



Appeal Decision

Site visit made on 3 October 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal Ref: APP/J0405/X/22/3299179

Land at the junction of Station Road and Quainton Road, approximately 1.5km southwest of Quainton

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by High Speed Two (HS2) Limited against the decision of Buckinghamshire Council.
- The application ref 21/02099/ACL, dated 18 May 2021, was refused by notice dated 30 November 2021.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is proposed temporary works consisting of:
 - 2 No. temporary office and welfare buildings at approximately 6m high (two-storey) each with a footprint of 390m²;
 - a temporary car park for 167 vehicles with a footprint of approximately 4,233m²;
 - the erection of a temporary 20m high communication mast;
 - creation of a temporary logistics storage area (3532m²);
 - a soil storage bund (2244m²);
 - an internal van & 4x4 car park and bus stop turning area (1346m²);
 - a security checking plaza (710 m²);
 - a wheel wash and vehicle final inspection point (630m²);
 - a surface water attenuation pond (256 m²); and
 - the erection of temporary fencing around the entire site.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operations which are found to be lawful.

Preliminary Matters

2. The HS2 railway line between London and Birmingham, together with associated development, was granted deemed planning permission by the High Speed Rail (London - West Midlands) Act 2017 (the HS2 Act).
3. The application was made by HS2 Limited under s192(1) of the Town and Country Planning Act 1990 (the 1990 Act) and sought to establish whether temporary works on land at the junction of Station Road and Quainton Road would be lawful. The Council confirm that it considered the application on the basis of the revised scheme, as set out in the EKFB letter dated 8 October 2021, despite its decision notice referencing the description as originally submitted.
4. The appellant has subsequently identified a number of discrepancies between the description of the revised proposals set out in the banner heading above

and the details of the revised proposals submitted. It is requested that the description be amended as follows: Proposed temporary works consisting of:

- Temporary office and welfare buildings (861m²);
 - a temporary car park for 167 vehicles with a footprint of approximately 4,233m²;
 - M&E infrastructure including the erection of a temporary 20m high communication mast (533m²);
 - creation of a temporary logistics storage area (2532m²);
 - a soil storage bund (2244m²);
 - an internal van and 4x4 car park and bus stop turning area (1346m²);
 - a security checking plaza (710 m²);
 - a wheel wash and vehicle final inspection point (630m²);
 - access road (1467m²);
 - a surface water attenuation pond (256 m²); and
 - the erection of temporary fencing around the entire site.
5. I am satisfied that description reflects the details shown on the plans submitted to the Council on 8 October 2021¹, and those details listed in the Council's delegated report, so that the description should be modified accordingly.
6. The parties initially disputed whether the appeal proposal also included the demolition of derelict farm buildings. However, it has since been confirmed that the appellant does not intend to contest the Council's position that it does not. I therefore make no further comment on that matter.
7. The consented HS2 works already include the construction of a temporary satellite compound at Station Road, however, the proposed works consist of a larger compound that extends beyond the Act limits, such that they do not benefit from deemed consent as a single development/operation.
8. I saw at my site visit that a construction compound had been created on the land. It is unclear whether that is the consented compound or the proposed larger compound. Even if it is the latter, I am still able to consider the LDC application under s192(1) because the determination is to be made as to whether the development would have been lawful at the time of the application.
9. The appellant submitted a separate application for a LDC for a temporary site compound on land to the south of the FCC energy from waste plant in Edgcott², which was refused for the same reason, around the same time. I have also been appointed to determine the appeal against that refusal, which is subject to a separate decision³.

¹ 1MC12-EKF-CV-DGA-CS08-000220 and 1MC12-EKF-CV-DGA-CS08-000221

² Ref 21/03484/ACL

³ Appeal Ref: APP/J0405/X/22/3299180

Main Issue

10. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether the proposed temporary works would have been lawful on the date of the LDC application on the basis that they would have been granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as then in force.

