



Appeal Decisions

Site visit made on 15 September 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2021

Appeal A Ref: APP/D0121/C/20/3250491

Appeal B Ref: APP/D0121/C/20/3250492

Birds Farm, Kingdown Road, Bristol BS40 8DW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Christopher Williams, and Appeal B is made by Mr Anthony Gould, both against an enforcement notice issued by North Somerset Council.
 - The enforcement notice was issued on 5 March 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the land for the parking of vehicles for airport customers.
 - The requirements of the notice are:
Cease the use of the land for the parking of vehicles for airport customers.
Remove all vehicles from the land that are not associated with the authorised use of the land.
 - The period for compliance with the requirements is 7 days.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended, whilst Appeal B is proceeding on the ground (g) only.
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the addition of the words "as shown hatched on the attached plan" after the address in the description of the land to which the notice relates, and the deletion of the plan attached to the notice and its substitution with the plan attached to this decision. Subject to these 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

2. The appeal is dismissed.

Costs

3. Applications for the award of costs have been made by North Somerset Council against Mr Christopher Williams and Mr Anthony Gould and by Mr Christopher Williams and Mr Anthony Gould against North Somerset Council. These applications are the subject of separate Decisions.

Procedural matters

4. The Council has granted a certificate of lawfulness, ref: 18/P/2043/LDE, which indicates that at the date of that application, the use of 3 buildings within the enforcement notice site for the storage of commercial catering equipment was lawful. At the visit I noted that storage uses were taking place within the buildings subject of the certificate of lawfulness as well as in a building not covered by the certificate and on open land to the east of the southernmost of the three buildings to which the certificate relates. The northernmost of the agricultural buildings on the east side of the site is used to house two pigs, but this use might be regarded as immaterial.
5. I have a duty to get an enforcement notice in order, if I can do so without prejudice to the parties. I wrote to the parties to point out the need to correct the notice to reflect the mixed use that is actually taking place on the site. The Council wished to amend the notice to remove those parts of the site on which storage was taking place.
6. The appellants objected to that course of action, considering that omitting the storage uses from the plan would be prejudicial because the appellants would not benefit from the provisions of s.173(11) of the Act which would come into play if the storage uses were referred to in the notice and were not required to cease. However, as the notice was originally drafted, there was no reference to the storage uses, so the s.173(11) provisions would not bite. There is no requirement to include all land in the same ownership or occupation within an enforcement notice, and such a variation of the notice would have no impact on the planning status of storage uses and it would neither widen the physical extent of the land referred to by the notice nor its requirements.
7. The existence of the lawful storage use is known to the appellant, and any planning implications of that use on the ground (a) appeal could have been argued, whether or not the areas occupied by those storage uses fell within the enforcement notice site. Thus, it would not prejudice the interests of the owners or occupiers of those parts of the site or the wider site. I consider that varying the notice to that effect falls within the wide scope of my powers under s.176(1) of the Act. I shall therefore vary the notice to omit those parts of the site used for storage and will substitute the plan attached to the notice.

Appeal on ground (a) – that planning permission should be granted

Main Issues

8. The main issues are:
 - i) whether the use affects the openness of the Green Belt or the purposes for including land within it, thereby amounting to inappropriate development in the Green Belt;
 - ii) the effect of the use on highway safety;
 - iii) whether the use would result in greater reliance on travel by private car, and
 - iv) if the use is inappropriate development, whether there are any considerations which outweigh the harm caused by inappropriateness and

any other harm sufficient to amount to very special circumstances to justify the development.

