



Appeal Decisions

Hearing held on 11 February 2025

by **Paul Dignan MSc PhD**

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Appeal A Ref: APP/R3650/C/23/3316584

Appeal B Ref: APP/R3650/C/23/3316585

Former Beaver Depot, Birtley Road, Bramley, Guildford, Surrey, GU5 0LA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) against an enforcement notice issued by Waverley Borough Council.
- Appeal A is made by Mr S Singh (Singh Concrete Ltd) and Appeal B is made by Ms D Kaur.
- The notice was issued on 20 December 2022.
- The breach of planning control as alleged in the notice is Without planning permission:
 1. The material change of use of the land from B8 (storage and distribution) to a mixed use of B2 (storage and distribution);
 2. The erection of a building being a platform tower; and
 3. An engineering operation consisting of the widening of an access by way of laying of hardstanding.
- The requirements of the notice are 1. Cease the use of the land for the B2 use (general industrial use). 2. Remove the platform tower in the position marked A. 3. Remove the hardstanding from the area crosshatched on the enforcement notice plan and 4. Remove from the land all materials resulting from the above steps.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e) and (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. Appeal B is proceeding on grounds (b), (c), (e), and (g).

These decisions supersede those issued on 19 February 2024. Those decisions on the appeals were remitted for re-determination by order of the High Court.

Decisions

1. It is directed that the enforcement notice is corrected as follows:
 - by substituting “Borough” for “Brough” in the notice header;
 - by deleting “(b)” following the words Section 171 A (1) in section 1 of the notice;
 - by deleting section 3.1 of the notice and replacing it with the words “1. The material change of use of the land to use as a concrete batching plant, a use falling within Class B2 of the Use Classes Order”
 - by deleting section 3.3 and the 3 following unnumbered clauses in section 3;
 - by deleting section 5.3 of the notice and renumbering requirement 5.4 to 5.3;
 - by substituting the plan attached to the notice with the plan attached to this decision.

It is directed that the notice is varied by deleting the 6 month period for compliance and replacing it with 9 months.

2. Subject to these corrections and variation the appeals are 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.

Preliminary Matters

3. The appeals included appeals on ground (e), that the notice was not properly served. This was in relation to the laying of hardstanding on highway land, the Highway Authority not having been served with a copy of the notice. This was resolved by the previous Inspector by amending the enforcement notice plan so as to excise the highway land, and by consequent corrections to the notice. I have taken the same approach, for the reasons he gave. There are also minor errors in the notice which I have corrected. These corrections can be made without injustice to the parties. The appeal on ground (e) was not pursued at the re-determination hearing.

Grounds (b) and (c)

4. An appeal on ground (b) is that the matters which appear to constitute the breach of planning control have not occurred, as a matter of fact, while a ground (c) appeal must show that planning permission is not required. This is argued both in respect of the use alleged and the operational development.
5. The appeal site is a single planning unit whose previous lawful use was as a scaffolding yard, a single use that the parties agree was a use falling within Class B8 (Use for storage or as a distribution centre) of the UCO¹. The land is currently being used by Singh Concrete Ltd as a concrete supply depot. Briefly, sand, aggregates and cement are delivered to the site. The sand and aggregates are initially stored in open storage bays and the cement in 2 silos. The sand and aggregates are then loaded into a compartmentalised silo. This silo and the cement silos are sited either side of a high level hopper which dispenses the required proportions and quantities into the lorries that operate from the site. The silos and hopper are free-standing but sit within a structure formed of scaffolding partially clad with metal sheeting. This structure shelters the hopper and silos and also houses the computerised dispensing control equipment for the silos and hopper. This is what the notice refers to as a building. The metal sheeting assists in dust suppression.
6. Two types of lorries are used, standard transit mixers (also known as drum mixers) which have a rotating drum mounted on the back, and volumetric mixers which have separate sand, water, aggregate, and cement compartments. With the former, the ingredients for concrete are dispensed into the drum via the hopper, the mixing in the drum commencing on the site and continuing to delivery at the end-use site. The volumetric mixers leave the site with the ingredients contained separately.
7. So far as the use is concerned, the appellant maintains that the use of the site as a whole is a storage use within UCO Class B8. This is on the basis that the materials brought to the site, that is the cement and the various grades of sand and aggregates, are distributed from the site by vehicles which mix specific quantities of

¹ The Town and Country Planning (Use Classes) Order 1987

the materials while travelling to the use destination, such that there is no making of concrete on the site. It is argued that the transferring of materials to the vehicles is not an industrial process as there is no change occurring to the aggregate material.

