



Appeal Decision

Site visit made on 8 November 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/Z3635/W/23/3327773

**Glenhaven Yard, Land on south side of Horton Road, Stanwell Moor
TW19 6AF**

- 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 Pritpal Singh Purewall of Mapgro Ltd against the decision of Spelthorne Borough Council.
- The application Ref 23/00110, dated 26 January 2023, was refused by notice dated 18 April 2023.
- The development proposed is described as "redevelopment of Glenhaven Yard - removal of existing buildings, erection of single storey structure to be used as a minibus depot for a holiday firm as per the Certificate of Lawfulness (18/00941CLD), reduction of existing hardstanding and improvement to grassed area/paddock. Use Class B8."

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the living conditions of occupants of neighbouring properties, with specific regard to noise and disturbance; and
 - on the basis that the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to very special circumstances required to justify the development.

Reasons

Whether or not the proposal would be inappropriate development

3. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
4. Saved Policy GB1 of the Spelthorne Borough Local Plan (2001) (Local Plan) has a similar approach to the Framework. It does not permit development in the

Green Belt which would conflict with the purposes of including land within it, and maintaining its openness, other than some identified exceptions that it considers not inappropriate. However, while the exceptions listed in saved Policy GB1 broadly reflect some of the exceptions set out at paragraph 149 of the Framework, there are fewer exceptions and there is no specific exception regarding the limited infilling or partial redevelopment of previously developed land. There are also some fundamental differences between its listed exceptions and those set out in the Framework and, unlike the Framework, saved Policy GB1 does not permit inappropriate development in the Green Belt in very special circumstances. It is therefore not consistent with the provisions of the Framework. As the Framework is more up to date than the Local Plan, I give greater weight to the policies in the Framework in this regard and have assessed the appeal on this basis.

5. There is no dispute between the Council and the appellant that the northern part of the appeal site constitutes previously developed land. From the evidence before me and my observations on site, I can find no reason to disagree. The southern section of the site is separated from the northern section by a fence, and trees and bushes. It currently comprises grassland and does not form part of the curtilage relating to the existing buildings on the northern section of the site. I am therefore of the view that it does not meet the definition of previously developed land set out in the Framework.
6. Paragraph 149 of the Framework establishes that the limited infilling or partial redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) is not inappropriate in the Green Belt, provided that it does not have a greater impact on the openness of the Green Belt than the existing development.
7. Neither the Council nor the appellant have set out what should be considered as the existing development in this case. I note the Council's Officer Report states the site as currently unused. Nevertheless, on my visit there were eight large HGV trailers and a small lorry parked on the site. There were also what appeared to be industrial racking beams and a few other boxed and bagged items such as pillows.
8. I have before me a Certificate of Lawful Use or Development¹ granted under Section 191 of the Town and Country Planning Act 1990 (as amended), for the existing use of the site for a minibus depot for a holiday firm and ancillary offices and welfare facilities (hereon referred to as the certificate). I understand the certificate relates to the northern section of the site. The Council's Officer Report on the application for the certificate explains that, at that time, there was a portable building accommodating the office area, plus a further portable building providing toilets. In addition, there were two small fuel storage buildings located towards the western end of the site.
9. The portable buildings and fuel storage buildings are still present on the site. However, the office building appeared to be empty. There is also a brick building located close to the entrance of the site labelled as a chemical store. There is no dispute between the Council and the appellant that the certificate establishes the lawful use of the northern section of the site.

¹ Reference 18/00941/CLD, dated 9th August 2018.

10. However, the use of the site for storage of HGV trailers and lorries does not appear to be part of this lawful use. It is not clear whether the Council are aware of this or have had an opportunity to investigate whether it would be expedient to take action to remedy any possible planning breach. Therefore, in my view, the existing lawful development comprises the existing buildings on the site and the lawful use of the northern section of the site established by the certificate. I have determined the appeal on this basis.
11. The northern part of the appeal site may be considered to have a commercial appearance. However, the effect of minibuses on the openness of the site and Green Belt would be limited, given their transient nature, and, in the absence of minibuses, the site is very open. While the existing buildings on site may be a little unsightly, they are very modest in size and have low, single storey profiles with flat roofs. Their positioning on the edge of the site, relatively close to the existing built form on Horton Road means they also have a limited effect on the openness of the site and thus the openness of the Green Belt.
12. The proposal would remove the existing buildings and erect a new structure to provide welfare facilities, an office, and a workshop on the eastern side of the site. It may be that the proposed structure would be smaller than buildings previously considered by the Council in a similar position on the site, including one building that was approved, which I consider below. However, it would be larger than the existing buildings. Although it would be single storey, it would have a large crown roof and would be significantly taller as a result. It would therefore unavoidably take up more space than the existing buildings. This would harm the spatial openness of the Green Belt. Furthermore, the proposed structure would also be far more permanent than the existing portable buildings, which could be moved from the site with relative ease at any time.
13. The appeal site is relatively well screened from the surrounding area by bushes and trees along its boundaries. Nonetheless, there are views of the northern part of the appeal site from the rear of some of the neighbouring properties fronting Horton Road due to a gap in the boundary treatment.
14. The proposed structure would be very wide and would extend away from the existing built form on Horton Road. This, together with its significant height, despite the flat part of the crown roof being green, would make it far more obvious than the existing buildings, both from within the site and from the neighbouring properties. This would result in harm to the visual openness of the Green Belt, albeit this harm would be localised. I recognise that there is other commercial development in the surrounding area, including a large recycling centre. However, this development is not appreciable from the appeal site. Therefore, although in this case it may moderate the harm to the openness of the Green Belt resulting from the proposal to some degree, it does not remove the harm entirely.
15. The proposal would include a reduction in the amount of hardstanding and the provision of a landscaped green buffer, which is shown on the submitted plans to comprise additional grassed area paddock. This may help to 'green' the site. However, its effect on openness in this case would be limited. While it would restrict the number of minibuses that could be parked on the site, when taking into account the space required to operate the site effectively, it would be unlikely to result in significantly fewer minibuses. In any case, as set out