Reasons

Inappropriateness

9. The site lies in the Bristol and Bath Green Belt. Paragraph 133 of the National Planning Policy Framework explains that the Government attaches great importance to Green Belts, and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
10. Paragraph 145 lists certain categories of built development which are not inappropriate, whilst Paragraph 146 says that certain other forms of development are also not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. This list includes material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). It also includes the partial or complete redevelopment of previously developed land, but I consider that this does not apply here, as most of the land concerned is agricultural land, which is excluded from the definition of previously developed land.
11. The appellant has referred me to the case of *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin) (upheld at [2014] EWCA Civ 825), which involved the an exploratory drill site to explore for hydrocarbons in the Green Belt, including plant and buildings. The Inspector in that case failed to consider the proposal in the context of paragraph 90 of the Framework then in force, which says, as does paragraph 146 (a) in the current version, that mineral extraction is not inappropriate development.
12. The Court held that the effect on openness had to be considered in the context of duration and reversibility. However, the Court said that those factors are of particular importance to the thinking which makes mineral extraction potentially appropriate in the Green Belt. Another is the fact that extraction, including exploration, can only take place where those operations achieve what is required in relation to the minerals. Minerals can only be extracted where they are found. Thus, the considerations relating to mineral extraction are completely different from those for a material change of use of land of the kind involved here. There are no physical constraints which mean that car parking can only take place in a very limited number of locations, nor is the existence of such land finite.
13. However, there are a number of considerations which are relevant to the assessment of openness in relation to car parking. The first is that of frequency of use. The evidence before me suggests that the site is used on a year-round basis, throughout the day and night and that the number of cars has increased as time has passed. I accept that the use is reversible, but, unlike mineral extraction, which is a finite activity, there is no such "end date" here. The deemed planning application is not one for a temporary permission as the appellant proposes, but, if the circumstances justified it, a condition could be imposed to grant a temporary permission. However, the only reason the appellant suggests for doing so is to allow for future assessment of need

and impact, but given the evidence already provided about both need and impact, I see no justification for that.

14. The appeal site involves open land which surrounds a number of large barns, three of which have been granted a lawful development certificate for storage. Another is extremely dilapidated, yet was also in use for storage of catering equipment at the time of my visit. Two other agricultural buildings are largely unused, with one being used to house 2 pigs. The land on which the parking takes place has no lawful use other than as agriculture.
15. The use of the land for the parking of airport customers' cars does not involve the erection of any buildings. There is no statutory definition of openness, but I regard it as the absence of physical manifestations of development. The parking of densely packed cars on the scale involved here, where several hundred cars may be parked at one time, appears as man-made development and it clearly reduces the spatial openness of the land. My finding is consistent with those of Inspectors who also considered the effect of car parking on openness in the decisions referred to by the Council.
16. I accept that the site cannot be readily seen from any public place due to the presence of substantial screening. On my visit I saw that parked cars could be glimpsed from the point at which the public footpath which runs along the access drive diverts to continue along the western boundary of the site. More extensive views may be possible when vegetation dies down over winter months, or if it is removed, or if a greater number of cars were parked on the site. I therefore find that there is some small harm to the visual aspect of openness. However, the spatial dimension has the greater impact, and I am firmly of the view that openness is not preserved by the use enforced against.
17. Paragraph 143 of the Framework provides that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The use of the land for airport parking is inappropriate development, contrary to North Somerset Development Management Policies (DMP) Policy DM12, and results in loss of openness to the Green Belt, which is harmful in itself. It is also contrary to DMP Policy DM30 which deals with off-airport parking, making it clear that it will not be permitted within the Green Belt.

Highway safety

18. DMP Policy DM24 provides that development will be permitted provided it would not prejudice, amongst other things that are not relevant here, highway safety. The car parking operation is based out of Oakwood House, premises adjacent the A38, not far to the north of the main road leading from Bristol Airport towards Bristol. The Council's undisputed explanation of the way in which the business operates, is that customers will drive their car to Oakwood House where it is checked in. The car owner will be taken by minibus to the airport. The customer's car is then driven to the appeal site where it is parked, accompanied by another car to take the driver back to Oakwood House. Similar arrangements apply when the car is returned to the customer at Oakwood House.
19. Thus, for every car that is parked on the site, it is likely that 4 journeys are required from Oakwood House to the site and back, and a further 4 journeys from Oakwood House to the airport and back. The journey from Oakwood

House to the access to the site is a relatively short one, some 1.5 miles. However, for over half of that distance the road is single track, unlit and lacking a footway. The Council has found from observations that there was a maximum of 165 cars parked on the site, with an average of 119 cars, although these were seen outside of the peak holiday season, so these figures would be likely to be greater. The number of movements associated with such a large number of cars is likely to result in vehicles meeting head on, requiring reversing manoeuvres, and inconvenience to other road users, and posing a significant danger to the more vulnerable road users, pedestrians, horse riders and cyclists. The site has a potential to accommodate a much larger number of cars, and thus the highway impacts could be even more severe.

