



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/22/3299180

Land to the south of the FCC energy from waste plant, Edgcott, Aylesbury, Buckinghamshire HP18 0QN

- 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 21/03484/ACL, dated 1 September 2021, was refused by notice dated 19 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 a temporary site compound comprising welfare and office units, car parking, storage areas, internal access roads, security area, a communications mast and an associated drainage feature.
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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 the creation of a temporary site compound on land to the south of the FCC energy from waste plant in Edgcott would be lawful.
4. The development would comprise:
 - a double-stacked cabin at 6m in height with a footprint of 314m², accommodating welfare units for 200 and office units for 50 staff;
 - a single storey briefing cabin with a footprint of approximately 57m²;
 - 179 car parking spaces, with 29 of those reserved for 4x4 vehicles and vans used for internal movement of people between the compound and the assets they are working on;
 - a communications mast 15m in height;

- a wastewater treatment plant to treat and discharge cleaned water, with waste solids being emptied periodically using a tanker; and
 - an on-site attenuation pond with capacity of 480m³.
5. The appellant submitted a separate application for a LDC for temporary works on land at the junction of Station Road and Quainton Road¹, 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 decision².

Main Issue

6. 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 site compound would have been lawful on the date of the LDC application on the basis that it would have been granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as then in force.

Reasons

7. 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*".
8. The Council's officer report specifically confirms that the office and welfare buildings, the communication mast, the attenuation pond and wastewater treatment plant would, as individual elements, be considered to constitute permitted development under Class A. In principle, I find no reason to take a different view. The Council's reason for refusal therefore solely cites car parking as not being permitted development under Class A.
9. The Council's view is that the provision of 179 car parking spaces, equating to 46% of the site, amounts to a material change of use of the land which requires express planning permission and thus is not permitted by Class A. It further states that such provision does not fall within the remit of Class A not being buildings, moveable structures, works, plant or machinery.
10. However, subsequent to submitting its appeal statement, the Council sought and has provided advice on the proposed LDC from David Matthias KC. The Council confirm that advice, and the advice given by Mr Matthias KC on the related appeal at Quainton Road, form part of its case as to why the LDC should not be granted.
11. In preparing the Quainton Road advice, Mr Matthias KC had regard to other legal opinions on the scope of Class A, including that of Richard Kimblin KC³, and the opinion written by Paul Tucker KC⁴ on behalf of the appellant in relation

¹ Ref: 21/02099/ACL

² Appeal Ref: APP/J0405/X/22/3299179

³ And Howard Leithead, relating to a HS2 LDC at the Future Colne Valley Viaduct Northern Abutment Worksite, Near Denham

⁴ And Stephanie Hall

to the Quainton Road appeal (which is confirmed to equally apply to this appeal).

12. 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"*.
13. Mr Matthias KC recognised that the Quainton Road LDC is not simply concerned with a change of use, as was the case in the Green Acre appeal decision⁵, which the Council refer to as a material consideration in both cases, and that the appellant was 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 took the view that the Green Acre case, which related to the provision of car parking without any associated works, is distinguishable.
14. 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"*.
15. Mr Matthias KC confirms that his analysis for the Quainton Road site equally applies in this case, thereby effectively rejecting the main principles of the Council's sole reason for refusing the LDC.
16. I see no reason to disagree with those findings. It therefore follows 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 operational development is permitted, they must also be permitted to be used as such.
17. Moreover, there is nothing in the Class A provisions which precludes car parking from occupying the majority of the compound, or requires it to be 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 land adjoining that land. It is those provisions which control the scale of the works.
18. However, the advice of Mr Matthias KC, both in respect of the Quainton Road site and this appeal, 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.
19. His advice to the Council 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.

⁵ Appeal Ref: APP/L3815/C/19/3233587

20. 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.
21. 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*⁶, “required” is taken to mean what is genuinely reasonably required, rather than necessary, merely desirable or convenient. As in *North Cornwall District Council*⁷ it will be a matter of fact and degree in each case whether there is some connection between the temporary structure and the operations.
22. Although there is no definition in the GPDO of “adjoining”, the Court of Appeal in the case of *CAB Housing Ltd*⁸ 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).
23. 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.
24. In any case, the appeal site sits directly alongside the HS2 Limits of Land to be Acquired or Used under the HS2 Act for other works utilised for the construction of the HS2 railway, associated works and for environmental mitigation. This case is therefore materially different to the case of the appeal decision referred to by the Council relating to land at North East Junction of Manilla Street and Tobago Street, where land was to be used in relation to operations located one mile away by road.
25. Mr Matthias KC nevertheless 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. The Council also submits that because workers will be required to be transported to other sites away from the compound, that demonstrates that those workers will not be working on land adjoining the compound as required by Class A. However, Class A is not that prescriptive and to apply such an approach to any very large development would likely require the provision of numerous compounds.
26. Mr Matthias KC suggests that because the appeal site adjoins the limits of deviation for one of the scheduled works⁹ (the construction of an access road),

⁶ *R (oao Wilsdon) v FSS & Tewkesbury BC* [2006] EWHC 2980 (Admin); [2007] JPL 1063

⁷ *North Cornwall District Council v Secretary of State for Transport, Local Government & the Regions* [2002] EWHC 2318 (Admin)

⁸ *CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC* [2022] EWHC208 (Admin); [2023] EWCA Civ 194

⁹ Limits of deviation for work no.2/72A, described in sch.1 of the HS2 Act as “An access road commencing at a point 88 metres west of the footbridge carrying bridleway QUA/36/1 over the Aylesbury Link and terminating at a point 56 metres west of the junction of bridleway GUN/25/2 with footpath GUN/31/1”.

the appellant's position is that it can be said to adjoin all HS2 works, regardless of where they take place on the proposed railway line from London to Birmingham.