above, the transient nature of the minibuses limits their impact on the openness of the Green Belt.

16. For the reasons above, the proposal would have a greater impact on the openness of the Green Belt than the existing lawful development. It would not accord with paragraph 149 of the Framework. It would therefore be an inappropriate form of development within the Green Belt, which by definition, is harmful to the Green Belt, and would conflict with Saved Policy GB1 of the Local Plan.

Character and Appearance

17. Horton Road comprises a mixture of residential properties and commercial premises. The residential properties are modest in scale and set back from the highway on moderate to large sized plots, which creates a spacious character. In addition, along the section of Horton Road where the entrance to the appeal site is located there is a large field on the opposite side of the highway. The open field adds contributes to the sense of spaciousness and, together with trees and bushes in the frontages of the houses and along the boundary of the field, adds greenery to the street scene.
18. In the wider area, many of the larger commercial premises are set further back from the highway than the residential properties, either behind the residential properties that front the highway or behind hard or soft boundary treatments that at least partly screen them from the street scene.
19. I have found that the proposal would adversely affect the openness of the site by permanently adding a significant amount of built form to a part of the site where there is currently none. However, while this would not preserve the openness of the Green Belt, this would not necessarily result in it being out of character with the existing pattern of development, as described above.
20. Given the large number of similar types of commercial premises in the wider area and taking into account that the site is contained and fairly well screened, I am not of the view that the proposal would result in any appreciable harm to the character and appearance of the area. Furthermore, the reduction of the hardstanding and landscaped green buffer would help to 'green' the site and the removal of the existing buildings would likely make it more attractive.
21. Accordingly, it would accord with Policy EN1 of the Spelthorne Core Strategy and Policies Development Plan Document (2009), which seeks to ensure a high standard in the design and layout of new development.

Living conditions of neighbouring occupants

22. The proposal is supported by a Noise Impact Assessment² (NIA), which concludes that noise emissions from the proposed development would be acceptable and recommends planning permission to be granted subject to the imposition of suitable planning conditions. This is based on the site operating between 06:00 and 23:30 Monday to Friday and includes vehicle movements from minibuses and staff cars. The noise sources for each vehicle movement include a door slam, an engine start, a pull-away from a parking bay and an

² Prepared by Cass Allen Associates Ltd for Glenhaven Yard, Horton Road, Report Reference: RP02-20655-R0, dated 21 February 2023.

exit via the access road. The NIA also provides a limit for noise emissions from any external plant.

23. Nonetheless, it does not appear to take account of the uses associated with the proposed structure, particularly the workshop activities, which are likely to include mechanical noise. Therefore, the cumulative impact of the proposal is unclear.
24. While there is a high level of background noise at the site, predominantly due to the site lying under the flight path of the nearby Heathrow Airport, on my visit, the level of background noise dropped significantly during the gaps between planes flying over the site. Also, the level of noise being generated by the M25 motorway was far less than the aircraft noise. At my time of visiting, I experienced no noise from the nearby commercial uses.
25. The mechanical noise associated with vehicle maintenance can have quite different characteristics from the ambient noise of the aircraft and motorway, and the vehicle movements associated with the depot, in terms of its sound pressure level and frequency. It is likely to be more impulsive and could adversely affect the occupants of the neighbouring properties.
26. Overall, I am of the view that some of the Council's concerns, such as the spilling out of the workshop activities across the site, could be addressed by condition in the event the appeal was allowed. However, there is insufficient information to demonstrate that the proposal, as a whole, including the workshop activities, would have an acceptable impact on the living conditions of neighbouring occupants with regards to noise.
27. Given the proposed operating times of the depot, it is likely that some form of external artificial lighting would be required. Nonetheless, from the evidence before me and my observations on site, it would be possible to incorporate some external lighting without adversely affecting the occupants of the neighbouring properties. Therefore, in the event the appeal was allowed, the design and positioning of this lighting could be secured by condition.
28. Accordingly, in the absence of sufficient information and evidence, it has not been demonstrated that the proposal would not have an unacceptable impact on the living conditions of the occupants of the neighbouring properties with regards to noise. It would therefore conflict with Policy EN11 of the Core Strategy. This seeks to minimise the adverse impact of noise by, among other things, ensuring that developments generating unacceptable noise levels include measures to reduce noise to an acceptable level.