Reasons

11. Subject to limitations and conditions, Article 3 and Schedule 2, Part 4, Class A of the GPDO (hereafter referred to as Class A), provide permitted development rights for the "*provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land*".
12. The Council held a meeting with the applicant during the course of the application when it conveyed its view that Class A permitted development rights could not be utilised due to the proportion of car parking proposed, which, by virtue of its excessiveness, would not be deemed as an ancillary element to a temporary compound and would amount to a material change of use of the land.
13. The Council referred to the Denham⁴ LDC application that had been submitted on behalf of the appellant by a different contactor for the change of use of a vacant site to a temporary construction worker car park to be used in connection with HS2. The Council infer that the application was withdrawn after the Council shared the legal opinion of Richard Kimblin KC with the contractor and the appellant. That legal opinion took into account legal opinions provided by the appellant from Pinsent Masons and DLA Piper, and advised an inspector would more likely than not decide that the proposed development did not fall within Class A and that the Council was entitled to refuse the certificate and invite a planning application.
14. The appellant has sought to draw distinctions between the nature of that application and that currently proposed and has put forward a differing narrative as to why it was withdrawn, before being resubmitted.
15. In any event, although the appellant did not agree with the Council's Class A assessment, car parking was reduced from 218 vehicles over a footprint of approximately 6,647m², to 167 vehicles over a footprint of approximately 4,233m². As a result, the proposed car parking would take up approximately 29% of the compound area. The land take for all of the other aspects would be significantly less.
16. The Council's officer report specifically confirms that the office and welfare buildings, the communication mast, the stockpile and the fencing would, as individual elements, be considered to constitute permitted development under Class A. In principle, I find no reason to take a different view.
17. The officer report does not, as stated by the appellant, specifically refer to the attenuation pond and the wastewater treatment plant as falling within Class A,

⁴ The Future Colne Valley Viaduct Northern Abutment Worksite, Near Denham

- nor does it specifically refer to the other aspects of the proposal in that regard. Nevertheless, the Council's decision notice solely identifies the car parking aspect as not being permitted under Class A in its reason for refusal.
18. Despite the reduced quantum, the Council's position remained that set out above that the proposed car parking area would amount to a material change of use of the site which would require planning permission. The Council further state that the provision of such a large area of land within the site for car parking does not fall within the remit of development permitted by Class A, not being buildings, moveable structures, works, plant or machinery.
 19. However, subsequent to submitting its appeal statement, the Council sought and has provided advice on the proposed LDC from David Matthias KC. In preparing the advice, Mr Matthias KC has had regard to other legal opinions on the scope of Class A, including the aforementioned advice written by Mr Kimblin KC⁵ and the opinion written by Paul Tucker KC⁶ on behalf of the appellant in relation to the appeal proposal.
 20. In that advice Mr Matthias KC agrees with Mr Tucker KC that given the breadth with which Class A has been drawn, *"the laying of hardstanding constitutes 'works' for the purposes of Class A. Hardstanding is clearly the physical product on land of engineering operations. There is nothing to indicate that 'works' should be defined narrowly so as to exclude such operations"*.
 21. Mr Matthias KC recognises that the proposed LDC is not simply concerned with a change of use, as was the case in the Green Acre appeal decision⁷, which the Council refer to as a material consideration in this case, and that the appellant is not proposing that the site be used for car parking, without any associated operations being carried out. Rather, it is proposed that the hardstanding works be provided at the appeal site, and that those works be used in connection with the construction of HS2. On that basis Mr Matthias KC takes the view that the Green Acre case, which related to the provision of car parking without any associated works, is distinguishable.
 22. Mr Matthias KC also agreed with Mr Tucker KC in that Class A *"would be rendered ineffective if it permitted a developer to provide buildings, structures, works, plant or machinery on a site, but not to use them. It must follow that any buildings, moveable structures, works, plant and machinery provided on land pursuant to Class A may be used in connection with operations on that land or adjoining land"*.
 23. I see no reason to disagree with the above advice given to the Council by Mr Matthias KC, which effectively rejects the main principles of its sole reason for refusing the LDC.
 24. It follows that I find that the engineering operations involved in the laying of hardstanding to create a car park amount to *"works"* for the purposes of Class A. Plainly, if such works are permitted, they must also be permitted to be used as such.
 25. Moreover, there is nothing in the Class A provisions which precludes car parking from being the dominant aspect of the compound, or requires it to be

⁵ And Howard Leithead

⁶ And Stephanie Hall

⁷ Appeal Ref: APP/L3815/C/19/3233587

ancillary to other aspects, as long as the works are reasonably required temporarily in connection with and for the duration of HS2 operations on that land or on adjoining land. It is those provisions which control the scale of the works.

