



Appeal Decision

Site visit made on 18 March 2025

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03rd April 2025

Appeal Ref: APP/N1920/C/21/3288478

Land Adjacent to White Park Business Estate, Elstree Hill South, Elstree, Hertfordshire, WD6 3BL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr R Moffitt for Elstree Equipment Storage Ltd against an enforcement notice issued by Hertsmere Borough Council.
- The notice was issued on 4 November 2021.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the Land to storage and distribution (Use Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended,) including the storage of containers, machinery, skips, equipment and materials, together with ancillary parking of vehicles in association with the said use, and the erection of fencing and gates on the land in association with the said use.'
- The requirements of the notice are 1. Cease the use of the land for storage and distribution, 2. Remove from the land the containers, machinery, skips, equipment and materials stored on the land, 3. Remove from the land the vehicles parked on the land in association with the unauthorised use, 4. Remove from the land the fencing and gates erected on the land in association with the unauthorised use and 5. Restore the land to its condition before the unauthorised use took place.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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.
- This decision supersedes that issued on 27 March 2024. That decision on the appeal was remitted for re-hearing and determination by Consent Order of the High Court.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of the land to storage and distribution (Use Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (as amended) including the storage of containers, machinery, skips, equipment and materials, together with ancillary parking of vehicles in association with the said use, and the erection of fencing and gates on the land in association with the said use at land adjacent to White Park Business Estate, Elstree Hill South, Elstree, Hertfordshire, WD6 3BL, as shown on the plan attached to the notice and subject to the conditions set out in the Schedule attached to this Decision.

Procedural Matters

2. The original appeal decision was challenged under s289 of the Act. The Consent Order of the High Court (12 June 2024) confirmed that, in the previous decision letter, the reasoning on ground (a) and the planning merits contained an error in law insofar as mitigation proposals were not properly considered. The Court ordered that the matter be remitted for redetermination in accordance with that finding. Other grounds of challenge, primarily relating to the assessment and

findings on supply and need for open B8 storage sites, did not need to be considered.

3. It was anticipated that the appeal would be redetermined following a public inquiry, but the procedure was changed to written representations because the appellant and the Council issued a statement of common ground (SoCG) which narrowed the matters in dispute. Additionally, a third-party adjacent landowner, White Park Properties (WPP), who had been granted 'Rule 6 status', informed the Planning Inspectorate that they could not viably attend an in-person event.
4. The parties, including WPP, were given opportunities to submit additional written representations, including invitation to address changes arising from the revised National Planning Policy Framework [Dec.2024] (the Framework).

The Notice and Grounds of Appeal

5. The Land subject of the Notice forms only part of the appellant's land ownership in the locality. The Notice does not cover the full extent of the land where the alleged uses are taking place. However, I understand that some enforcement action was taken on adjoining land where the Council considered it expedient to do so to protect their position.
6. An earlier ground (e) appeal, that the Notice was not properly served, has been withdrawn.

The Appeal on Ground (a) and the Deemed Application for Planning Permission

Main Issues

7. Whereas it would normally be appropriate to focus on disputed matters subject of the Court ruling (and those reserved), material changes in policy and the evolution of available data require a refocus of considerations in this instance. Based on all submissions and reasons for issuing the Notice, the main issues are:
 - Whether the development is inappropriate in the Green Belt for the purposes of the revised Framework and any relevant development plan policy.
 - If so, the effect on the openness of the Green Belt.
 - The effect on the character and appearance of the locality.
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate in the Green Belt

8. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Although the Hertsmere Core Strategy [2013] (the HCS) pre-dates the revisions to the Framework, in referencing only inappropriate development, the

combined effects of policies SP1 and SP13 defer to the Framework's definitions. The Council's policies thereby retain consistency with national policy.