Other Considerations

29. The appellant considers that there is an extant permission³ relating to the site, which was granted in 2006 for the erection of a detached single storey workshop/office building with associated car parking (2006 permission). The permitted single storey workshop/office building was larger than the proposed structure subject to this appeal and would have been located in a similar position on the site. It is the appellant's view that the 2006 permission has been implemented and the approved building could therefore be erected.

³ Reference: 05/00831/FUL, dated 6 January 2006.

30. There is no dispute between the Council and the appellant that the 2006 permission was partly implemented, and evidence considered as part of the certificate suggests that works on the site relating to the 2006 permission occurred at some point between 2006 and 2008. Nevertheless, both parties also agree that not all the pre-commencement conditions were discharged. Given this, the works that had taken place to implement the permission may not be lawful. Also, the approved building was never constructed. Therefore, although the use of the site continued for 10 years, in breach of the pre-commencement conditions, and thus the work undertaken acquired immunity, it did not include the erection of the approved workshop/office building.
31. For the reasons above, I am not satisfied that there is a reasonable prospect of the 2006 permission being lawfully completed in the event the appeal was dismissed. Moreover, the approved building has still not been constructed, which suggests that its lawful erection as part of the 2006 permission is no more than theoretical. The 2006 permission therefore does not constitute an established fallback position in this case.
32. Despite the site not currently being used as a minibus depot, I am satisfied that there is a reasonable prospect of the site being used for its existing lawful use as set out in the certificate. Its existing lawful use therefore does constitute an established fallback position.
33. The appellant considers that the proposal would result in some benefits as, unlike the lawful use of the site, it would limit the overall level and intensity of the use through the reduction of the hardstanding and by placing restrictions on the operating hours. I note that interested parties have experienced nuisance in the past from the unrestricted operation of the site. The proposal would limit activities to specific times of the day and the reduction in hardstanding and provision of a landscaped green buffer means they would take place further from the neighbouring properties. This could help reduce the effect of the operations on the living conditions of the occupants of the neighbouring properties in comparison to the existing lawful use of the site.
34. Nevertheless, granting planning permission for the appeal proposal would not give the Council the power to stop the unrestricted lawful use of the northern part of the site. The appellant would need to covenant not to use the site in the terms of the certificate. This could not be reasonably imposed through a condition. It would need to be secured through a planning obligation. Therefore, I can only afford the potential benefits in this regard limited weight.
35. Notwithstanding this, while both the proposal and the existing lawful use of the site would support economic growth, there would also be some modest operational benefits arising from the improved office and welfare facilities. The reduction of the hardstanding and landscaped green buffer would help to marginally 'green' the site and the removal of the existing buildings would likely make the site modestly more attractive. Nevertheless, as concluded above, the proposal, by virtue of the proposed structure, would have a greater impact on the openness of the Green Belt than the existing lawful use of the site. As such, implementation of the proposal over the fallback position has not been shown to have an effect that would be broadly the same or better and therefore does not weigh in favour of granting permission.
36. The appellant considers that the policies most important for determining the appeal are out of date because the Council is currently unable to demonstrate a

five-year housing land supply. However, the proposal does not involve the provision of housing and therefore, in line with footnote 8 of the Framework, paragraph 11 does not fall to be considered in this case.

Green Belt Balance

37. The Framework indicates that very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
38. I have found that the proposal would, by virtue of having a greater impact on the openness of the Green Belt than the existing development, be an inappropriate form of development within the Green Belt. Paragraph 148 of the Framework states that any harm to the Green Belt should be given substantial weight.
39. In addition, I have identified other harm in the form of insufficient information and evidence being provided to demonstrate that the proposal would not have an unacceptable impact on the living conditions of the occupants of the neighbouring properties, with regard to noise. The Framework seeks to ensure that developments create places with a high standard of amenity for existing users. This matter therefore carries significant weight.
40. On the other hand, the other considerations that I have identified are of modest weight in favour of the proposal. Thus, they would not clearly outweigh the harm identified and, on account of this, the very special circumstances necessary to justify the proposal have not been demonstrated.

Conclusion

41. Accordingly, the proposal would be at odds with the development plan taken as a whole and there are no other material considerations which outweigh this conflict. Thus, the appeal is dismissed.

Hannah Guest

INSPECTOR