



Appeal Decision

Site visit made on 5 September 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 October 2023

Appeal Ref: APP/R3705/C/22/3303742

Old Rail Farm, Hurley Common, Hurley CV9 2LS

- 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 Act).
- The appeal is made by Mr Gary Robert Stibbs against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 22 June 2022.
- The breach of planning control as alleged in the notice is:
 - (i) Without planning permission, the material change of use redundant buildings agricultural buildings, to a use as a workshop for the maintenance of Heavy Goods vehicles and agricultural vehicles shown BLUE within the land edged RED on the attached plans.
 - (ii) Without planning permission, the use of the hard standing area hatched BLACK within the land edged RED for the parking of HGV vehicles and the use of the land for an HGV operating business.
 - (iii) Without planning permission, the formation of hardstanding, shown hatched BLACK within the land edged RED on the attached plans.
- The requirements of the notice are to:
 - (i) Cease the use of the building, shown BLUE and hatched BLACK within the land edged RED for the maintenance and parking of HGV vehicles.
 - (ii) Remove from within the land edged RED and hatched BLACK and the building shown in BLUE, on the notice plan, all HGVs, all incidental plant, materials, and equipment associated with the maintenance of vehicles and the operation of an HGV business.
 - (iii) Remove from the land edged RED and hatched BLACK the hardstanding areas.
 - (iv) Reinstate the land edged RED and Hatched BLACK to its previous condition and levels.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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.

Decision

1. It is directed that the enforcement notice is corrected by:
 - In section 5(i), after the word “building”, insert the wording “and the land”
2. Subject to the 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 Act.

The Enforcement Notice

3. Section 176(1) of the Act provides a wide-ranging power to correct or vary the terms of an enforcement notice provided that it would not result in injustice to the parties.

4. The insertion of the wording “and the land” into the requirements of section 5(i) of the notice reflects the breach of planning control which describes the change of use of the land for a HGV operating business.
5. Given the limited extent of the correction which aligns the requirements of the notice with the breach of planning control, I am satisfied that no injustice to the appellant or the Council would arise by me correcting the notice in terms I have set out in paragraph one above. I have therefore done so using the powers available to me under Section 176(1) of the Act.

Appeal on ground (a)

6. The ground of appeal is that planning permission should be granted for the change of use of the buildings and land to a use as a HGV business and formation of hardstanding.

Main issues

7. The main issues are:
 - i) Whether the development is inappropriate development in the Green Belt;
 - ii) The effect of the development on highway safety with regards to access; and
 - iii) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to very special circumstances necessary to justify the developments.

Reasons

Whether inappropriate development

8. Policy LP3 of the North Warwickshire Local Plan 2021 (NWLP) relates to development in the Green Belt. Paragraph 150(b) and 150(d) of the National Planning Policy Framework (the Framework) states that engineering operations and the re-use of buildings (provided that the buildings are of permanent and substantial construction) are not inappropriate forms of development in the Green Belt provided they preserve its openness.
9. Both spatial and visual impacts form part of the concept of openness of the Green Belt. In spatial terms, the building has not been extended or altered and the building is of solid construction. The formation of hardstanding is dark in colour with minimal changes to the ground level. The appellant argues that the appearance of the site is similar to the previous agricultural use however, the type and size of vehicles such as grab lorries and beavertail plant lorries, associated with a heavy good vehicle (HGVs) operation is significantly different to vehicles associated with an agricultural use. The activities associated with a HGV use is also significantly different to an agricultural use with it being described that lorries typically leave in the morning and return in the afternoon.
10. The parking of HGVs on the hardstanding area, whilst predominantly only between the hours of 16:00 hours and 07:30 hours, and the frequent comings and goings of HGVs, are visually prominent from within the site as well as from

the surrounding area. In visual terms, the development has a greater impact on the openness of the Green Belt than the previous situation. The development does not preserve the openness of the Green Belt and is inappropriate development as described in paragraph 150 of the Framework.

11. The development described in the notice is inappropriate development in the Green Belt and as such conflicts with Policy LP3 of the NWLP and the Framework which seeks to safeguard the Green Belt from inappropriate development and impacts on openness.