20. I have had regard to the grant of planning permission (Ref: 07/P/2792/F) for the use of 5 buildings at Birds Farm as a mixed use site comprising 16 No. holiday lets, office/conference facilities and light industrial/storage, which was granted on 18 March 2015. That permission has not been implemented and has expired, and therefore it does not represent a fall-back against which the current use can be compared.
21. Nevertheless, the grant of that permission is a material consideration. The Highway Authority calculated that the approved use would give rise to about 100 traffic movements per day, and that such a level of use is unlikely to have a significant impact upon the local network. The Council suggests that the airport parking use would generate at least 476 movements per day. Although this figure has not been disputed by the appellant, it seems to me to have been arrived at on a fallacious basis, being the sum of an average of 119 cars per day, multiplied by 4 movements. However, in my experience, most airport parking takes place over a much longer period than one day, and thus not all 119 cars would generate 4 movements per day.
22. However, the Council has produced a document (Appendix 4 of the Council's statement) from a third-party operator who has detailed the number of annual arrivals at the car park over several years. This has not been contested by the appellant. The most recent year for which a figure is given is 2019, and that shows 22,683 arrivals over the year, averaging at 62 movements a day. As each arrival generates 4 journeys, this would average at 248 daily movements. Clearly, there are likely to be more movements in the summer months, and the figures may not show all arrivals at the car park. As the numbers have increased significantly as each year passes, even more movements might be expected to have been recorded in 2020. Thus, I consider that the number of movements is of a different scale from those which the Highway Authority adjudged would not have a significant impact.
23. The access to the site at the junction of Kingdown Road has poor visibility to the west; I have no information about the volume of traffic using that road, but it seems to me that it is likely to be used by residents of Winford wishing to travel to the south side of the airport or to travel southbound on the A38. The large numbers of traffic movements which could be generated by the airport parking use are likely to pose a moderate risk to road safety and conflict with DMP Policy DM24.
24. The access from Kingdown Road is made of unconsolidated materials, and this risks mud and debris being deposited on the highway. This adds to my

concerns about highway safety, although I accept that a condition on any grant of planning permission could address this matter.

25. I have had regard to the grant of planning permission (Ref: 07/P/2792/F) for the use of 5 buildings at Birds Farm as a mixed use site comprising 16 No. holiday lets, office/conference facilities and light industrial/storage, which was granted on 18 March 2015. That permission has not been implemented and has expired, and therefore it does not represent a fall-back against which the current use can be compared.
26. Nevertheless, the grant of that permission is a material consideration. Although I do not have any evidence before me on the predicted trip generation of the proposal, I consider that, having regard to the size and intended use of the buildings concerned, it would have been unlikely to have given rise to traffic generation on the scale of the movements likely to be associated with the airport parking. Thus, the effect on the wider road network would not be of the same magnitude as is the case here. No doubt the agricultural use of the site was taken into account as the fallback in assessing the highway impact, but I note that the planning permission required that the access road to be widened and surfaced in permanent materials for part of its length. Accordingly, I find that the circumstances between that proposal and the development being enforced against are materially different, and thus the permission does not carry significant weight in my decision.

Travel modes

27. DMP Policy DM24 also provides that development giving rise to a significant number of travel movements will only be refused on transport grounds if it is likely to have a severe residual cumulative impact on traffic congestion or on the character and function of the surrounding area or is not accessible by non-car modes or cannot readily be integrated with public transport, cycleway and footpath links, and bridleways where appropriate. The development gives rise to a significant number of traffic movements, and as referred to above, the way in which the business is operated is incompatible with the function and character of narrow rural lanes, is wholly dependent on access by car, and there are no public transport links to the site.
28. DMP Policy 30 to which I have referred above, as well as precluding airport parking in the Green Belt, also aims to limit the numbers of parking spaces outside of the airport, with the aim of managing appropriately the demand for travel by car by ensuring that the provision of car parks is balanced with the need to promote wider travel choices. Other policies in the plan deal with on-airport parking and include measures to improve public transport to the airport.
29. Planning permission was granted under Ref 18/P/5118/OUT to increase passenger numbers at the airport, subject to a requirement to promote public transport, resulting in the Airport Surface Access Strategy (ASAS). This commits the airport operators to, amongst other things, subsidising bus routes and travel plans for airport staff.
30. The parking use, no doubt, responds to customer demand and widens choice, and it is not the role of the planning system to inhibit competition. I recognise that the vast majority of airport passengers travel to the airport by private car.

