



Appeal Decisions

Inquiry held on 22-24 and 27-28 January 2025

Site visits made on 21, 23 and 27 January 2025

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an Inspector appointed by the Secretary of State

Decision date: 06 February 2025

Appeal A Ref: APP/G2435/C/24/3342579

Former site of Stardust, Beveridge Lane, Bardon, Coalville LE67 1TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Bardon Truck Park against an enforcement notice issued by North West Leicestershire District Council.
 - The notice was issued on 15 March 2024.
 - The breach of planning control as alleged in the notice is 'following the expiration of a temporary planning permission for use of the land for parking of heavy goods vehicles (HGVs) for a temporary period of 36 months, including erection of fencing/gates and a mobile building (ref. 20/00264/FUL), the continued use of the land as such and failure to restore the land to its former condition in accordance with condition 1 of that planning permission, as well as lighting that was not authorised by that planning permission'.
 - The requirements of the notice are 1. Cease the use of the land for the parking of heavy goods vehicles and any other vehicles; 2. Remove all vehicles, structures, buildings and any other paraphernalia associated with the unauthorised use of the land; 3. Remove the lighting installed on the land; and 4. Return the land to its former condition prior to the creation of a heavy goods vehicle parking facility taking place.
 - The period for compliance with requirement 1 is four weeks, with requirements 2 and 3 is eight weeks, and with requirement 4 is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (g) of the Town and Country Planning Act 1990 (as amended). 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.
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Appeal B Ref: APP/G2435/W/24/3343327

Former site of Stardust, Beveridge Lane, Bardon, Coalville LE67 1TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Brett Parker against the decision of North West Leicestershire District Council (NWLDC).
 - The application Ref is 23/00565/FUL.
 - The development proposed is 'change of use of land for parking of heavy goods vehicle (HGV) for a temporary period of 36 months including erection of fencing/gates and a mobile building'.
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Decisions

Appeal A Ref: APP/G2435/C/24/3342579

1. The enforcement notice is varied by:

1. The deletion of text in section 3 and the substitution instead of 'The material change of use of land for parking of heavy goods vehicles (HGVs) including the erection of fencing/gates/lighting and a mobile building';
 2. The deletion of paragraph 3 in section 4 and the substitution instead of 'The breach of planning control occurred less than ten years before the date of this notice';
 3. The deletion of 'and any other vehicles' in requirement 1 in section 5;
 4. The deletion of requirement 2 in section 5 and the substitution instead of '2. Remove all vehicles, structures, buildings, toilets, showers, trailers, generators, battery power supplies, signage, CCTV, poles and any other paraphernalia associated with the unauthorised use of the land';
 5. The deletion of requirement 3 in section 5 and the substitution instead of '3. Remove the fences and lighting installed on the land associated with the unauthorised use of the land'; and,
 6. The addition of 'providing that additional hardstanding or aggregate imported to the site in relation with the unauthorised use need not be removed' at the end of requirement 4 in section 5.
2. Subject to the variations 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 1990 Act as amended.

Appeal B Ref: APP/G2435/W/24/3343327

3. The appeal is dismissed.

The site and surroundings

4. The gently sloping site is about 0.8 hectares. It has a north-east frontage to Bardon Road, part of the A511, a south-east frontage to Beveridge Lane, part of the B585, a north-west frontage to land with planning permission for warehouse and ancillary uses, and a south-west boundary to the car park of the Cavendish Arms (CA), a public house/restaurant/hotel. On the south side of Beveridge Lane to the CA and the site is a group of about 30 dwellings with frontages onto the road and East Lane. To the west of the dwellings is a large distribution centre, and to the west of the CA, beyond Cartwright Way, are buildings in business and commercial use. Cartwright Way, a cul-de-sac, leads to a business park.
5. Vehicular access to the CA and to the site is off Beveridge Lane where a splitter island separates in and out lanes. Access to the site requires drivers to take a right angled turn in front of the entrance to the CA and only a short distance from the highway, and then proceed through the car park, between vehicles parked by customers and guests of the CA. The adopted highway, and therefore the extent of Leicestershire Highway Authority's jurisdiction, extends up to the north corner of the triangular splitter island. Beyond that, and up to entrance into the site, land is owned by the operators of the CA, Greene King. The freehold owners of the site have a legal right of vehicular access through the car park to the site.

