



Appeal Decision

Site visit made on 6 June 2023

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Appeal Ref: APP/J3015/W/22/3312998

4 Foundry House, Newtons Lane, Cossall, Nottinghamshire NG16 2SE

- 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 Mark Barber against the decision of Broxtowe Borough Council.
 - The application Ref 22/00337/FUL, dated 18 April 2022, was refused by notice dated 13 June 2022.
 - The development proposed is change of use from hardstanding forming part of the curtilage of the host dwelling house, to a vehicle brokerage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposal constitutes inappropriate development in the Green Belt, having regard to any relevant development plan policies and the National Planning Policy Framework (the Framework),
 - if the proposed development is inappropriate development, its effect on the openness of the Green Belt and the purposes of including land within it,
 - the effect of the proposal on the living conditions of occupiers of existing neighbouring properties,
 - whether the proposal would have an unacceptable impact on highway safety, and
 - if the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations that amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development in the Green Belt

3. Policy 8 of the Broxtowe Borough Council Part 2 Local Plan 2018-2028 (2019), (LP), advises that applications for development in the Green Belt will be determined in accordance with the Framework, supplemented by certain Broxtowe-specific aspects. The Broxtowe-specific aspects outlined in the Policy are not relevant to the appeal.

4. The Framework advises that the construction of new buildings (which could include structures) should be regarded as inappropriate development in the Green Belt. It also advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (VSCs), other than certain specified exceptions.
5. The appellant acknowledges that the site is within the Green Belt and that inappropriate development in the Green Belt is harmful by definition. However, he suggests that inappropriate development in this context could relate specifically to built structures and visual changes.
6. The definition of development in The Town and Country Planning Act 1990 (as amended), (the Act), includes material changes in the use of any building or land. The appeal proposal relates to a material change in the use of a building and land, and therefore constitutes development *vis-a-vis* the Act.
7. One of the development exceptions identified in the Framework as not being inappropriate development in the Green Belt is "*material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)*"¹. Although I consider the change of use examples outlined in the Framework does not constitute an exhaustive list, to my mind the phrase "*such as*" in this context refers to changes of use 'like' the examples provided. In my opinion, the material change of use applied for is not a use like outdoor sport, recreation or a cemetery. Consequently, I conclude that the proposal constitutes inappropriate development in the Green Belt.

Effect on openness of the Green Belt and the purposes of including land within it

8. Paragraph 137 of the Framework states that the essential characteristics of Green Belts are their openness and permanence. The openness of the Green Belt has both spatial and visual dimensions. Paragraph 138 of the Framework outlines the 5 purposes of including land within Green Belts, one of which is to assist in safeguarding the countryside from encroachment.
9. The proposed business would primarily operate as an on-line business and visits to the site would be by appointment only. It is currently envisaged that the number of sales would be limited, and it is proposed that the hours of business operation be restricted to 09:30-17:00, Monday to Saturday. The limited size of the area where vehicles would be parked would inevitably limit the number of vehicles that could be parked on it at any one time. I note that domestic vehicles associated with the host dwelling could presently park on the hard standing. I accept that the existing boundary treatments around the site, which could be retained by condition, would screen the site from public vantage points.
10. Notwithstanding these factors, vehicles would be brought to the site, driven directly, or delivered on a larger vehicle, and driven away from the site once sold. Although the intension is to deliver vehicles to customers, it is possible that some customers at least could visit the site, all-be-it by arrangement, to view and/or collect a car. I consider the hours of operation and number of sales could not be controlled using conditions, as it would not be possible to enforce such conditions.

