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Appeal Decision

Inquiry held on 28 - 29 November 2000

by Christopher J Craig MA (Oxon) MPhil MRTPI

an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions

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Date

8 DEC 2000

Appeal Ref: APP/A1910/C/99/1027680
Bovingdon Airfield, Chesham Road, Bovingdon, Herts

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr S Badcock against the decision of Dacorum Borough Council to issue an enforcement notice.
- The Council's reference is 4/1446/99/ENA.
- The notice was issued on 14 July 1999.
- The breach of planning control as alleged in the notice is, without planning permission, the use of land outlined in red on the attached plan for the storage of plant, equipment, vehicles, materials used for building and engineering operations, and temporary buildings.
- The requirements of the notice are:
  1. Cease the use of the land as a contractors yard comprising the storage of plant, machinery, vehicles, materials used for building and engineering operations and temporary buildings.
  2. Permanently remove all plant, machinery, vehicles, materials used for building and engineering operations and temporary buildings from the site.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (c) and (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Reasons

The Notice

1. In the form in which it was issued the enforcement notice contains certain inconsistencies between the wording of the allegation and requirements. The requirements refer to a "contractors yard", a term absent from the allegation, and also refer to "machinery" in place of the term "equipment" used in the allegation. However, both parties at the inquiry fully understood that the notice was aimed at the totality of activities comprised in a contractors yard, including company offices, and were agreeable to my correcting the notice to include reference to a contractors yard in the allegation and to rewording of both allegation and requirements to ensure consistent reference to the same activities. I am satisfied that this is a minor correction within my powers under S176(1)(a) of the Act which can be made without causing injustice.

The Appeal on Ground (c)

2. It is argued for the appellant that his use of the site does not involve a breach of planning control as the use is the same as that enforced against by Dacorum Borough Council in a notice (Notice B) issued on 18 September 1996. The contention is that this notice could

have, but did not, require the appellant's activities to cease and, since the requirements of the notice have been fully complied with, the use accordingly benefits from planning permission under the terms of s173(11) of the 1990 Act.

3. It is not disputed that Mr Badcock's use of the current appeal site is essentially the same use as that enforced against in the 1996 notice. I also accept, from the invoices from suppliers submitted by Mr Badcock, that his occupation and use of the appeal site had commenced by the time that notice was served in September 1996 and that the red lined area on the plan accompanying the notice covered the present appeal site.

4. However, it is clear from paragraph 53 of the appeal decision (T/APP/C/96/A1910/644602 & 975) in respect of that enforcement notice that the Council was directing the notice to the area on the plan outlined in green (that to the north of the present appeal site) and that the red-lined area was included in an attempt to prevent those targeted by the notice simply moving to an adjoining piece of land within the same overall site. The Council accepted that this was incorrect and invited the Inspector to correct the notice by deleting all reference to the red area. This was accepted by the Inspector, whose formal decision upholding the notice deleted the plan which had accompanied the notice and substituted his own plan showing only the green area.

5. Section 175(4) of the 1990 Act states that where an appeal is brought under s174 the enforcement notice shall be of no effect pending the final determination or withdrawal of the appeal. In my view that provision makes clear beyond any doubt that the extant enforcement notice is that as confirmed by the Inspector in his decision of 28 April 1998, which excluded the current appeal site, and that the notice as issued, which included the red lined area, never came into effect. It follows that Notice B issued on 18 September 1996 does not apply to the current appeal site and does not, and could not, have required the use of this site to cease. No planning permission for that use can therefore be claimed by virtue of s173(11).

6. The Council further maintains that all the requirements of Notice B have as yet not been fully complied with, which is the other condition necessary for the provisions of s173(11) to apply. While the use by Fitzpatricks has ceased, the Council's evidence is that the extreme northern part of the Notice B site immediately adjacent to the former airfield control tower is still used by Messrs Chisholms for the storage of plant and equipment used in connection with remediation works for the area of clay extraction within the airfield, which is permitted to continue until 31 December 2000. Because of the ongoing remediation works, the Council has not sought to take action for breach of Notice B. While I note that the appellant disputes that the notice has not been complied with, I am satisfied from the evidence, including the photograph (Doc 7, p.15) submitted by the Council and my own site inspection, that the activities to which Notice B applies are continuing. I also accept, bearing in mind the judgement in *Westminster CC v. British Waterways Board [1985] AC 676*, that the contractors yard site to which that notice applies is separate from, and not merely ancillary to, the clay extraction site. Although at my inspection it appeared that a conveyor shown in the photograph had been moved to a different position, an oil tank appeared to be in the same position, leading me to conclude on the balance of probability that this use is within the Notice B site and that its requirements have accordingly not been fully complied with.

7. I conclude that, as Notice B applied to a different area to the appeal site, it could not require

the cessation of the activities upon it, nor have the requirements of the notice been fully complied with. It follows that no planning permission has been granted for those activities by virtue of s173(11) and the present use of the appeal site is therefore in breach of planning control. The ground (c) appeal accordingly fails.

The Ground (a) Appeal and Deemed Application

8. From my inspection of the site and its surroundings, and from the representations made at the inquiry and in writing, I consider the main issue is whether the use is an inappropriate use within the Green Belt and, if so whether there are any very special circumstances to justify an exception to the normal presumption against such development in the Green Belt.

9. The statutory development plan for the area comprises the Hertfordshire Structure Plan Review 1991-2011, adopted in April 1998, and the Dacorum Borough Local Plan 1995, together with the Alterations Package to the Local Plan adopted in June 1998. In addition, the Dacorum Borough Local Plan 1991-2011 is currently the subject of a public local inquiry and is a material consideration in the appeal.