Procedural matter

6. Greene King (GK) were granted Rule 6 status, under the provisions of the Inquiries Procedure Rules, and participated fully in the Inquiry.

Planning policy and legislation

7. The Development Plan includes the North West Leicestershire Local Plan (NWLLP) and the Ellistown and Battleflat Parish Neighbourhood Plan (EBPNP). NWLDC does not consider that there are any relevant NWLLP policies. However, they have, though this was not referred to in the refusal of planning permission or in the reasons for issue of the enforcement notice, suggested that the use of the site conflicts with policies in the EBPNP. EBPNP policy E2 states that new employment generating opportunities will be supported if, amongst other things, it is well integrated with and complimentary to existing businesses. GK consider the use of the site to be in conflict with policies in the NWLLP and the EBPNP, though little was made of this alleged conflict at the Inquiry.

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

9. The three main parties agree that the National Planning Practice Framework (NPPF) is a significant material consideration. Paragraph 11 d) states that where there are no relevant development plan policies, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits. Paragraph 114 refers to the importance of providing adequate overnight lorry parking facilities to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance.

10. Paragraph 115 b) of the NPPF requires that, in assessing a site for development, it should be ensured that a safe and suitable access can be achieved for all users. Paragraph 116 states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety, and paragraph 117 requires that applications for development should, amongst other things, give priority first to pedestrian movements and result in places that are safe, secure and attractive.

11. Paragraph 200 of the NPPF states that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities, such as pubs, and that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established.

Planning history

12. The site was previously occupied by the Stardust Nightclub and its car park, including space for 10 coaches. Sometime before 2006 the nightclub ceased operations. In that year planning permission was granted for 'Demolition of existing nightclub and function rooms and redevelopment for B1 use (outline – siting and means of access)'. The approved means of access to the site is the same as it is now. The building was demolished in about 2006 but no reserved matters application was submitted and the planning permission thus lapsed.

13. On 9 June 2020 planning permission was granted for 'Change of use of land for parking of heavy goods vehicle (HGV) for a temporary period of 36 months including erection of fencing/gates and a mobile building'. The planning permission was implemented but the use did not cease on 9 June 2023 and the site was not returned to its former condition in accordance with conditions of the permission. The application that is the subject of the planning appeal is dated 5 May 2023.

Reasons

The ground (b) enforcement appeal

14. The Appellant and NWLDC agreed during the Inquiry that the ground (b) appeal could be addressed by variations to the enforcement notice. The notice has been varied accordingly.

The ground (a) enforcement appeal and the planning appeal

15. The ground (a) appeal and the planning appeal are the same, except that in the ground (a) appeal the Appellant is seeking full planning permission whereas in the planning appeal he is seeking a temporary planning permission for three years.

16. The main issues are; first, the effect of the use of the site for parking of HGVs on highway safety, and pedestrian safety within the car park of the CA; and second, the effect of the use of the land for parking of HGVs on the CA business. There is also a planning balance to be considered, which will take into account the need for the continued use of the site for parking of HGVs and whether this need outweighs any harm caused by the use.

The first issue - safety

17. Beveridge Lane is a dual carriageway with a central reservation and is subject to the national speed limit of 70mph. There is a slip lane and a gap in the central reservation to allow westbound vehicles to cross the eastbound carriageways to enter the car park. Vehicles exiting the car park must, legally and guided by the splitter island, only turn left onto the eastbound carriageways; a roundabout junction with the A511 provides the opportunity for vehicles to then proceed westwards. Evidence indicates, however, that some drivers of HGVs make illegal right turn manoeuvres when leaving the car park, by passing to the right of the splitter island, then crossing the eastbound carriageways to pass through the gap in the central reservation and then to continue in a westbound direction.

