



Appeal Decisions

Inquiry held on 5 September 2023

Site visit made on 5 September 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30TH OCTOBER 2023

Appeals A & B Ref: APP/N4720/C/22/3311361 & 3311402

Land at TJ's Travel Ltd, Leeds Road, Lofthouse, Wakefield, WF3 3LR

- Appeals A & B are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Marsh Investments Wakefield Limited and Searchagain Limited against an enforcement notice issued by Leeds City Council.
- The notice, numbered 22/0739/UCU3 was issued on 20 October 2022.
- The breach of planning control as alleged in the notice is the material change of use of land to a sui generis coach depot including ancillary offices, toilet and storage uses in converted storage containers; a portable office building; and cleaning/servicing facilities accommodated under a scaffold canopy structure and the erection of a fence and gates..
- The requirements of the notice are: Step 1 Cease the use of the land as a coach depot. Step 2 Remove from the land all vehicles stationed on the land in connection with the coach depot use. Step 3 Remove from the land all buildings containers, scaffold canopy structure and portable office building associated with and incidental to the coach depot business sited on the land. Step 4 Remove from the land all fencing and gates indicated along the yellow and red line on the attached the plan.
- The periods for compliance with the requirement are six months from Steps 1 to 3 and nine months for Step 4.
- The appeals is proceeding on the grounds set out in section 174(2)(d), (f), (g) of the Town and Country Planning Act 1990 as amended. Since Appeal A has also been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeals C & D Ref: APP/N4720/C/22/3311363 & 3311408

Land at Lofthouse Tyres, Leeds Road, Lofthouse, Wakefield, WF3 3LR

- Appeals C & D are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Marsh Investments Wakefield Limited and Searchagain Limited against an enforcement notice issued by Leeds City Council.
- The notice, numbered 22/00740/UCU3, was issued on 20 October 2022.
- The breach of planning control as alleged in the notice is the material change of use to a mixed use comprising a tyre fitting depot, the parking and storage of vehicles, the stationing of containers and the storage of metal and other waste materials in the said containers and on the land..
- The requirements of the notice are: Step 1 Cease the use of the land for the parking and storage of motor vehicles (save for the parking associated with the tyre depot use), the stationing of containers and the storage of metal and other waste materials in the said containers and on the land other than those associated with the tyre depot use. Step 2 Remove from the land all vehicles (other than the parking associated with the tyre depot use) and all containers stationed and stored on the land and all scrap metal and other waste material.
- The period for compliance with the requirements is six months.
- Appeals C & D are proceeding on the grounds set out in section 174(2) (d), (f), (g) of the Town and Country Planning Act 1990 as amended. Since Appeal C has also been

brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeals E & F Ref: APP/N4720/C/22/3311364 & 3311418

Land at Alpine Scaffolding Contractors Ltd, Leeds Road, Lofthouse, Wakefield, WF3 3LR

- Appeals E & F are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Marsh Investments Wakefield Limited and Searchagain Limited against an enforcement notice issued by Leeds City Council.
 - The notice, numbered 22/00742/UCU3, was issued on 20 October 2022.
 - The breach of planning control as alleged in the notice is the material change of use of land to a sui generis scaffolders yard, including the siting and incidental use of storage containers, scaffolding racks, a portable office building and the erection of a fence and gates.
 - The requirements of the notice are: Step 1 Cease the use of the land as a scaffolding yard. Step 2 Remove from the land all buildings, containers, scaffolding racks and other materials associated with and incidental to the use of the land as a scaffolding yard. Step 3 Remove from the land all fencing and gates indicated along the yellow and red line.
 - The periods for compliance with the requirements are: six months for Steps 1 and 2 and nine months for Step 3.
 - Appeals E & F are proceeding on the grounds set out in section 174(2)(d), (f), (g) of the Town and Country Planning Act 1990 as amended. Appeal E has also been brought on ground (a) and an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeals G & H Ref: APP/N4720/C/22/3311366 & 3311425