Highway safety

12. The appeal site is accessed from a single vehicle width track, with some passing places, that leads to Hurley Common Road that has a 40 miles per hour (mph) speed limit. The single width track is also used to access a Severn Trent Water Facility, a Ministry of Defence shooting range and the properties of 31, 33 and 33a Hurley Common.
13. The site holds a HGV Operators Licence for 6 HGVs and the appellant indicates on this basis that the use of the site described in the notice could generate 20 HGV movements per day. Whilst this level of HGV traffic is similar to the level generated by Severn Trent, this is significantly increasing the overall amount of HGV traffic using the access lane and the junction with Hurley Common Road. There is no compelling evidence to suggest that an agricultural use at the site would generate this level of HGV movements. It is also unlikely that the farmhouse and the residential holiday lets¹ would result in significant levels of HGV traffic.
14. The parties disagree over the visibility splays required from the junction of the site access with Hurley Common Road. The Council consider a visibility splay of 120 metres is needed with the appellant implying 60 metres is required. Nevertheless, the appellant confirms that a visibility of only 45 metres can be achieved to the south of the junction. Average traffic flows and speeds along Hurley Common Road were surveyed indicating average speeds of between 33mph and 40mph. It does not seem uncommon for vehicles to be parked along Hurley Common Road, something I saw at my site visit, therefore requiring moving vehicles to sometimes travel on the opposite side of the road. Even with the average speeds being within the required speed limit, given the reduced visibility splay to the south by walls and fencing, and further obstacles in terms of parked vehicles on the road, as well as HGVs being generally slower moving to manoeuvre from a junction, I consider that the junction with Hurley Common Road to be unsuitable and hazardous for highway users, particularly as the development significantly increases the amount of HGVs using the junction.
15. There are passing places scattered along the access road however, there are minimal passing points immediately after the junction with Hurley Common Road. This section of the access road is single vehicle width and there would be occasions when two vehicles would meet each other on the access road. This would then require a vehicle to undertake an unusual manoeuvre by reversing back along the access which would be a hazardous procedure, particularly if it requires a HGV to reverse back out onto Hurley Common Road. Given the operations of the development, it is unlikely that there would be many

¹ Referenced consent PAP/2018/0232

pedestrians visiting the site. Nevertheless, should pedestrians wish to visit the site, due to the narrow width of the access road and lack of formal footpath, there would be conflict should vehicles wish to pass any pedestrians along the access.

16. I have had regard to the appellants statement of case including the Traffic Impact Note that details matters relating to traffic movements, highway safety, site access, road surface damage, safety audit and traffic generation. I also note that there have been no recorded personal injury accidents at the junction of the site access with Hurley Common Road in the last 23 years. These matters, however, do not outweigh the harm I have identified with regards to the increase in HGV traffic and the adverse effect this has on the access junction with Hurley Common Road.
17. Accordingly, the development harms highway safety with regards to the access. The development is contrary to Policy LP13 of the NWLP and the Framework which seeks development to not cause an unacceptable adverse impact to the safe and free movement of pedestrian, vehicular or other traffic.

Other considerations

18. The appellant describes that the HGV operating business assists with the diversification of the rural economy, employing six people and bringing benefits to the local economy and increasing the potential for local employment.

Conclusion

19. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework states that substantial weight is given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. I have also found that the development has a harmful effect on highway safety.
20. Other considerations have been identified some of which can be described as benefits and given the scale of the development, I attribute minimal weight to these benefits. These benefits would not clearly outweigh the harm that I have identified above, particularly given the importance the government gives to the protection of the Green Belt as reflected in the Framework.
21. For the reasons outlined above, therefore, other considerations do not clearly outweigh the harm to the Green Belt and any other harm. Consequently, the very special circumstances needed to justify the development do not exist. The development is contrary to the relevant development plan policies and the Framework as a whole.
22. I therefore conclude that the appeal on ground (a) fails.

Appeal on ground (g)

23. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. In the notice, the time to comply with the requirements is six months.
24. The appellant is seeking the time compliance to be changed to 12 months as the business supports a significant number of jobs and more time would be

needed to locate and secure new premises. There is a lack of convincing evidence identifying why six months is not enough time to find alternative premises. Nevertheless, the requirements are to cease the unauthorised use of the building and land, the removal of items and the reinstating of the land to its previous condition. In this respect, I consider a six month period to comply with these requirements does not fall short of what is reasonable.

25. The appeal on ground (g) therefore fails.

Chris Baxter

INSPECTOR