9. Paragraph 155 of the revised Framework sets out the circumstances whereby the development of homes, commercial and other development in the Green Belt should not be regarded as inappropriate by utilising grey belt land. Grey belt is defined in Annex 2 of the Framework. It includes 'previously developed land and/or any other land that, in either case, does not strongly contribute to any of the purposes (a), (b) or (d) in Paragraph 143.'
10. There is no dispute between the Council and the appellant that the site falls within that definition. While the adjacent landowner highlights that the Land was previously undeveloped, that does not exclude the site qualifying as 'any other land'. A Green Belt assessment¹ by the Council found that a wider parcel of land, including the site, White Park and adjacent fields to the north and east, moderately met Green Belt purpose assessment criteria. However, it was also found to be, in part, 'less important' in its contribution to the wider strategic Green Belt.
11. At the site-specific level, the Land is in a location detached from large built-up areas. In terms of the purposes of including land in the Green Belt, as set out in Paragraph 143 of the Framework, the site does not play a significant role in preventing the merging of towns or in preserving the setting or special character of any historic town. It is contained (and constrained) between White Park, an established commercial site, and a significant highway interchange between the M1, A5/A5183 and the A41. However, it is not large enough that the alleged storage use could be said to have resulted in the unrestricted sprawl of a large built-up area.
12. For those reasons and having regard to Planning Practice Guidance² (PPG) relating to grey belt, I agree with the appellant and the Council that the development utilises grey belt land and that it does not fundamentally undermine the purposes of the Green Belt across the area of the development plan.
13. Paragraph 155 of the Framework advises that commercial and other development on the 'grey belt' is only 'not inappropriate' in the Green Belt if there is a demonstrable unmet need for the type of development proposed. The PPG³ requires authorities to prepare a robust evidence base to understand existing business needs, which will need to be kept under review to reflect local circumstances and market conditions.
14. There is no dispute between the appellant and the Council that the data relevant to commercial and industrial land needs, on which the current development plan was based, is out of date. Furthermore, it is relevant that the employment land site allocations identified in Policy CS8 of the HCS have been built out such that the demand identified in preparation of that plan has largely been realised. Taken with the stalled progression of an emerging local plan, the parties agree that there is currently no pipeline of reserved sites to meet latent and projected demand identified in the updated South West Herts Economic Study Update [2024] strategic assessment for storage and distribution uses.

¹ Green Belt Assessment Stage 2 (2019)

² PPG Paragraphs: 004-011 Reference ID: 64-004-20250225 to 64-011-20250225

³ Paragraph: 025 Reference ID: 2a-025-20190220

15. Although this data has limitations and does not drill down to detailed assessment of the specific nature of B8 uses, I agree with the Council (which has the benefit of its own monitoring data) and the appellant, that it points to a clear unmet need for new small scale industrial sites, including those for open storage purposes. WPP highlight that a number of such sites are available on the market, but those properties predominantly lie outside of the borough which is the relevant area for consideration of unmet need.
16. I cannot speculate as to whether the appellant is correct that land take-up rates mean that Green Belt releases may be required in the future; that is a matter for the emerging local plan. However, for the purposes of Paragraph 155(b), it is sufficient for this appeal that there is clear evidence of an unmet need now. I also accept the appellant's submissions that the other sites mentioned by WPP are not suitable for the development because of considerations such as: operational restrictions associated with large plant and machinery; access problems for staff; access to client catchments; suitable access for large vehicles to enter, use and manoeuvre within the site; and/or limitation by neighbouring land uses – notably proximity to residential properties.
17. That brings me to the final requirement of Paragraph 155, that development on grey belt land would be in a sustainable location. Paragraph 87 of the Framework recognises different specific locational requirements for different sectors. The site is located where direct access to the strategic road network is available. As businesses largely dependent on road transportation because of their activities, the location provides flexible access to their business catchments while minimising the necessity for commercial traffic to travel through nearby settlements and residential areas. The area is also well served by bus stops, cycle lanes and footways, such that employees or others have a choice between various transport modes when travelling to or from the nearby settlement.
18. For the above reasons, I conclude that the appeal development would utilise grey belt, not fundamentally undermine the purposes of the remaining Green Belt across the area of the local plan, meet an unmet need for small storage sites, and be in a sustainable location. The appeal storage use is not inappropriate development in the Green Belt by virtue of the provisions of Paragraph 155.
19. As set out in Paragraph 153 and footnote 55 of the Framework, it is not necessary for me to consider whether the development would cause any other harm to the Green Belt, including harm to its openness. Furthermore, I do not need to address whether any harm to the Green Belt would be clearly outweighed by other considerations, because very special circumstances are not required to justify the development. The development does not conflict with Section 13 of the Framework or Policies SP1 and SP13 of the HCS.

Character and appearance

20. The site is set between the White Park Business Estate and the successive road corridors of the A41 and M1. Access is via an inclined estate road from Elstree Hill South (the A5/A5183) to the west. Open fields lie to the north of White Park separating it from the main residential area of Elstree. A partially cleared yard site with buildings lies to the east. A large modern business park 'Centennial Park' lies nearby to the west of Elstree Hill South.