18. Leicestershire Highway Authority (LHA) are concerned about the illegal manoeuvres but maintain that the impact on highway safety can be mitigated by introduction of lit direction signs and 'No Entry' road markings, all of which would be at the Appellant's expense but which could be secured by imposition of a planning condition. The road markings would require a Traffic Regulation Order (TRO) but the Appellant has entered into a Section 106 Unilateral Undertaking to make certain, if planning permission is granted, the payment of £7,500 for the TRO. In this respect the use of the site for the parking of HGVs does not result in any unacceptable impact on highway safety.

19. There is only a short distance between roundabouts to the east and west of the access off Beveridge Lane and vehicle speeds are unlikely to exceed 50mph on this section of the B585. Evidence indicates that, occasionally, an HGV must wait on leaving Beveridge Lane, next to the splitter island, for another HGV to exit the car park, and that this can prevent other vehicles from leaving Beveridge Lane. Stacking can occur but the eastbound and westbound slip lanes can accommodate waiting vehicles without causing any obstruction to traffic. Potentially dangerous incidents in the vicinity of the access off Beveridge Lane have been recorded on CCTV but such incidents could be recorded on other roads. In this respect also the use of the site for the parking of HGVs does not result in any unacceptable impact on highway safety, and does not conflict with NPPF paragraph 116.

20. LHA have not offered any comment on activity within the CA car park, because they do not have any jurisdiction to do so. But safety within the car park is a significant matter and regard to it is required by NPPF paragraphs 115 and 117. The aisle passing through the car park up to the entrance into the site is about 7.5 metres wide and, in theory, two HGVs could pass each other in opposite directions. However, in practice, this is not possible because an HGV leaving the site must swing to the right across the aisle before turning left towards Beveridge Lane in front of the entrance to the CA. This is illustrated on internal swept path diagrams submitted on behalf of the Appellant.

21. The aisle is about 35 metres long and the driver of an HGV entering the car park off Beveridge Lane can see if there is another HGV exiting the site or moving along the aisle. The driver must wait, next to the splitter island, to allow the other HGV to continue until it is at the junction onto Beveridge Lane, before proceeding towards the site. Traffic surveys indicate that there are, on a daily average, about 125 HGV movements to and from the site. There is a peak in the morning and early evening, probably because some HGV parking is by operators who use the site as a base, but movements can occur at any time of the day or night.

22. The CA is one of a chain of Hungry Horse public houses operated by GK, which are set up to be family friendly establishments. The car parking spaces on either side of the aisle are those closest to the entrance to the CA and these spaces are those most used by customers of the pub and by guests arriving at the hotel, because the hotel reception is in the pub. So customers, both old and young, walking to and from their cars, pass through the space where HGVs are making a right angled turn to or from the site. The swept path diagrams illustrate how close an HGV must get to cars parked on the north side of the aisle, and to the kerb in front of the entrance to the CA, to make the turn without passing across a grass verge on the inside of the turn.

23. Introducing markings on the ground to define a crossing point or a pedestrian route is not feasible given the degree to which an HGV uses the full width of the aisle. The Appellant accepted at the Inquiry that there are no mitigation measures to offset the potential for conflict between HGVs and pedestrians, though he did suggest that human marshalling could be introduced to control the passage of HGVs. But this could only be control over an HGV leaving the site and this would do nothing to mitigate the potential for conflict in front of the entrance to the CA, or the possibility that an HGV being released from the site would coincide with another HGV entering the car park from Beveridge Lane.

24. The potential for collisions involving pedestrians and HGVs within the car parking area was identified in an independent Road Safety Assessment (RSA) by The Safety Forum. The RSA indicates that the severity of the risk is considered to be "...potentially fatal due to the size/weight of vehicles and the issues around poor all round visibility that is inherent in large vehicles". The likelihood of such collisions is 'once every 5-10 years', the severity would be 'major harm', and, therefore, the risk value requires additional control measures to reduce the risk to a level which is equivalent to a test of 'reasonably required' for the people concerned, in this case the customers and guests of the CA. The RSA suggests five possible mitigation measures to reduce the risk.