8. There is, however, some mixing of the materials on the site as they are being delivered to the mixer units. But in any case, it is necessary to examine the activity on the land and to assess the primary purpose to which the land is being put in order to decide whether it can fairly be called 'storage'. The various materials brought to the site are entirely for the purposes of producing concrete, and the sophisticated and substantial plant on the site is there to provide accurate measurement and delivery of the concrete components. It is an integral part of the process of producing concrete, which is the primary purpose of the use of the land. The land is clearly being used as a concrete batching plant, the purpose of which is to prepare and despatch a mixed or precursor concrete product rather than for the onward distribution of the components in largely the same form in which they were delivered to the site. Furthermore, the batching process itself is clearly dust-producing, which has the potential for off-site impacts, and the overall process of concrete production requires the cleaning of the mixer vehicles upon return, a waste producing activity. These are not impacts I would normally associate with a B8 use, rather they support my conclusion that the land is being used for the carrying out of an industrial process.
9. At the hearing the appellant indicated that there were occasions where sand or aggregates would be sold directly from the silos, or weighed through the hopper, but there is no evidence that this is of a quantity and frequency that it should be considered as a separate primary B8 use of the land. Rather it appears to me to be an occasional, and very much incidental, activity. The keeping on the land of the various components of concrete is not, in my view, true storage. It is not a case where, for example, sand or aggregates are put away for a period of time because they are not immediately needed or their use is not contemplated in the short term. There is not, so far as I could see, any other use of the land that is not part and parcel of the concrete batching use. In other words, the land is in a single primary use within UCO Class B2 and not in a mixed use as alleged in the enforcement notice. So far as the use is concerned, there is therefore success on ground (b).
10. I consider also that the character of the use is materially different to the former lawful use as a scaffolders yard, acknowledged as a B8 use. The current use generates dust, necessitating among other things the provision of the large scaffolding structure, the loading and yard activities are perceptible outside of the site due to noise generation which local residents have found intrusive, and the use is likely to generate considerable additional heavy goods vehicle trips to and from the site. Overall, as a matter of fact and degree, I conclude that there has been a material change of use which requires planning permission. On the use point the appeal on ground (c) cannot therefore succeed.
11. Turning to the platform tower, the appellant argues that this is not a building, rather a use of land by a mobile structure or, alternatively, a means of enclosure. In determining whether it is a building or not, it is common ground that the relevant considerations are size, permanence and degree of attachment. The structure is sizeable and visible from outside of the site, due mainly to its height and cladding. Being scaffolding based, it could be dismantled and moved to another part of the site, but it has been in place for some time and it appears to me that it is where it is for good reason, both in terms of the varying level topography of the site and the

convenience of the location in terms of the flow of activities around the site. Although moveable, it is to all intents and purposes in a permanent location. In terms of fixation, it is not attached to the ground but its weight alone gives it a significant degree of fixation. As a matter of fact and degree, I conclude that it is a building for planning purposes, and planning permission is required. So far as the 'means of enclosure' argument goes, its main purpose was explained to me to be for dust mitigation, and its other functions seem to be some degree of shelter for the silos and the provision of an operating room or platform for the weighing/dispensing control equipment. I can see no merit in the argument that it could be considered as a means of enclosure. So far as the operational development is concerned the appeals on grounds (b) and (c) must fail.

12. There is therefore partial success on ground (b), in respect of the description of the use. However, rather than quash the notice I consider that I should exercise my power to correct the allegation so that the use enforced against is the use of the land as a concrete batching plant, a use falling within UCO class B2. The Council accept that there would be no prejudice to them if the allegation is corrected, while the appellant conceded that their approach to the planning merits of the development would have been no different. I am satisfied accordingly that no injustice would arise from my correction of the description of the use of the land.

Ground (a) and the deemed planning application

13. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (NPPF) and development plan policy.
- The effect on the openness of the Green Belt.
- The effect in relation to highway safety.
- The effect on residential amenity and biodiversity.
- If the development is inappropriate in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Inappropriateness and openness

14. The appeal site lies within the Green Belt. Recent changes in national planning policy affecting development in the Green Belt were considered by the main parties in advance of the hearing. In particular it was agreed that the site should now be considered as 'grey belt', as defined in the NPPF. This has implications for the question of inappropriateness.
15. Development in the Green Belt is inappropriate unless either it would utilise grey belt and satisfy all three criteria set out in paragraph 155 of the NPPF, or one of the exceptions in paragraphs 154 applies. It is agreed that the developments, being the material change of use and the erection of the building, would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan, hence criterion a. of paragraph 155 is met. Criterion b. is that there is a demonstrable unmet need for the type of development proposed. The

appellant's evidence is that most of its deliveries are within a 30 mile radius of the site, and it points to its role in supporting the construction industry locally, noting that there is a considerable housing shortfall in the Borough, hence there is likely to be significant construction projects coming forward in the future. However, while I do not doubt that there are benefits arising from proximity to local construction projects, this falls short of demonstrating an unmet need for this type of development.