¹ Sub paragraph 150 e)

11. Parked vehicles could cover the whole of the existing area of hard standing, in contrast with its use as residential garden as part of the domestic curtilage, which currently only has domestic paraphernalia sited on it. I consider changing the use of part of the residential curtilage for the parking of vehicles for sale and the activities that would be associated with the proposed business, would therefore have an impact on both the spatial and visual openness of the Green Belt and it would result in encroachment into the Green Belt. Although I consider the extent of the impact in relation to spatial and visual openness and encroachment into the countryside to be limited, nevertheless, it would erode the openness of the countryside.
12. I consider changing the use of the domestic outbuilding that already exists to an office use associated with the commercial sale of vehicles would have no impact on the spatial or visual openness of the Green Belt or the purposes of including land within it.

Effect on living conditions – existing

13. The site is located adjacent to a tarmacked track off Newtons Lane. The track serves around 5 or 6 dwellings. As noted above, although the appellant suggests that the level of sales would be limited, and therefore the level of associated activities would be limited, I consider it would not be possible to control the number of sales or opening hours by conditions. I appreciate that as the size of the site is relatively small the extent of sales and associated activities would be to a degree self-limiting. However, without any concrete means of controlling the extent of the activities, it is not possible to guarantee that the proposal would not harm the living conditions of occupiers of existing neighbouring dwellings. If vehicles were delivered to the site on a HGV sized vehicle, and if this happened regularly, this could result in noise disturbance to existing occupiers as well as disruptions whilst trying to access/exit their properties by car.
14. Therefore, the proposal does not accord with Policy 17 of the LP or sub paragraph 130 f) of the Framework, which collectively and among other things, require the living conditions of occupiers of existing properties to be satisfactory following new development.

Highway safety

15. The site is close to the Nottingham Canal Local Nature Reserve. There is a public car park at the northern end of the tarmacked track, close to Newtons Lane, with capacity for around 12-14 cars. The track is used by walkers, cyclists, and horse riders, as well as vehicles accessing properties along the track. Given the width of the tarmacked track, ie wide enough for a modest size car to be able to readily pass horse riders, cyclists and pedestrians, even though I have concluded that the extent of activity associated with the proposed business could not be controlled by conditions, I consider that the proposal would not create any unacceptable highway safety concerns. The proposal therefore adheres to paragraph 111 of the Framework.

Other considerations, planning balance & very special circumstances

16. I have found that the appeal proposal constitutes inappropriate development in the Green Belt, that it would have a limited degree of impact on the spatial and virtual openness of the Green Belt, that it would encroach into the countryside,

to a limited extent, and that it cannot be guaranteed that the proposal would not have a harmful impact on the living conditions of occupiers of existing neighbouring dwellings.

17. In accordance with the Framework², substantial weight is attached to any harm to the Green Belt, by reason of inappropriateness or any other harm resulting from the proposal, and VSCs will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
18. The appellant proffers that the proposal would allow him to down-size his business, from current premises and scale of operations, and work from home in a semi-retired capacity, utilising his knowledge of the car sales industry. I appreciate the appellant's personal desires, though attach limited weight to such personal aspects, given that the planning system operates primarily in the public interest.
19. The appellant observes that there are many other businesses located within the Green Belt within proximity of the site. However, this observation does not provide justification for the proposal, and I attach little weight to the matter.
20. The appellant suggests that motor vehicle servicing and repair activities are occurring on the opposite side of canal from the appeal site, in the Green Belt, which appears not to be contested. I have not been provided with full details of this matter. If such activities are occurring without planning permission having been granted, this would be a matter for the Council to pursue. I attach little weight to the issue in support of the proposal.
21. Notwithstanding my conclusions regarding highway safety, I have found that the proposal constitutes inappropriate development in the Green Belt, that it would have an all-be-it limited impact on the spatial and visual openness of the Green Belt, would encroach into the countryside to a limited degree and cannot guarantee the living conditions of occupiers of existing neighbouring properties would not be harmed. I consider that the harms I have found are not clearly outweighed by the other considerations outlined. Consequently, the very special circumstances required to justify the proposed development do not exist. As such, the proposal does not accord with Policy 8 of the LP or Green Belt policies in the Framework. I therefore conclude that the appeal is dismissed.

J Williamson

INSPECTOR

² Paragraph 148