Although the airport does not benefit from a rail service, there are bus links to Temple Meads Train Station in Bristol, and 8 bus or coach operators provide services to the airport.

31. Airport parking needs to be provided in accordance with the strategic aims of the Council's policies and not, as here, in an uncoordinated ad hoc manner. I note that the Inspector deciding the 2018 Rocks Lane, Felton appeal (Refs: APP/D0121/C/17/3175493, 3175494 & 3175495) found that following the implementation of the ASAS the proportion of passengers travelling to and from the airport by public transport was significantly higher than the initial trajectory, thus indicating that it was achieving its aim. That Inspector afforded the ASAS and development plan policies significant weight, and I see no reason to differ. The Bristol Airport Monitoring Report 2018 shows that the Bristol Airport commissioned express bus Flyer services had significant increases in patronage over 2017, and that investment made in public transport.
32. The Inspector who dealt with the 2017 appeals at Newditch Farm¹ addressed many of the same matters on this issue in great detail, and I agree with his findings, so I shall not repeat them. Whilst a planning application has been made to increase passenger numbers at the airport, that application was refused, and the appeal has yet to be heard. I therefore afford that proposal minimal weight in view of its undecided status.
33. I note that consultants acting for the Council in connection with that application have highlighted that other airports with better public transport facilities than Bristol still perform poorly in terms of the use of public transport. However, it also says that incremental increases in Bristol Airport's public transport mode share will require the continued effort and investment that the airport has committed to. I consider that this emphasises the importance of providing airport parking as part of a planned strategy, supporting public transport initiatives.
34. The development runs counter to the policy objectives of maximising opportunities for travel by means other than by car, and conflicts with the objective in the NPPF to pursue public transport use, and actively manage patterns of growth, as well as with the travel aims of DMP Policy DM24.
35. No mitigation measures have been offered by the appellants and there are no conditions which could be imposed which would address the harm.

Other considerations

36. Paragraph 144 of the Framework says that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. In the case I have found that there is harm through inappropriateness, which is harmful by definition. Added to this is the harm caused by loss of openness. I have also found moderate harm to highway safety and as a result of the reliance on travel by car. I also find that the development conflicts with the development plan as a whole. The benefits of the proposal carry small weight and are insufficient to clearly outweigh the harm that I have identified. Accordingly, very special circumstances to justify the development do not exist in this case.

¹ Appeal refs: APP/D0121/C/16/3155197, 3155198, 3155199, 3155200 and 3155201

Conclusion on ground (a)

37. For the reasons given above, I conclude that planning permission should not be granted for the development and that the appeal on ground (a) fails.

Ground (g) – whether the period for compliance falls short of what should reasonably be allowed

38. The notice requires compliance in 7 days. The appellants wish the period to be one month in order to honour existing bookings, but I have no evidence to show how many bookings are for over 7 days. However, it is open to the appellants to move the vehicles to other land, including other lawful car parks whether or not in their control, or onto land using the 28 day provision under the Town and Country Planning (General Permitted Development) (England) Order 2015.
39. The Council has pointed to where the appellants have achieved such compliance on land at Oakwood House. The pandemic has resulted in a reduced demand for flights, and on the basis of current Government guidance, there is likely to be ample spare capacity elsewhere by the time the notice comes into effect. I therefore consider that, in all the circumstances, 7 days is not an unreasonably short period for compliance. The appeals on ground (g) therefore fail.

Overall conclusions

40. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

JP Roberts

INSPECTOR



Plan

This is the plan referred to in my decision dated: 16 March 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

Land at: Birds Farm, Kingdown Road, Bristol BS40 8DW

Reference: APP/D0121/C/20/3250491 & APP/D0121/C/20/3250492

Not to scale