25. Three of the five measures would require signage and surface markings within the car park but these cannot be undertaken by the Appellant because it is GK who own the car park. One of the measures would be the relocation of the

entrance into the site to the north end of the car park, where it was originally. But this location of the entrance was found to be unlawful because it was not as approved by the lapsed temporary planning permission, it would be unlawful because it is not the location applied for, and the legal right of access across the car park is to the current location of the entrance. The only measure that could be provided would be signage within the site but this would do nothing to alleviate the risk of pedestrian/HGV collisions in front of the entrance to the CA.

26. Mr Roberts, for the Appellant, accepted at the Inquiry that the risk of pedestrian/HGV collisions could not be mitigated and, importantly, that the passage of HGVs through the car park is neither safe nor suitable. He accepted that the proposed continued use of the site as a truck park conflicts with paragraph 115 of the NPPF. This view is also that of the Environmental Health Officer at NWLDC. There is, in fact, a consensus that the passage of HGVs through the car park to the site is unsafe and unsuitable.

27. The Appellant has referred to the fact that there have been no recorded accidents involving collisions between HGVs and customers and guests of the CA in the four and a half years the site has been in use as a truck park. However, as commented in submissions, the conflict between pedestrians and HGVs in front of the CA is "...an accident waiting to happen". The Appellant has also suggested that the previous use of the site did result, and the intended B1 use of the site would have resulted, in significant vehicular movements through the car park to the CA. But neither the previous nor intended use of the site would have resulted in anywhere near the number of HGV movements associated with the current use.

28. The simple truth is that HGVs are manoeuvring, on a regular basis, through a small area that is traversed by customers and guests of the CA. The severity of the risk is, as noted in the RSA, 'potentially fatal', and there are no measures that could be introduced to mitigate the risk. The risk to life is severe. The passage of HGVs through the car park to the site is not safe or suitable for customers and guests of the CA. The continued use of the site for the parking of HGVs conflicts with NPPF paragraphs 115 and 117.

The second issue – effect on the CA business

29. Evidence indicates that guests of the CA have suffered disturbance during nighttime hours from noise emanating from the site, principally from refrigerated HGVs and a generator, but also from general activity within the site. GK have not used two rooms in the hotel, those closest to the site as a result of complaints, for some time. However, the Appellant has agreed to conditions that would effectively control nighttime noise. He would be required to submit for approval by NWLDC a scheme for noise management, which would, amongst other things, prevent the use of reversing alarms and the use of fixed plant and equipment during nighttime hours. Another condition would prevent the parking of refrigerated HGVs during the same period. These and other conditions would reduce noise, particular at night, to an acceptable level.

30. If a vehicle is parked at the entrance to the CA, to drop off or pick up customers or guests or for any other reason, then an HGV cannot make the right angled manoeuvre previously described. In this circumstance an HGV is forced to drive over the grass verge on the inside of the manoeuvre. Successive manoeuvres of this type have destroyed the verge and the kerbs to it. The verge is now a muddy, uneven mess that is fenced off, and that is not the sanctuary for

pedestrians that it once was. GK have also found it necessary to prevent use of two parking spaces, those nearest the entrance to the CA, next to the verge.

31. The regular movement of HGVs round the verge has also resulted in the creation of a large pothole, which fills up with muddy water when it rains. When this occurs HGVs, necessarily moving through the pothole, splash muddy water and spread it throughout the aisle leading to the entrance to the site and across the area in front of the entrance to the CA; the areas that customers and guests must walk across to and from the CA. The muddy water mixes with gravel from the site that is deposited by exiting HGVs, leaving the car park unpleasant to walk across. In this area customers and guests of the CA also have to contend with large HGVs and other traffic moving towards or away from the site.

32. Customers and guests leaving the CA may be confronted by an HGV moving towards them from the site. This in itself must be intimidating given the size of an HGV and especially intimidating when the HGV turns, very close by, towards Beveridge Lane. The simple truth referred to above is not just dangerous but is also unpleasant for customers and guests of the CA. The truck park use of the site is most certainly not well integrated with, and is wholly uncomplimentary to, the CA. The continued use of the site conflicts with policy EBNP policy E2.

