



Appeal Decisions

Site visit made on 1 August 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2023

Appeal A - Ref: APP/Z0116/C/22/3306441

Former Wyevale Garden Centre, Bath Road, Brislington, Bristol BS31 2AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Sam Litt, Wyevale (Bristol) Ltd against an enforcement notice issued by Bristol City Council.
 - The notice was issued on 17 August 2022.
 - The breach of planning control as alleged in the notice is the use of land for builder's yard and scaffold storage yard without the benefit of planning permission.
 - The requirement of the notice is to:
Cease all use of the land as builder's yard and scaffold storage yard.
 - The period for compliance with the requirement is:
Three months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
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Appeal B - Ref: APP/Z0116/C/22/3306444

Former Wyevale Garden Centre, Bath Road, Brislington, Bristol BS31 2AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Sam Litt, Wyevale (Bristol) Ltd against an enforcement notice issued by Bristol City Council.
 - The notice was issued on 17 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, use of land for storage of construction plant equipment and portable buildings.
 - The requirement of the notice is to:
Permanently remove from the land all items of construction plant and equipment and all portable buildings from the area shaded grey and marked A on the appended plan.
 - The period for compliance with the requirement is:
Three months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
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Appeal C - Ref: APP/Z0116/C/22/3306445

Former Wyevale Garden Centre, Bath Road, Brislington, Bristol BS31 2AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Sam Litt, Wyevale (Bristol) Ltd against an enforcement notice issued by Bristol City Council.
- The notice was issued on 17 August 2022.

- The breach of planning control as alleged in the notice is without the grant of planning permission, the formation of a hardstanding.
 - The requirement of the notice is to:
Remove all hard surfacing laid from the land in the area shaded grey marked B on the appended plan and remove all the resulting spoil from the land.
 - The period for compliance with the requirement is:
Three months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
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Appeal D - Ref: APP/Z0116/C/22/3306446

Former Wyevale Garden Centre, Bath Road, Brislington, Bristol BS31 2AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Sam Litt, Wyevale (Bristol) Ltd against an enforcement notice issued by Bristol City Council.
 - The notice was issued on 17 August 2022.
 - The breach of planning control as alleged in the notice is without the grant of planning permission, earth moving and regrading of the land has taken place, including the formation of bunds and the depositing of construction site waste and portable buildings.
 - The requirements of the notice are:
 - i) Remove all of the earth bunds that have been formed on the land.
 - ii) Remove all portable buildings from the land.
 - iii) Remove all deposited piles of construction site waste (soil – spoil mounds) from the land.
 - iv) Remove all deposited timber and plastic and all other waste materials from the land.
 - The period for compliance with the requirements is:
Three months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
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Decisions

Appeal A

1. 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.

Appeal B

2. The enforcement notice is quashed.

Appeal C

3. 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.

Appeal D

4. It is directed that the enforcement notice is corrected by substituting the word "potable" for "portable" in requirement ii).
5. Subject to this correction, 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 Matter

6. The notice for Appeal D contains a minor typographical error in requirement ii) of section 5. I shall correct this, being satisfied that no injustice will be caused.

Appeal B – The Notice

7. The notice for Appeal B alleges the use of land for the storage of construction plant and equipment and portable buildings. The subsequent requirements require that all items of construction plant and equipment and all portable buildings be permanently removed from the land. However, there is no requirement to cease the use of the land. This is clearly the Council's intention in the serving of the notice, as it states within its Statement of Case that the unauthorised change of use is unacceptable.
8. To uphold the notice without the requirement for cessation would result in the grant of planning permission for this use, under S173(11) of the Act. I do not consider that I am able to vary the notice to include a requirement for the cessation of the use without causing injustice to the appellant. Accordingly, I find that the notice is incomplete and incapable of correction. I will therefore quash the notice on this basis and will not consider it further below. It is open to the Council to issue a further notice should it consider necessary.

Ground (a) – the deemed planning applications

Main Issues

9. The main issues are:
 - Whether or not the proposals are inappropriate development in the Green Belt (Appeals A, C and D),
 - The effect of the proposals on the character and appearance of the area (Appeals A, C and D),
 - The effect of the proposals on matters of ecological importance (Appeals A and C),
 - The effect of the proposal on the living conditions of nearby occupiers, with particular regard to noise and disturbance (Appeal A), and
 - If each of the proposals 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.

