determined that a notice attacking a material change of use may reasonably require the removal of operational development that is part and parcel of that change of use¹. In this case, it has not been shown that PLSL had the hardcore laid on the land for any purpose other than to facilitate the depot use that it instituted around the same time.
9. However, if the appellant is correct that there had been a hardstanding on the site before PLSL began the depot use, the notice should not require removal of material that pre-dates the change of use. References are made to use of the land during construction of the North Circular Road (A406) in the 1960s, by Thames Water and, in the 1990s, by British Gas under licence from Thames Water, but there is no evidence of a hardstanding at those times. I note reference to the site being used as a landfill during construction of the A406, but there is no information about what material was deposited then, or whether it constituted a hardstanding or was capable of functioning as such.
10. A receipt from 2010 confirms "clearance of brambles, trees mulch on site and spread inside boundary fence. Level ground to a suitable level for traffic to pass

¹ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

across". However, this does not include laying a hardstanding and instead implies regrading of existing materials.

11. A ground investigation of the site, carried out in September 2012, records between 30 and 170cm, generally 90 to 100cm, of "made ground" in 8 trial pits. This made ground includes some inert materials that may be used when forming a hardstanding, such as gravel, bricks, and fragments of brick, thermalite block, slate, tile, concrete and clay pipe. However, it also includes grass, topsoil, sand, clay, metal, rope and wire and those materials are unlikely to be used to form a hardstanding. Critically, the proportions of the various materials are not recorded, so it has not been shown that the composition of the made ground constituted a hardstanding or could function as such.
12. It has therefore not been demonstrated, on the balance of probability, that a hardstanding was laid on the land other than to facilitate the depot use instituted in 2016. It follows that step 6 of the notice does not require anything more than the 580 tonnes of hardcore that were deposited then to be removed.

The portacabin

13. It is agreed this was on site before 6 March 2016 and the appellant contends it was erected, by PLSL, in January of that year. However, it is claimed that it serves more than one purpose and is therefore not part and parcel of the depot use. The building provides welfare facilities for drivers operating for PLSL and engineers working on the company's vehicles, and those aspects of its use are clearly part and parcel of the depot use.
14. The other identified purpose of the portacabin is for site security, although it is not clear how that may be distinguished from PLSL's operational security needs as occupier of the site. In any event, any site-specific security purpose is additional to the portacabin's welfare functions, which are inseparable from the depot use. I was advised there had been unauthorised entry and fly-tipping in the past and that, prior to PLSL's occupation, another cabin had been used purely for site security purposes. While I have no reason to doubt what I was told, it is far from clear how site security could be viewed as a separate matter from PLSL's operational security needs or, if it could, that it is the primary purpose of the portacabin.
15. It has therefore not been demonstrated, on the balance of probability, that the portacabin serves any purpose that may be separated from the depot use.

Conclusion on ground (d)

16. For these reasons the laying of the hardstanding and the erection of the portacabin are matters that are part and parcel of the depot use, which was not instituted on or before 5 March 2011. Accordingly, they are not immune from enforcement action and the appeal on ground (d) must fail.

The appeal on ground (a)

17. The main issues in this ground of appeal are:
 - Whether the depot use is inappropriate development in the Green Belt ("the GB").
 - Its effects on the openness and purposes of including land in the GB.

- Its effect on biodiversity interest.
- Flood risk.
- If the depot use 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 required to justify the proposal.

Reasons

Whether the depot use is inappropriate development

18. Paragraph 150 of the National Planning Policy Framework (“the Framework”) states that certain forms of development, other than the construction of buildings, are not inappropriate in the GB provided they preserve its openness and do not conflict with the purposes of including land within it. This includes, at (e), material changes in the use of land “such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds”.
19. The words “such as” indicate that the listed uses may not be the only ones that are not inappropriate in the GB. However, they also indicate that, to be found not inappropriate, other uses must be comparable. The examples listed in paragraph 150(e) may be defined by the presence of green infrastructure throughout the site, whether it is grassland or landscape planting, the relative absence of tall items and low levels of activity. In contrast, the depot use involves tall vehicle trailers being placed on the land and considerable activity as they are brought on and off the site and manoeuvred within it. Furthermore, while there is green infrastructure around the edges of the site, this is outside the security fence and absent from the main body of the site.
20. For these reasons, the depot use is significantly different in character from the limited examples in paragraph 150(e). It is therefore inappropriate development and, by definition, harmful to the GB.

The effect on the openness and purposes of including land in the GB

21. While the appellant argues that the principle of the land being used for the storage of vehicles is well-established, the only evidence pre-dating PLSL’s occupation is an unimplemented permission for use as a car storage site for 12 months². Accordingly, and having regard to the site’s planning history, no lawful or authorised use of the land has been identified.
22. The land does not meet the Framework’s definition of previously developed land, because it is not and has not been occupied by a permanent structure. While I note the existence of a large advertising hoarding, it only accounts for a small part of the site and therefore does not occupy it. Similarly, while the security fence and gates stand within the site, they do not occupy it.
23. The appellant contends the site is better related to adjacent industrial land than the GB and that previous assessments that it performs poorly in GB terms should be taken into consideration.
24. The Council commissioned an assessment of GB land within the Borough against the purposes of including land in the GB in 2015. This concluded that

² 151593/FUL, granted 21 August 2015

the appeal site performed relatively poorly compared with other sites. I understand that assessment informed pre-application advice concerning the appeal site given in 2018 and that the Council commissioned a further assessment in 2019. However, I have only been presented with a study specific to the site, commissioned by a prospective occupier, from 2019, not a Borough-wide assessment.