33. The car park of the CA is not a place that is safe, secure and attractive and the continued use of the site as a truck park conflicts with NPPF paragraphs 115 and 117. The CA business is having unreasonable restrictions placed on it by the use of the site as a truck park and there is thus also conflict with NPPF paragraph 200.

The planning balance and conclusion

34. A National Survey of Lorry Parking carried out in September 2023 identifies NWLDC as being the Local Authority, given its location relative to the Strategic Road Network, with the highest level of unmet demand for lorry parking in the country. This unmet demand is uncontroversial and accepted by NWLDC and GK. That the Appellant uses the site to meet a demand for contract parking does not diminish the benefit that is being provided to meet the unmet demand for lorry parking. But this benefit must be weighed against the harm that is being caused and the conflict that has been identified with the Development Plan.

35. The safety of pedestrians is the most important of considerations, particularly where the jeopardy to their safety is severe. The severity of the risk has been found, in an independent RSA, to be 'potentially fatal', and there are no measures that could be introduced to mitigate the risk. The risk to life goes far beyond being an 'adverse effect' and, in itself and as a matter of planning judgement, significantly and demonstrably outweighs the benefit of the use of the site as a lorry park.

36. The passage of HGVs through the car park has also caused significant harm to the existing CA business. The truck park use of the site is not well integrated with, and is uncomplimentary to, the CA. The continued use of the site conflicts with EBNP policy E2 and with NPPF paragraphs 115, 117 and 200. There are no material considerations to indicate that the appeals should be determined other than in accordance with the development plan. The ground (a) enforcement appeal and the planning appeal thus fail and planning permission, both full and temporary, is withheld for change of use of land for parking of heavy goods vehicles.

37. The Appellant has developed a business that satisfies a recognised unmet need; but it is, without doubt and with regard to access to it, in the wrong location.

The ground (g) enforcement appeal

38. The enforcement notice requires the use of the site as a lorry park to cease within four weeks. The Appellant maintains that this is insufficient time to inform transport companies, both national and international, of the change in circumstances and for contract customers to find alternative operating centres. He is seeking a period of six months. The severity of the risk to life cannot be underestimated and the use of the site must cease as soon as is reasonably possible. The Appellant uses modern communications and social media to contact customers and those same methods could be used to speedily inform customers that the use of the site as a truck park is to cease. Four weeks is sufficient time for truck parking customers to make alternative arrangements and for contract customers to find alternative operating centres. The ground (g) appeal thus fails.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr P Dixon Barrister

(instructed by Mrs J Smith of Smith Jenkins Ltd)

He called

Mr B Parker

Appellant and Director of Bardon Truck Park Ltd

Mr A Roberts BA(Hons) MCIHT MTPS

Managing Director of Roberts Highway Consultants Ltd

Mr R Malster BSc(Hons) PGDip MIOA

Acoustics Consultant at NoiseAir Ltd

Mrs J Smith BSc DipTP MRTPI

Director of Smith Jenkins Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Welch Barrister

(instructed by Mr R Morton of Ivy Legal Ltd)

He called

Mr N Whitaker BSc(Hons) MA MRTPI

Senior Planning Associate at Ivy Legal Ltd

FOR GREENE KING:

Mr P Riley-Smith Barrister

(instructed by Mrs H Binns of Walsingham Planning)

He called

Mr N Rowe BSc(Hons) MCIHT

Director of RGP Consulting Engineers Ltd

Mr L Faulkner BSc(Hons) PGDip MIA MIES

Associate Director of E3P

Mrs H Binns BA(Hons) MTPL MRTPI

Associate Director of Walsingham Planning

DOCUMENTS

- 1 Appellant's Appearances
- 2 Appellant's Opening
- 3 Council's Opening Submissions
- 4 Opening Submissions on behalf of Rule 6 Party
- 5 Letter from Mr M Singh dated 21 January 2025
- 6 Plan of site showing location of refrigerated HGVs on 23 January 2025
- 7 Location Plan of Airport Café, Kent
- 8 Draft Section 106 Unilateral Undertaking
- 9 Closing Submissions on behalf of Rule 6 Party
- 10 Council's Closing Submissions
- 11 Appellant's Closing