Reasons

Whether or not inappropriate development in the Green Belt

10. In respect of the undertaking of development within the Green Belt, the appellant advances that there are very special circumstances that would justify the grant of planning permission. In accepting that very special circumstances need to be considered, it is also accepted that the works that have been undertaken comprise inappropriate development. Nonetheless, I consider the works alleged in each of the notices below.
11. Paragraph 150 of the National Planning Policy Framework (the Framework) states that certain forms of development, such as engineering operations and material changes in the use of land, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
12. Appeal A refers to the use of land for builder's yard and scaffold storage yard, and covering the same area of land Appeal C relates to the creation of a hardstanding. Both developments have resulted in the storage of materials and vehicles within the site, variously located within the defined area. These materials and vehicles are obvious and significant features that erode the sense of openness at this location. I am conscious that the area covered by the EN's in both appeals benefits from a previously approved Certificate of Lawfulness allowing both an outdoor display/storage area and outdoor storage area associated with the previous retail use that operated from the site.
13. However, in my view, the change from a grass surface to a hard surface would likely result in the area being used more intensively than previously. This is a view that was shared by the Inspector when determining a previous planning appeal¹ on the site. As such the creation of the hardstanding together with the use of land for builder's yard and scaffold storage would, in my view, have a greater diminishing effect on the openness of the site than the previously authorised use. Consequently, the uses identified in Appeals A and C would comprise inappropriate development.
14. In respect of Appeal D, the works undertaken comprise engineering works. They have resulted in a more enclosed area of land, eroding the openness of the Green Belt at this location. Thus, these also comprise inappropriate development.
15. The developments are therefore contrary to the requirements of policy BCS6 of the Bristol Local Plan: Core Strategy (2011) (the Core Strategy), insofar as it seeks to ensure that land within the Green Belt is protected from inappropriate development as set out in national planning policy. The developments also conflict with paragraph 150 of the Framework.

Character and appearance of the area

16. Appeals A and C relate to an area of land that is located to the south and southwest of the buildings at the site, which were formerly operated as a garden centre. The area has been hard surfaced and is used as a builder's yard and scaffold storage yard. At the time of my site visit, I was able to see that there were a variety of items and materials being stored within the area covered by the

¹ APP/Z0116/W/20/3252071

notices, which include vehicles, caravans, plant, and machinery. Given the location of the site, in a position outside of a built-up area, with a reasonably verdant backdrop of trees to the south bordering a watercourse, the use of the site is a discordant element, which is harmful to the area. It introduces an element with a distinctly industrial appearance where there was previously a grassed surface. The construction of the hardstanding has facilitated this more intensive use with the industrial appearance and thus is also a harmful part of the development that has been undertaken.

17. I have noted above that the area is subject to a previously granted Certificate of Lawfulness, but my findings above that the development currently on site is more intensive are also applicable in consideration of the effect on character and appearance. The existence of this certificate does not therefore persuade me that the development that has been undertaken is acceptable.
18. In respect of Appeal D, the appearance of this area has been markedly altered through the construction of the earth bunds, which diminishes what was previously a more open area. The bunds which have been constructed around the outer edges of this enclosure, are alien features, which appear intrusive at this location. While at the time of my site visit the portable buildings referred to in the notice were not present on site, I have no doubt that their presence would also be intrusive at this location.
19. I accept that there are few public views of the appeal sites, particularly from the north, as they are screened by the presence of buildings and boundary features. Nonetheless, all the elements covered within the notices for Appeals A, B and D are intrusive and alien features at this location. Accordingly, I find that the developments are harmful to both the character and appearance of the area.
20. The Council have alleged conflict with policy BCS9 of the Core Strategy, as well as policies DM15 and DM17 of the Bristol Local Plan – Site Allocations and Development Management Policies (2014) (the DM Policies). However, these policies appear to deal with matters in respect of specific green infrastructure features, including designated areas of open space and other identified features. They do not in my view deal with general matters of character and appearance. Nonetheless, the schemes conflict with the well-designed places aims of the Framework, in particular that developments add to the overall quality of an area.

Matters of ecological importance

21. The site covered by the notice in Appeal A and C comprise part of a non-designated wildlife corridor that has been identified by the Council. I note that the appellant contends that the *"wildlife corridor shown is on a local information website and there has been no survey of value, scrutiny, public consultation with landowners or formal adoption process."*
22. Conversely, there is no survey work, or any other information submitted by the appellant to show that the area is not important for wildlife. Indeed, it would be difficult to do so given that the developments have already been undertaken.
23. I am also once again conscious of the conclusions of the Inspector when considering the previous appeal on the site, referenced above, who found that *"The site may have a role in the movement of wildlife along the corridor and some particular species may well be important in this part of the wider ecosystem. No*

wildlife survey has been undertaken so the type of species or habitat is not known. This would identify the particular significance of the surroundings and appeal site for wildlife. It would also provide the basis to consider whether mitigation could be provided and ensure that such measures were precise in relation to the specific species."