26. However, the advice of Mr Matthias KC, appears to raise new issues as to why the proposed development does not fall within Class A, which are not included within the Council's reason for refusal, and which the appellant may reasonably have assumed to have previously been agreed.
27. His advice is that the appellant has not provided sufficient information on the location, scale, nature and duration of the works for which the proposed development is said to be required. Accordingly, it is argued that it would not be possible for me to be satisfied that the proposed development is reasonably required temporarily in connection with operations taking place on adjoining land.
28. He states, that what is clear is that the proposed development is intended to be used for at least some operations that are set to take place on land not adjoining the appeal site. In those circumstances, it appears to Mr Matthias KC that the scale of development proposed, including the car parking, is not reasonably required in connection with operations on adjoining land, and that the proposed development does not fall within the scope of Class A.
29. In the context of those submissions, the relevant Class A criterion is essentially that the development must be required temporarily in connection with operations taking place on the same land or land adjoining that land. Following the case of *Wilsdon*⁸, "required" is taken to mean what is genuinely reasonably required, rather than necessary, merely desirable or convenient. As in *North Cornwall District Council*⁹ it will be a matter of fact and degree in each case whether there is some connection between the temporary structure and the operations.
30. Although there is no definition in the GPDO of "adjoining", the Court of Appeal in the case of *CAB Housing Ltd*¹⁰ held that the words "adjoining premises" in paragraph AA.2(3)(a)(i) of the GPDO extended to properties which lay close to the subject property rather than only contiguous or abutting buildings. Whilst that Judgement was made in the context of Class AA of Part 1 of the GPDO, in the High Court, Mr Justice Holgate highlighted that where in the GPDO the draftsman meant to say "immediately adjoining", he has used that express language. That is not the case for Class AA, nor is it for Class A (of Part 4).
31. I do not therefore agree that some sort of immediate proximity is necessary, or that the operations must take place on land which is in fact physically attached to the land on which the construction compound is to be provided.
32. In any case, the appeal site sits partially within and partially outside the HS2 Limits of Land to be Acquired or Used under the HS2 Act for other works (ancillary works) utilised for the construction of the HS2 railway, associated works and for environmental mitigation. The compound would therefore be

⁸ *R (oao Wilsdon) v FSS & Tewkesbury BC* [2006] EWHC 2980 (Admin); [2007] JPL 1063

⁹ *North Cornwall District Council v Secretary of State for Transport, Local Government & the Regions* [2002] EWHC 2318 (Admin)

¹⁰ *CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC* [2022] EWHC208 (Admin); [2023] EWCA Civ 194

- either on land or adjacent to the land which benefits from planning permission for HS2 operations.
33. Mr Matthias KC opines that the mere fact that the site physically adjoins some HS2 development cannot mean, for the purposes of Class A, that it can be taken to adjoin any HS2 development. Highlighting that the geographical scope of the HS2 construction works is vast, he argues that it cannot be sensibly said that because the appeal site adjoins one of the listed HS2 construction works in Quainton, that would mean that Class A would permit the proposed development to be used in connection with HS2 operations in, for example, Warwickshire or Birmingham.
34. However, the appellant does not propose such an extreme scenario where such a substantial separation is unlikely to be reasonably required. It is evidently a matter of planning judgement, where the nature of the operations is clearly relevant.
35. Mr Matthias KC argues that the correct approach for Class A purposes is for the appellant to demonstrate that the appeal site is physically adjacent to the land on which those specific operations are being carried out.
36. Although the HS2 Act disaggregates individual “works”, they form part of the construction of the same substantial linear infrastructure project. In that context there are bound to be logistical benefits from a compound serving operations within a reasonable distance, rather than to have numerous individual compounds adjacent to each of the works, thereby duplicating those facilities.
37. In this case, the appellant has identified the requirement for 40 staff to provide security and welfare to 120 operatives working on three bridges, an underbridge, highway works and five large drainage culverts, all within 3.5km of the compound.
38. The appellant’s position is that that the car parking and welfare/office facilities are directly linked to one another as part of a construction compound required to undertake those aspects of the HS2 operations. It is asserted that the proposed car parking is reflective of the number of staff who would use the compound on a daily basis, as well as its rural location, whilst being limited as far as possible.
39. It is stated that the work force must be located close to the project boundary to enable secure parking and project access, fatigue management controls and controlled welfare at the point of entry to site before using buses along the private access road to worksites. Although the Council argue otherwise, such considerations are relevant in this case as the proposals must be shown to be reasonably required. The appellant’s submission that the space available along the route for construction compounds is severely limited, is also relevant.
40. I therefore find that within the context of operations which involve the construction of a substantial linear infrastructure project, where inevitably some operations will be further along the line than others, the juxtaposition of the compound relative to the identified “works” is not unreasonable when the compound remains either on or adjacent to the land that has planning permission for the HS2 operations.