Land at Stone Cutting/Dressing Business, Leeds Road, Lofthouse, Wakefield, WF3 3LR

- Appeals G & H are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Marsh Investments Wakefield Limited & Searchagain Limited against an enforcement notice issued by Leeds City Council.
 - The notice, numbered 22/00743/UCU3, was issued on 20 October 2022.
 - The breach of planning control as alleged in the notice is the material change of use of land to a sui generis stone cutting, dressing and reclamation use with ancillary open storage of stone and like materials, the storage of waste materials, and the incidental stationing of storage containers and the erection of a fence and gates.
 - The requirements of the notice are: Step 1 Cease the use of the land as a stone cutting, dressing and reclamation use and for storage use associated and incidental to the stone cutting and dressing use. Step 2 Remove from the land all containers, waste materials, stone and like materials stored in connection with the stone cutting, dressing and reclamation use. Step 3 Remove from the land all fencing and gates indicated along the yellow and red lines on the attached plan which forms part and parcel of the stone cutting dressing, reclamation and ancillary storage use.
 - The periods for compliance with the requirements are: six months for Steps 1 and 2 and 9 months for Step 3.
 - Appeals G & H are proceeding on the grounds set out in section 174(2)(d), (f), (g) of the Town and Country Planning Act 1990 as amended. Since Appeal G has also 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

1. Appeals A, B, C, D, E, F, G & H are dismissed and the enforcement notices are upheld.

The Notices

2. The appellants argue that the notices in each case are invalid and incapable of correction without causing injustice because the notices are misdirected as to
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the correct planning unit. Instead they say that the four parcels covered by the notices form one single planning unit with several primary uses where one is not ancillary to another, although they also describe the land as having commercial open storage-related uses. A previous enforcement notice was served in 2019 on this basis.

3. However, whilst the overall area of land is in the same ownership, at the time that the notices in these appeals were served, there were four separate businesses with different uses operating from clearly identifiable areas within the wider site. Taking account of caselaw¹ it is necessary to consider the unit of occupation as a starting point when assessing the appropriate planning unit. In this case the land covered by the four notices is in the same ownership but each unit was in fact occupied and used by different apparently unrelated businesses, and located on physically distinct parts of the overall site. It was evident during the site visit that one of the original businesses, TJ's Travel, has extended across more of the appeal land as other businesses had left, but the appellant has not argued that the notices incorrectly described the businesses on each parcel of land at the date of the issue of the notices.
4. As such, it is in fact not necessary to go any further. Each of the physically separate and distinct parcel of land identified in the notices had the individual uses (including the mixed use as specified in the Lofthouse Tyres notice) as described and therefore falls squarely within the first category set out in the Burdle case.
5. The notices do not need to be corrected, as the planning units have been correctly identified, and are not invalid. This is notwithstanding that the position may have been different at some point in the past as it is a matter of fact and degree as circumstances and uses change, and the parties may have had different views historically.

Ground (d)

6. An appeal on this ground is on the basis that at the date when the notice was issued no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice. In this case, the appellant argues that some of the operational development alleged in the notices is immune from enforcement action, on the basis that it has been on the land for more than four years prior to the issue of the notices. However, operational development which is integral to and solely for the purpose of facilitating an unauthorised use does not become immune after four years, and can be required to be removed to remedy the breach of planning control.
7. The appellants have not shown on balance that the operational development as defined and required to be removed in the notices was not part and parcel of the material change of use, for example by showing that the works had been undertaken for a different purpose. As a matter of fact and degree, the works alleged in each of the notices were facilitative of the changes of use.
8. As I have found that the overall site constitutes four separate planning units, the relevant date for consideration in this ground of appeal in each case is the date on which that new unit was created. The Council have provided

¹ Burdle v Secretary of State for the Environment [1972] 1 WLR 1207

photographs taken during a site visit on 24 June 2015 which show that the majority of the overall site, and certainly the land to the south and east of the building used by Lofthouse Tyres was empty. On that day there were no buildings and no evidence of active use of those areas of land. This accords with the appellant's evidence regarding the occupation by the various businesses.