27. However, the appellant does not propose such an extreme scenario where such 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.
28. In that regard, although the HS2 Act disaggregates individual "*works*", they form part of the construction of the same overarching, substantial linear infrastructure project where the scope of the works is inevitably wider ranging, both in geographical location and nature, than a typical development project.
29. In that context there are bound to be reasonable logistical benefits from a compound serving operations within a reasonable distance, with workers being transported to carry out operations along other parts of the line, rather than having numerous compounds adjacent to each of the individual works, thereby duplicating those facilities. The fact that there are some 31 individual works in Buckinghamshire alone highlights the reasonableness of such an approach.
30. The appellant explains the construction compound would be used by a minimum of 160 staff, 40 of which would be full-time office based and 120 would be operative staff. The latter would work on the identified civil engineering and railway installation works in the "*local*" area, including three bridges, sidings, road works and mitigation measures. The plans show that the compound would be centrally located within a reasonable logistical separation of between 300m to 2km to those works.
31. It is further explained that an assessment has been made of resource requirements based on the works in the area, including reviews into the capacity of construction compounds identified within the HS2 Act and the feasibility of other land within Act limits which was not envisaged for use as a compound. The results of the assessment identified the need for an additional compound at the appeal site, which has been deemed by the appellant as the only suitable location with regard to the identified works.
32. The appellant states that the design and layout of the compound is directly informed by the requirements of the intended users. A canteen, toilets, changing, showers, office and meeting space are listed as essential facilities and that car parking at the site, whilst being limited as far as possible, is reflective of the staff numbers who will use the site on a daily basis and the rural location of the compound.
33. It is also argued 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 the worksites. Although the Council argue otherwise, such considerations are relevant in this case insofar as it must be shown that the Class A development is reasonably required. The appellant's submission that the space available along the route for construction compounds is severely limited, is also relevant.
34. I therefore find that within the context of operations which involve the construction of a substantial linear infrastructure project, where some

operations will inevitably be further along the line than others, the juxtaposition of the compound relative to the identified “works” is not unreasonable, when part of the compound adjoins land that has planning permission for the HS2 operations.

35. In *R. (Wilsdon)*¹⁰ 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 however, the size and nature of the operations being carried out must also be relevant.
36. As stated, the construction of HS2 is clearly a substantial operation. Consequently, the size and scale of the development required to deliver the project is also likely to be significant. Thus, the extent of the proposed compound, including car parking provision, is unsurprising.
37. 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.
38. Contrary to Council submissions, the appellant has advised that, subject to delays, the compound would be required until November 2026. Again, in the context of such a large infrastructure project, that again is unsurprising. In any case, there is no requirement within Class A for the operations to be completed within a particular timescale. The principal constraint is that the matters must be reasonably required for the purposes of the operations, even if carried out over a lengthy period, whilst Conditions A.2(a) and (b) prevent permanent provision.
39. Limitation A.1(b) of the GPDO states that the development is not permitted by Class A if planning permission is required for those operations but is not granted or deemed to be granted. Although the HS2 scheme is subject to a number of consents, that is fairly typical of a very large infrastructure project, as different regimes support different elements. Nevertheless, the operation remains the construction of HS2 for which the appellant confirms all parts have planning permission. The Council does not show otherwise.
40. Having regard to the particular characteristics of the HS2 operations, I conclude that the proposed temporary site compound would have been lawful on the date of the LDC application on the basis that it would have been granted planning permission by Class A of the GPDO, on the balance of probabilities.

Conclusion

41. 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

¹⁰ *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 1 September 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 site compound is 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/22/3299180

First Schedule

Temporary site compound comprising welfare and office units, car parking, storage areas, internal access roads, security area, a communications mast and an associated drainage feature, all in accordance with the application Ref 21/03484/ACL dated 1 September 2021 and drawing numbers 1MC12-EKF-CV-DGA-CS08-000197 C01 and 1MC12-EKF-TP-APP-CS08-000018 C01, submitted in connection with it.

Second Schedule

Land to the south of the FCC energy from waste plant, Edgcott, Aylesbury, Buckinghamshire HP18 0QN

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 to the south of the FCC energy from waste plant, Edgcott, Aylesbury,
Buckinghamshire HP18 0QN**

Reference: Appeal Ref: Appeal Ref: APP/J0405/X/22/3299180

Scale: Not to Scale