16. Criterion c. is that the development would be in a sustainable location, with particular reference to NPPF paragraphs 110 and 115. In assessing the sustainability of a location NPPF paragraph 115 expects assurance that safe and suitable access to the site can be achieved for all users. I deal with this matter in more detail below, but I have concluded that the access as it stands is unsafe and that it has not been demonstrated that safe access to and from the site can be achieved.
17. Since all of the criteria are not met, the appeal development cannot be considered to be not inappropriate on the basis that it uses grey belt land.
18. The development involves both a material change of use and the erection of a building. The building itself does not fall within any of the exceptions and hence is inappropriate development in the Green Belt. Furthermore, its height and proximity to the A281 and to the public footpath alongside the eastern boundary give it an undue visual prominence which adversely affects Green Belt openness.
19. Material changes of use may not be inappropriate in the Green Belt if they do not affect openness or Green Belt purposes. The existing scaffold structure is part and parcel of the use and clearly affects openness. Although I have concluded that it is a building, as a matter of fact and degree, I acknowledge that it could be dismantled and erected elsewhere on the site, but it has not been claimed that the use could continue without a similar structure somewhere on the site. I consider, on the balance of probability, that some kind of enclosed structure will be required to control noise and dust emission from the use. Therefore, the change of use does affect openness and hence is inappropriate development in the Green Belt.

Effect on character and appearance

20. The land has an acknowledged lawful use for B8 purposes, and hence a distinct commercial character. However, the current use has led to the introduction of the large scaffold structure alongside the eastern boundary. A section of the Downs Link public footpath runs immediately alongside this boundary. While the presence of the commercial site forms part of the character of the area, I consider that the structure, due to its considerable height and poor design, is intrusive and discordant, such that it causes some harm to the character of the area, contrary to Waverley Borough Local Plan Part 1 (LP1) Policy TD1, which requires development to be of high-quality design and to be well related in size, scale and character to its surroundings.

Effect on highway safety

21. There are currently two highway accesses to the site, one at the north end towards Bramley and the other at the south end. The access to the north end has been widened to accommodate the site traffic and the business operates a one-way system, vehicles entering at the southern end and leaving from the northern

access. The A281 passing the site has a 40mph limit. Though traffic surveys found that the 40mph limit was exceeded by almost 30% of vehicles, the Highway Authority (HA) assessed highway visibility of the accesses on the basis of the design speed of 40mph, requiring visibility splays of 2.4m x 120m. Sight line plans indicate that this can be achieved for both accesses, but in practice they cannot, due to road curvature and topography. The HA estimated the visibility 'y' distance in the trailing direction to be only about 70m at the northern access, which is significantly below the requirement. Similarly, it found that forward visibility splays of 120m, required to ensure that vehicles heading northbound on the A281 would be able to stop safely if obstructed by vehicles either exiting from the site or waiting to turn in, were not achievable. At my site visit I considered that visibility from both accesses was insufficient for safe access and egress. While I appreciate that lorry drivers would have better visibility, my impression was that highway visibility was simply not good enough on what was a busy stretch of road with relatively fast moving traffic. Since vehicles exiting would be heavy and slow moving, the sub-standard nature of forward visibility is of particular concern.

22. Swept path drawings also show that larger vehicles leaving the site to go southwards would cross the centre-line, with 10.2m tipper lorries actually over-running the opposite kerb edge. Given the sub-standard forward visibility for northbound traffic, such manoeuvres would result in increased risk and inconvenience to the safe movement of traffic on the A281. At the site visit a mixer truck did manage to leave the site southbound without using the entire width of the carriageway, but this required at least 2 awkward re-positioning manoeuvres within the site in order to make the turn as tight as possible, which I consider would not invariably be carried out in practice, and which would be even more difficult for longer vehicles, if it could be done at all.
23. The HA representative present, Mr Cooper, did offer the view that further improvements to the northern access would be possible, though that would require further works on highway land. However, I have no evidence to indicate that even with improvements using highway land, which would require further consent, the access could be made safe for all vehicles using the site, and in particular the larger tipper lorries and cement delivery lorries.
24. As it stands, and having regard also to Mr Cooper's views at the site visit, I consider that the current use of the site has unacceptable implications for highway safety. A B8 use would also have vehicles coming and going which would have highway safety implications, and this would not be controlled by planning conditions. However, the current use is causing unacceptable risk to highway safety and to the free flow of traffic, and it is not inevitable that a B8 use would have the same adverse consequences. I conclude accordingly, on the evidence before me, that the current use does not accord with Waverley Borough Local Plan Part 2 (LP2) Policy DM9, which requires provision of a safe and convenient access for all highway users.