9. Taking into account the appellants' evidence regarding the start dates of each use, cross-referenced with the Business Rates records, the earliest dates that it is alleged that the various businesses began operating from the overall site are: Lofthouse Tyres from around June 2015 (and the use immediately preceding it on the front part of that site was as car sales); TJ Travel from around September 2015; and Alpine Scaffolding from around May 2016.
10. The appellants' evidence regarding the stone cutting and dressing business is that it was operating from the site much earlier. However, it is clear from the aerial photographs that the area to the east of the overall site was extensively used by the business from around 2015 and that this was extended further east again to create a larger unit in around 2019-2020 (which is the area reflected in the notice in Appeals G and H). Therefore, whilst there may have been an element of this use on the overall site previously the planning unit for this single use was created at some point from around 2015 at the earliest which is therefore the relevant date for the material change of use. There are no business rates records in relation to this use but the Council's photographs and witness evidence confirm that these parts of the overall land were vacant during the visit on 24 June 2015.
11. The appellants have not shown on balance that any of the material changes of use on the individual planning units or associated operational development identified in the notices took place more than 10 years prior to 20 October 2022 and all of the appeals on ground (d) therefore fail.

Ground (a) and the deemed planning application (Appeals A, C, E & G)

12. The deemed planning application is for the development as alleged in each of the notices as taking place at the date of their issue (and which may not be the same as what is actually taking place on the land at present). It is also not necessarily the case that all of the businesses have the same impact or that all of the deemed planning applications will be determined in the same way.
13. It is agreed that Alpine Scaffolding have vacated the appeal land and that the enforcement notice has been complied with as the alleged use has ceased. However, the appeals in relation to this use have not been withdrawn and the deemed planning application for the alleged use is still to be determined.
14. The main issues in the appeals are:
 - a) Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2023 ('the Framework') and any relevant development plan policies;
 - b) The effect of the development on the openness of the Green Belt;
 - c) The effect of the development on the living conditions of the residents nearby properties; and

- d) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

The site

15. The appellant bought the land covered by the four notices as part of a bigger site which included the area to the south, which was subsequently developed as housing, and on which many of the interested parties now live. The entire site had previously been owned by the local authority and it is accepted that it had use as a depot overall, although the extent of the use across the area it is not in evidence and it appears from the aerial photographs provided that the built areas were predominantly located on the southern part of the site (now the housing estate) and in the vicinity of the western edge closest to Leeds Road (A61). Much of the overall site which now forms the land in the appeals appears green in the aerial photographs until the image dated 2015 which suggest that it was covered in vegetation, and there are not any buildings or roadways evident.
16. Appeal reference APP/N4770/W/16/3147890 granted permission for the change of use to a hand car wash at a site described as 'Former Commercial Car Sales, Leeds Road' which is the western part of the site adjacent to Leeds Road. This parcel of land is not included in any of the notices in these appeals. The inspector in that appeal was satisfied that the site was previously developed land, but the decision was only concerned with the small parcel of land used by the car wash business. The inspector did not give any indication regarding the extent of land which he believed to have been previously developed (and indeed had no reason to do so). He did however find that the proposed development at that time was inappropriate development in the Green Belt due to the material change of use of the site and went on to find that the harm caused was outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.
17. An enforcement notice was served on 14 November 2019 in relation to the whole of the area of land which is now the subject of the four appeal notices but this was quashed as a nullity.
18. Evidence regarding the use of the site has been provided by both of the main parties as well as by residents of nearby properties.

Green Belt

19. As set out in the Framework, which is a material consideration, inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.² Saved Policy N33 from the Leeds Unitary Development Plan 2006 ('the UDP') predates the Framework but is broadly in accordance with it.
20. The appellants argue that the development which consists of the construction of new buildings is not inappropriate because it falls within the exception set out in paragraph 149(g) of the Framework in that it is the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. This argument can

² Paragraph 147 of the National Planning Policy Framework 2023

only apply to any new buildings and not the material changes of use alleged in each case (and which I have found to have occurred as a matter of fact and degree with the creation of the new planning units.)