41. In *R. (Wilsdon)*¹¹ it was observed that on any basis, the size and means of construction of the building in question will be highly relevant factors. The larger and more permanent the building, the less likely it is to be “*required temporarily*”. Conversely, the size and nature of the operations being carried out must also be relevant; the bigger the operations, the more likely it is that the Class A requirements will increase in scale and duration.
42. The construction of HS2 is clearly a substantial operation. Consequently, the scale of the supporting temporary works identified to deliver the project is unsurprising.
43. Mr Matthias KC raises concern that the type of works proposed appear to be long-term in nature, and that the appellant has not explained when or how they will be removed. However, there is no requirement within Class A for the operations to be completed within a particular timescale. The principal constraint is that the works must be reasonably required for the purposes of the operations, whilst Conditions A.2(a) and (b) prevent permanent provision. Given the scope of the HS2 operations, it would not be surprising that the temporary requirement will run into a number of years.
44. The Council appear to argue that the proposed development does not comply with Class A.1(b), which states that development is not permitted by Class A if “*planning permission is required for those operations but is not granted or deemed to be granted*”. However, in this case, ‘*those operations*’ are the HS2 railway line between London and Birmingham together with associated development, which, as noted has been granted deemed planning permission by the HS2 Act. Accordingly, I do not find conflict with limitation A.1(b).
45. Moreover, even if the size of the site is larger than the appellant’s own definition of a satellite compound, that would not preclude it from falling within the scope of Class A, so long as the provisions of the same are met.
46. Having regard to the particular characteristics of the HS2 operations, I conclude that the proposed temporary works would have been lawful on the date of the LDC application on the basis that they would have been granted planning permission by Class A of the GPDO, on the balance of probabilities.

Other Matters

47. The Council has confirmed that it has adopted a screening opinion that the proposed temporary works do not constitute Environmental Impact Assessment development. The works are not therefore precluded from being permitted development by Article 3(10) of the GPDO.

Conclusion

48. For the reasons given above I conclude, on the evidence now available, that the Council’s refusal to grant a LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Richard S Jones

INSPECTOR

¹¹ *R. (Wilsdon) v First Secretary of State* [2006] EWHC 2980 (Admin)

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 May 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probabilities, the temporary buildings, structures and works constitute permitted development by virtue of the provisions of Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and would be granted planning permission by Article 3(1) of the same.

Signed

Richard S Jones

INSPECTOR

Date: [14 December 2023]

Reference: APP/J0405/X/22/3299179

First Schedule

Temporary works consisting of:

- temporary office and welfare buildings (861m²);
- a temporary car park for 167 vehicles with a footprint of approximately 4,233m²;
- M&E infrastructure including the erection of a temporary 20m high communication mast (533m²);
- creation of a temporary logistics storage area (2532m²);
- a soil storage bund (2244m²);
- an internal van and 4x4 car park and bus stop turning area (1346m²);
- a security checking plaza (710 m²);
- a wheel wash and vehicle final inspection point (630m²);
- access road (1467m²);
- a surface water attenuation pond (256 m²); and
- the erection of temporary fencing around the entire site

all in accordance with the application Ref: 21/02099/ACC dated 18 May 2021, as revised by letter dated 8 October 2021 and in accordance with drawing numbers 1MC12-EKF-CV-DGA-CS08-000220 C01 and 1MC12-EKF-CV-DGA-CS08-000221 C01.

Second Schedule

Land at the junction of Station Road and Quainton Road, approximately 1.5km southwest of Quainton

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated:14 December 2023

by Richard S Jones BA(Hons), BTP, MRTPI

Land at the junction of Station Road and Quainton Road, approximately 1.5km southwest of Quainton

Reference: Appeal Ref: APP/J0405/X/22/3299179

Scale: Not to Scale