24. No substantive evidence has been put before me that would lead me to a different finding than that Inspector did previously. While the area has a lawful use for storage, as mentioned previously, this would likely have been less intensive, and a vegetated area has been lost. Thus, the previous use of the site would not have the same effect on matters of biodiversity. The appellant has offered enhancement of the vegetation along the watercourse to the south of the site, as well as the creation of bunding. However, in the absence of further supporting information I am unable to assess whether this would be suitable.
25. Accordingly, I find that I am unable to conclude that the developments that have been carried out have not been harmful to matters of ecological importance. Therefore, there is conflict with policies BSC9 of the Core Strategy, as well as policies DM15, DM17 and DM19 of the DM Policies. Together, and amongst other things, these policies seek to ensure that the integrity of wildlife networks is maintained, and that habitats are protected.

Living conditions

26. In respect of Appeal A, the Council has alleged that there is harm to residential amenity, through an intensification of the use of the site and the associated vehicle movements, resulting in additional activity and noise. However, there is no identification of specific dwellings, the occupiers of which would be harmfully affected.
27. The appellant highlights that the nearest residential property is 240 metres (m) from the site, with further dwellings at 360m and 380m distant. When considering this matter, I am conscious of the presence of a busy road to the north of the site, which appeared to be a busy thoroughfare with high levels of traffic. Thus, there would be a degree of noise and disturbance generated by this.
28. Considering the separation distances involved, together with the existing level of activity that is likely to occur within the area, I find that use of the site as a builder's yard and scaffold storage yard would not have any unacceptable effect on the living conditions of nearby occupiers. Accordingly, there would be no conflict with policy BCS23 of the Core Strategy, or policy DM35 of the DM Policies. Together, and amongst other things, these policies seek to ensure that development does not have an unacceptable impact on environmental amenity, including through noise pollution.

Other considerations

29. The appellant states that a temporary, three-year planning permission is sought in respect of all the developments covered by the Enforcement Notices. There is also reference to the temporary nature of uses that have taken place, and that they are reversible. Moreover, the appellant points to the economic benefits that would result from allowing the retention of the developments.
30. My attention is also drawn to the emerging Local Plan. Within this document, the appellant has stated that the entirety of the area of land that is covered by all the

Enforcement Notices is proposed to be removed from the Green Belt, to allow the creation of a new neighbourhood, comprising 750 new homes. A new development plan was initially expected to be adopted in late 2018, however there have been a number of delays to this. The appellant states that currently a new Local Plan, removing the area from the Green Belt is expected to be published in draft form in 2023. I have received nothing to indicate that this has yet taken place. Adoption of the plan is then expected in Autumn 2024.

31. While this is noted, I am conscious that a draft plan is yet to be published, and furthermore is yet to be the subject of detailed scrutiny through the examination process. I am aware that a previous version of the plan received some scrutiny from an Inspector, however this led to the abandonment of that document and thus I find this of little use. As such, the Local Plan is at a relatively early stage and there may be considerable changes to it through the course of its examination.

Green Belt Balance

32. The developments are inappropriate development in the Green Belt. The Framework establishes that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, as well as that substantial weight should be given to any harm to the Green Belt. There are also adverse effects on the character and appearance of the area, as well as harm to matters of ecological importance. These matters carry considerable weight.
33. I have taken note of the other considerations above. I give moderate weight to the reversible nature of the developments, together with the economic benefits that would accrue. Due to the stage of preparation of the draft Local Plan, together with the potential for changes to take place, I accord it only limited weight.
34. I have had regard to the other considerations above. However, these are not sufficient to amount to the very special circumstances necessary to justify the development. Thus, the proposal would be contrary to the requirements of the Framework and would conflict with Policy BCS6 of the Core Strategy.
35. The developments conflict with the development plan as a whole and there are no other considerations, including the provisions of The Framework, which outweigh this finding. Therefore, for the reasons given above, the appeals on ground (a) fail.

Other Matters

36. The appellant has drawn my attention to the balance of factors that led to the grant of temporary planning permission for car sales on another area of the wider site. However, the balance of factors was different in that case. In particular, that scheme was not considered to be inappropriate development and there was no harm to character and appearance. This matter therefore has little bearing on my decision.

Conclusions

37. For the reasons given above, I conclude that Appeals A, C and D should not succeed. I shall uphold the enforcement notices, subject to correction where

necessary, and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act (as amended).

38. In respect of Appeal B, I shall quash the enforcement notice.

Martin Allen

INSPECTOR