Other matters

25. Local residents are concerned that noise generation by the current use adversely affects their living conditions. However, given the commercial nature of the site some noise generation must be expected and I have no evidence of noise levels at sensitive receptors upon which I could found a conclusion of material harm to residential amenity. Issues of dust and wash water run-off have also been raised,

but I consider that these are matters that could be controlled by conditions. Ecological enhancement could also be secured in that way.

Very Special Circumstances

26. As set out in the NPPF and reiterated in LP2 Policy RE2, inappropriate development in the Green Belt is harmful by definition and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, harm to highway safety and to local character in this case, is clearly outweighed by other considerations. The Green Belt harm, both definitional and loss of openness, must be accorded substantial weight. I also accord the highways harm substantial weight given the type of traffic generated and the substandard nature of the accesses. The harm to the character of the area is relatively localised and so carries only moderate weight.
27. The other considerations put forward are the absence of harm to Green Belt purposes, the use of previously developed land, the sustainability of the location, local and regional economic benefits, highway safety betterment arising from access improvements and the ability to control aspects of traffic generation and hours of operation by condition, and ecological enhancement.
28. Absence of harm to Green Belt purposes can only be a neutral factor in the balance. So far as the use of previously developed land is concerned, it remains the case that the site has a lawful commercial use that could be resumed in any case, so only limited weight can be attached in that respect. In purely locational terms, the site is well located for the purposes of supplying local construction projects and I attach significant weight to this. The provision of employment and associated economic benefits to the locality is unlikely to be lost entirely as the business will seek to find other premises, though I accept that this may not be nearby and some local benefits may be lost, so this is a matter that carries moderate weight in favour of the development. Both highways accesses are very sub-standard, and while the in-site routing and improvements to the northern access/egress can be considered as betterment, it is a very modest improvement. There is potential for further improvement of the northern access, and the potential to better control traffic generation and movements through planning conditions is a benefit. I accord these considerations moderate weight. Control of the hours of operation offers only limited benefits over the uncontrolled use as B8, which typically would not be likely to generate significant noise or other disturbance, while any related traffic benefits of control over operating hours are unclear. These are considerations to which I attach only limited weight. There is some limited scope for ecological enhancement, and I give this moderate weight.
29. Overall however the positive weight of the considerations put forward, either individually or in combination, fall well short of clearly outweighing the overall harm that I have identified. It follows that the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. There is therefore conflict with national planning policy, and with LP1 Policy RE2.

Planning Balance and Conclusion

30. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that development should be in accordance with the development plan unless material considerations indicate otherwise, and this is reaffirmed in the NPPF.

31. I have found that the development, taken as a whole, would conflict with the development plan Green Belt policy, and with policies aimed at preventing harm to highway safety and local character. I consider therefore that it is contrary to the development plan, read as a whole. Even when considered cumulatively, the weight given to the other considerations would not outweigh the identified harm. Accordingly, there are not material considerations that indicate that permission should be granted contrary to the development plan. The appeal on ground (a) must therefore be dismissed and planning permission refused.

Ground (g)

32. This ground is that the period for compliance, 6 months, is too short. In essence, a 12 month period is sought in order to find a new premises. Were suitable alternative premises available now then there should be no problem moving the operation with the 6 month period, but in the event that it proves difficult to find suitable premises, to avoid serious disruption to the business, with its economic and employment benefits, I consider that it is reasonable to extend the compliance period to 9 months. This would balance the competing needs of the business and the harm arising. Given my findings on the risk to highway safety, I consider that a longer period for compliance would not be warranted. The appeal on this ground succeeds to that extent.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Emily Temple	Planning Consultant
Louise Smith	Highways Consultant
Nivy Singh	Singh Concrete Ltd
Kam Kaur	Singh Concrete Ltd

FOR THE LOCAL PLANNING AUTHORITY:

John Bennett	WBC Enforcement
Vic Choularton	WBC Planning
Jeanette Guy	WBC Environment
Richard Cooper	SCC Highways

INTERESTED PARTIES:

Francesca Stern	Bramley Parish Council
L S Dadak	Neighbour

DOCUMENTS

1. Speaking Notes – F Stern
2. Speaking Notes L S Dadak
3. Highway visibility splays – 30mph



This is the plan referred to in my decision dated: 21 March 2025

by Paul Dignan MSc PhD

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