21. Amongst other things, the introduction of stored items, vehicles and containers; the internal enclosure of the site by solid fencing; and the introduction of bound or compacted hard surfacing will have wrought a significant change to the appearance of the site compared to its previously undeveloped condition.
22. However, the site and wider business estate are substantially bordered by established vegetation. From outside of the site and further afield, views are limited. Where it can be glimpsed, the site is seen to nestle between White Park and the adjacent road infrastructure. Although it contrasts with nearby undeveloped open fields, in its context, the largely screened development integrates with the adjacent developed land.
23. An established conifer screen hedge divides the Land from the southern part of White Park. Deciduous vegetation is present on the A41 roadside and M1 slip road embankment, providing a seasonal degree of screening. Towards the A5/A41 roundabout the roadside vegetation is backed by a row of evergreen trees. Together these have a variable screening effect.
24. Notwithstanding, parts of the site have a degree of prominence, particularly from the A41 where it bridges the motorway. From here stored vehicles, plant, containers and the like can be viewed directly or through breaks in the vegetation cover. This reflects the conclusions of a landscape and visual impact assessment carried out on behalf of the appellant.
25. Subject to the retention and suitable management of the existing vegetation and enhancements to it, the effect on the character and appearance of the area could be mitigated. At the time of my site visit, however, at least part of the row of conifers was set in earth mounding. It is unclear whether mounding about the bases of the conifers pre-dated the screen planting, or vice-versa. Taken with some storage occurring within the rooting areas of the trees, there is little to provide assurance of the long-term success of the conifer screen.
26. In support of the development, the appellant has provided details of an indicative landscaping scheme which could enhance the screening effect of the existing trees and vegetation. It could introduce new lines of planting to the east, to improve assimilation into the landscape when viewed from that side. The planting could be secured partly on the Land in addition to other land owned by the appellant. Subject to the implementation and maintenance of landscaping, I find that the effect of the development on the character and appearance of the locality could be made acceptable in planning terms.
27. Although the nature of the land use does not lend itself to the high-quality design or enhancement of the local character, as sought by Policy SP1 of the HCS and Policy SADM30 of the Site Allocations and Development Management Policies Plan (the SADM), I conclude that the limited harm could be mitigated such that there would be no unacceptable harm.

Other Matters

28. According to the adjacent landowner, surface water flows from the appeal site onto third-party and highway land. As sustainable drainage is a requirement of the development plan (Policy SADM15), this is a matter which could be addressed by planning condition. I note the claim that WPP are considering legal action over the

appellant's use of land in their ownership. As a legal issue between those parties, it is not a matter for this appeal.

Conclusion on Ground (A) and the Deemed Application for Planning Permission

29. For the reasons above, I find that the development falls within the updated provisions of the Framework as a development of grey belt land within the Green Belt. Furthermore, I am satisfied that the limited harm to the character and appearance of the locality can be mitigated. The development thereby accords with the development plan and the provisions of the Framework read as a whole.

Conditions

30. I have considered the suggested conditions from the Council and had regard to Para. 57 of the Framework and the PPG in terms of the use of planning conditions.
31. A condition requiring details of site layout, sustainable site drainage, and hard and soft landscaping, is necessary and reasonable to protect the character of the area and ensure the site is properly drained. Since this condition will suffice to redress any unacceptable impacts of the development, a planning obligation should not be used for the same purpose, and I will disregard that submitted by the appellant. An alternative site layout plan provided by the appellant cannot be incorporated because the deemed planning application is made in respect of the development as alleged and built. However, the requirement to submit a layout scheme will facilitate the rationalisation of development on the Land.
32. The condition requiring those details will be drafted to ensure that the required details are submitted, approved and implemented in accordance with a strict timetable. That is necessary because planning permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of those matters before the development takes place. The condition will ensure that the whole development can be enforced against if the layout, drainage and landscaping requirements are not met.
33. A restriction of direct sales from the site is necessary and reasonable to limit site activity to the level it is designed and laid out for. It is also necessary and reasonable to impose a restriction on the height of goods stored and require retention of the existing boundary vegetation to ensure mitigation of the visual impacts of the development are successful.
34. In the absence of evidence that the development would have a significant effect on the transport network or highway safety, a condition limiting operational times based on congestion during peak period traffic flows is unnecessary and unreasonable. As no significant harm to the living conditions of the nearest residential occupiers has been demonstrated, a 'requirement for white noise' or 'broadband' reversing alarms is also unnecessary. A restriction to the erection of buildings is also unnecessary because planning permission would be required for such works in any event.

Conclusion

35. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice. The enforcement notice will be quashed.

36. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered, and it is not necessary for me to vary the requirements of the Notice as suggested in the SoCG.

R Hitchcock

INSPECTOR

Schedule of Conditions to the deemed Planning Permission granted on Ground (a) on appeal Ref. APP/N1920/C/21/3288478.

- 1) The use hereby permitted shall cease and all equipment, machinery, vehicles, skips, containers and materials brought onto the land for the purposes of such use shall be removed within 60 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision schemes for the site layout, sustainable drainage and hard and soft landscaping (including fencing and gates and the maintenance of existing vegetation within the appellant's immediate ownership) shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for their implementation and details of post installation management.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved schemes shall have been carried out and completed in accordance with the approved timetables.
 - v) Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be maintained in accordance with the approved detail for the duration of the development.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 2) No goods shall be stacked to a height exceeding three metres and no fence or gate shall exceed a height of three metres on the site.
- 3) No sales shall be carried out on the site.
- 4) The existing trees and hedges on the boundaries of the site shall be retained.

END.