25. The assessments commissioned by the Council were in the context of potential GB releases through the local plan process, but no such release has been progressed since. Outside of the local plan process, and in the context of a specific planning application, it would be fundamentally wrong to place greater emphasis on the perceived quality of the land than the effect of the development in question.
26. Given the absence of an authorised or lawful use of the site, the only alternative to the depot use is a nil use. If unused, the site would be inactive and appear open, notwithstanding the boundary fence and gates and the advertising hoarding. In contrast, the depot use entails large items, primarily HGV trailers, being on the land and that is harmful to the openness of the GB, certainly in visual terms.
27. I have considered a document written by Christopher Young KC, concerning sites in other parts of the country where residential development was proposed on GB land. However, I do not find it particularly helpful in this instance because limited comparison can be made with the facts of this appeal.
28. Considering all the foregoing, the depot fails to preserve the openness of the GB, primarily through the storage of HGV trailers that can be seen from surrounding roads. This is at odds with the visual characteristics of the Green Belt, despite the existence of landscape planting on the boundaries of the site.

The effect on biodiversity interest

29. The September 2012 ground investigation and a January 2019 ecological appraisal suggest the main body of the site has limited potential for biodiversity at present. Nevertheless, the site is designated a Site of Borough Importance for Nature Conservation.
30. The landscaped areas around the perimeter of the site, including areas outside the security fencing, have potential to retain, restore or enhance biodiversity resources and provide opportunities to secure other habitats on the site. Appropriate measures could be secured by condition if planning permission were granted. Accordingly, the depot use does not conflict with policy G6 of the London Plan ("the LP"), policy CS5 of the Waltham Forest Local Plan Core Strategy ("the CS") and policy DM35 of the London Borough of Waltham Forest Development Management Policies Local Plan ("the DMP") in this regard.

Flood risk

31. The site is within Flood Zones 2 and 3, where there is a high probability of flooding. The portacabin is the only aspect of the depot use considered to be vulnerable, rated 'less vulnerable', and a flood risk assessment recommends its floor level is raised to 300mm above the site's 1 in 100-year flood level. Subject to securing this by means of a planning condition, the depot use would not conflict with policy SI12 of the LP, policy CS4 of the CS and policy DM34 of the DMP.

Whether very special circumstances justify the development

32. Very special circumstances will not exist unless the potential harm to the GB by reason of inappropriateness is clearly outweighed by other considerations. For the reasons given earlier, I afford very little weight to the past assessment of the site as poorly performing in GB terms.
33. The site history only includes one instance of planning permission being granted for a use of the land. This was for a temporary period of 12 months with the benefit that implementation, if it had occurred, would have funded site clearance and disposal of unlawfully tipped commercial waste. Very little information has been provided about any other uses of the site prior to the depot use, meaning that little weight can be attached to this matter.
34. While the site may have a history of trespass and unauthorised encampment, it has not been shown that this could not be managed other than through the continuation of the depot use. Accordingly, I afford little weight to this matter.
35. The development has economic benefits that should be taken into consideration in deciding this appeal. PLSL's operations support the work of the Post Office and other businesses in the area, provide employment opportunities, and business rates are due. The degree of support these matters can provide for inappropriate development in the GB must depend in part on understanding whether the site is essential to providing those benefits or whether they could be realised in a non-GB location.
36. It was explained in the Hearing that the growth of the logistics sector in recent years has increased competition for suitable sites. It was also explained that urban regeneration projects, such as Meridian Water near the site, displace employment uses, including logistics. I also accept that maintaining a presence in the Lee Valley, close to its current customer base, is important to PLSL and its customers.
37. Nevertheless, the evidence I can rely on is limited and there is no information on the availability of alternative sites or of efforts to secure such a site, matters that might have informed an appeal on ground (g)³. While I appreciate PLSL may face challenges in relocating, it has not been demonstrated that the economic benefits of the depot use could not be maintained on another site. This absence of appropriate evidence means I can afford little weight to the advanced economic arguments. While discretion might be exercised under section 173A(1)(b) of the Act if such evidence were forthcoming in future, that would be entirely a matter for the Council.

Conclusion on ground (a)

38. For the reasons given, the depot use is inappropriate development and harmful to the openness of the GB, contrary to policy G2 of the LP, policy CS5 of the CS and policy DM12 of the DMP. This harm carries substantial weight.
39. Set against this, and for the reasons given, I afford little weight to the considerations that have been advanced, including the site's history, the need for site security, and the economic benefits of the depot use. The mitigation of flood risk by raising the portacabin is neutral in the overall balance and neither weighs for or against. Therefore, the identified other considerations do not,

³ That any period specified in the notice falls short of what should reasonably be allowed

individually, or cumulatively, clearly outweigh the harm to the GB and the very special circumstances necessary to justify the development do not exist.

40. Accordingly, the appeal on ground (a) should not succeed.

Conclusion

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

Formal Decision

42. It is directed that the notice is corrected in section 3, part I (the matters which appear to constitute the breach of planning control) by the deletion of the words "from open scrub and grass land on undeveloped Green Belt land".

43. It is further directed that the notice is varied in section 5, step 9) by the deletion of the words "authorised use and".

44. Subject to the correction and 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 Act.

Mark Harbottle

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Bowles, Planning Director, Savills
Gabriella Dyche, Graduate Planner, Savills
Simon Linney, Director, Pointbid Logistics Services Limited
Murat Yurtseven, Director, A2Z Building Supplies Limited

FOR THE LOCAL PLANNING AUTHORITY:

Izindi Visagie, Solicitor, Ivy Legal
Neil Whittaker, Chartered Town Planner, Ivy Legal
Ritu Kalia, Planning Enforcement Manager, Waltham Forest London Borough Council

Documents submitted at the Hearing

- 1 Letter of representation from Roy Cook, Pointbid Logistics Services Limited
- 2 Letter of representation from James Cheesemore, Costco Wholesale UK Limited