21. However, I do not have sufficient evidence before me to be able to determine the extent of the previously developed land. Whilst it is accepted that the land was held by the Council as part of a wider depot site there is no evidence regarding the extent of any buildings or structures or actual use on the appeal sites overall. It is therefore not possible to say that the operational development alleged in the notices would not have a greater impact on the openness of the Green Belt, as there is no baseline against which to measure it.
22. The appellants' landscape evidence concludes that the developments overall have very limited impact on the wider character of landscape/townscape, and that with planting and tree maintenance along the north and south boundaries there would be no greater impact on the perception of the openness of the Green Belt. However, it is not clear as to the baseline that is being adopted in this assessment when considering the openness. It is also accepted within that evidence that the development overall has extended into parts of the appeal site which were previously free from development. It is therefore a matter of fact and degree, that the creation of the new planning units and occupation by the four separate entities has led to a significantly more built-up environment overall with large quantities of waste and other storage, including the parking of many vehicles, and additional structures to support the businesses. Some of this is evident when viewed from outside of the site.
23. The fencing and gates across the site, delineating the separate uses and different areas within planning units, as well as the associated signage and other built structures causes visual and spatial harm to the openness of the green belt, as does the stationing of portable or more 'temporary' items such as office buildings and containers.
24. In any event, the increase in the area used by the tyre business with the associated parking and storage of many vehicles and additional storage including containers is significant in terms of the impact on openness in both visual and spatial terms when compared with the historic aerial photographs provided. Likewise, the coming and goings and the storage of the coaches when taken with the associated structures which forms the development at TJ's Travel is similarly significant. The scaffolding business would consist of storage of the scaffold and racks as well as any associated vehicles and buildings which would harm the openness in visual and spatial terms as does the stone cutting and dressing business, which whilst predominantly consisting of piles of stone which are then neatly stacked covers a substantial area and appears very different in nature from land covered in vegetation as previously. These two uses therefore also cause significant harm to the Green Belt.
25. The operational developments described in the notices cannot therefore fall within the exception under paragraph 149(g). The same considerations regarding the harm to openness also applies to the material changes of use in each case which means that the material changes of use also fall within the definition of inappropriate development.

Living conditions

26. Sworn evidence was heard from a number of residents of Springfield Road and additional representations were received from many others during the course of the appeals. Evidence was presented regarding the effects of the various businesses on the living conditions of the nearby residents – this was in relation to the scaffolding, stone working, and coach hire businesses but not specifically in relation to the tyre business when considered alone. There was evidence regarding the unacceptable levels of noise made by the businesses but also evidence in relation to the fumes, and the visual impact on the character and appearance of the area caused by the proximity of the unauthorised developments. Several residents had witnessed fires (and therefore smoke, ash and fumes) at the overall site although it was not always possible to identify on which planning unit they were located.
27. It is clear that material harm has been caused by the developments to the living conditions of nearby residents although it is not possible to identify where all of the noise and fumes originated from and it is likely that some of the noise may have been cumulative caused by the overall increase in the use of the sites. Expert evidence regarding the noise and fumes was not required due to the number of interested parties who made representations in this matter and whose joint body of evidence regarding the harm caused by the businesses on their living conditions was cogent, clear and reliable. I therefore attribute great weight to this material harm which is in conflict with Policy GP5 of the UDP.

Other considerations

28. The appellants have suggested that the harm to the Green Belt could be mitigated by the provision of a landscaping scheme and additional planning along the northern and southern boundaries.
29. Whilst a landscaping condition could reduce the visual harm I am not satisfied that it would totally remove the harm to the openness of the Green Belt, and in any event this is not a positive effect which should be weighed against any such harm. Similarly, a unilateral undertaking to limit the uses to only those stated in the notices, or personal permissions, is of no effect as it is these uses which are causing the harm to both the Green Belt and living conditions. Whilst the appellants indicated that conditions could be imposed which would adequately mitigate the harm they did not provide any such detailed conditions or reasons for my consideration.
30. There is a positive economic impact in terms of bringing busy commercial enterprises and employment into the locality although I was not provided with specific details regarding this in relation to any of the businesses. I therefore award this consideration moderate weight in each case.
31. The combined weight of these other considerations do not clearly outweigh the totality of the Green Belt harm and the harm to the living conditions of the nearby residents. Very special circumstances as referred to in the Framework do not therefore exist. This is in relation the alleged development in each notice taking account of the harm caused in each case.

Conclusion

32. The development alleged in each notice causes harm to the green belt and living conditions of nearby residents. It is contrary to Policies N33 and GP5 of the Development Plan, and the Framework. In the absence of any other considerations to clearly outweigh this harm, very special circumstances do not exist and Appeals A, C, E and G on ground (a) fail, and the applications for deemed planning permission in each case is refused.

Ground (f)

33. An appeal on this ground is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control constituted by the matters stated in the notice, or as the case may be, to remedy any injury to amenity which has been caused by any such breach.
34. The appellants have not provided detailed reasons as to how the requirements exceed what is necessary as the evidence submitted relates to the previous enforcement notice issued in 2021 and not the four notices which are the subject of these appeals. The purpose of the requirements in the notices in relation to TJ's Travel, Alpine Scaffolding, and the stone cutting and finishing business is to remedy the breaches of planning control i.e. for the use to cease and associated operational development to be removed, and as such do not exceed what is necessary.
35. The notice in relation to Lofthouse Tyres recognises that there was already a lawful use on part of this planning unit and this is not being targeted by the notice which therefore under-enforces in that the overall use is not required to stop. The notice seeks to target the elements of the mixed use other than the tyre depot, i.e. the parking and storage of vehicles and the stationing of containers and the storage of metal and other waste materials other than those associated with the tyre depot use. As such the notice requires that the land is used solely for the tyre depot use and as such does not therefore exceed what is required to remedy the breach of planning control i.e. the change to a mixed use. This tackles the harm identified to the Green Belt and is proportionate.
36. The ground (f) appeals are therefore unsuccessful in relation to each of the notices.

Ground (g)

37. The appellants seek an extension of time to 12 months. In light of the significant harm being caused to the residents of nearby houses, and absence of a clear justified reason why additional time is required, I am satisfied that the periods of 6 and 9 months are proportionate in all of the circumstances.
38. This ground therefore fails in each of the appeals.

Zoë Franks

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/N4720/C/22/3311361	Marsh Investments Wakefield Limited
Appeal B	APP/N4720/C/22/3311402	Searchagain Limited
Appeal C	APP/N4720/C/22/3311363	Marsh Investments Wakefield Limited
Appeal D	APP/N4720/C/22/3311408	Searchagain Limited
Appeal E	APP/N4720/C/22/3311364	Marsh Investments Wakefield Limited
Appeal F	APP/N4720/C/22/3311418	Searchagain Limited
Appeal G	APP/N4720/C/22/3311366	Marsh Investments Wakefield Limited
Appeal H	APP/N4720/C/22/3311425	Searchagain Limited

APPEARANCES

FOR THE APPELLANT:

None

FOR THE LOCAL PLANNING AUTHORITY:

Mr Timothy Leader of Counsel

Mike Howitt, Senior Planning Officer

Afsor Ullah, Senior Enforcement Officer

INTERESTED PARTIES:

Karen Whitwam

Pauline Best

Heinz Petzold

Daniel Wood

Richard Jackson

DOCUMENTS

Submissions from LPA (on which the Appellants were given the opportunity to provide comments following the Inquiry).

PLANS

Annotated aerial photograph showing the locations of the interested parties' houses in relation to the appeal sites.