10. Policy 5 of the Structure Plan sets a presumption against inappropriate development in the Green Belt, except in very special circumstances, for purposes other than those detailed in PPG2. Policy 3 of the adopted Local Plan states that the only uses which are generally acceptable are agriculture, forestry, mineral extraction, open air recreation uses which cannot reasonably be located within the towns and large villages, and other uses appropriate to a rural area. An essentially similar policy is repeated in the emerging Local Plan, although Policy 3(e) of that plan refers to "other open uses (which preserve the open character of the Green Belt)". In addition, the Alterations Package incorporates the Bovingdon Airfield Policy Statement, originally approved for development control purposes in 1996. Policy 1 of that Statement states the Council's intention to reinforce the Green Belt designation of the airfield by enforcement action and not to accept the derelict condition of sites as a justification for development inappropriate to the Green Belt. Policy 6 further sets out the intention to remove all current unauthorised uses and to assess the implications of changes of use on the assumption that the main airfield should be regarded both visually and functionally as a single unit.

11. The appeal site is located on a concrete hardstanding/taxiway in the south eastern corner of the former airfield adjacent to Molyneaux Avenue and the buildings and prison housing of The Mount Prison. It falls within the Metropolitan Green Belt as defined in the Local Plan. A contractors yard is not a use normally found in the Green Belt or one of the purposes for which development may be considered appropriate under Policy 3 of the Local Plan or in PPG2. Paragraph 3.12 of PPG2 makes clear that the making of a material change in the use of land is inappropriate development unless it maintains openness and does not conflict with the purposes of including land in the Green Belt.

12. The appellant argues that as the use is for open storage, this preserves such openness as exists in this part of the Green Belt. I acknowledge that the appeal site is adjacent to the substantial buildings of The Mount Prison, which is included within the boundary of the Green Belt although prison housing in Lancaster Drive has been excluded from the Green Belt. However, there is open land to the east between the site and the prison housing and the airfield itself is overwhelmingly open, a substantial part having been restored to agriculture, and unauthorised uses have been the subject of enforcement action by the Council. The existence of a large earth bund to the west of the appeal site may reduce its

visibility, but neither this nor the absence of public access to the site in my view have any bearing on the openness of the land in respect of the Green Belt. It can clearly be seen from PPG2 that "openness" refers to land being kept free from development and is unrelated to landscape quality or whether or not the land is visually enclosed. The use of the appeal site involves a fenced compound with storage of large stocks of materials such as pipes, concrete blocks, stone, bricks and shuttering, together with oil tanks for company vehicles, a number of containers and a large group of temporary buildings, stacked 2 high, which are used as the company's offices. In addition company delivery trucks and vans are kept overnight on site. Far from maintaining the openness of the Green Belt, I consider that this intensive use of the site seriously detracts from that openness and is not compatible with the Green Belt purposes of preventing the sprawl of built-up areas and safeguarding of the countryside from encroachment. The use of the site is therefore inappropriate development and very special circumstances need to be demonstrated if it is to be permitted in the Green Belt. I note that Inspectors in other Bovingdon airfield appeals have reached similar conclusions.

13. Inappropriate development is, by definition, harmful to the Green Belt. In its reasons for issuing the enforcement notice the Council did not allege any other harm in respect of traffic or amenity, although there have been objections from other interested parties and persons in respect of visual and other amenity, lorry traffic and the effect on prison security. The use and activities on the site are effectively screened from view from the bulk of the airfield to the west by the bund and I acknowledge that the site is less visually prominent than the scaffolding site adjoining Chesham Road in respect of which appeals against enforcement notices were dismissed on 1 November 2000. Nevertheless, the present appeal site is visible from Chesham Road to the south and through a thin tree screen from Molyneaux Avenue, and the extensive open storage and temporary office buildings present an unattractive and incongruous appearance that is harmful to the appearance and character of this vulnerable edge of the Green Belt and of Bovingdon village.

14. As to the impact of vehicular movement, I note that all traffic from the site has to travel through Bovingdon village and through rural surroundings to reach the nearest junction with the A41 bypass some 5-6km away. Bearing in mind that some 25-30 lorries and vans operate from the site, together with any items of plant brought back for repair, I consider that some additional harm to amenity would be caused. I also note the complaints from the prison authorities of dust, fumes and smoke and of heavy vehicles waiting on Molyneaux Avenue and leaving mud on the road, however, it is not clear that these complaints relate to the appeal site or the land to the north where unauthorised use as a contractors yard and for a recycling facility have also been the subject of enforcement action. I do, however, recognise that the presence of large quantities of building materials on the site, together with plant and machinery albeit stored mainly on the land to the north, could pose a security risk to the adjacent fence of a prison that now houses life sentence prisoners; in my view this adds weight to the main planning objection to the development.

15. The appellant's business comprises 2 companies, Steve Badcock Ltd and Steve Badcock Plant Hire, engaged in groundwork, civil engineering and plant hire, with a turnover of some £15 million per annum. The business has grown rapidly, with the number of employees rising from approximately 120 before the 1996 move to the appeal site to some 400 at the present time, of whom 63 are employed at the appeal site. The business is currently operating on some 30 sites in the south east of England, which have to be supplied with materials and equipment from the appeal site, the convenient location of which via the

A41 to the M25, M1 and M11 makes it very important to the supply operation. No suitable alternative site has been identified and the emerging Local Plan makes insufficient provision for B8 uses. The appellant contends that, if forced to leave the appeal site, there would be a loss of employment, including some 46 employees resident in Dacorum Borough, and spending with other businesses in the Borough which in the last year amounted to £1.7 million would be lost to the local economy.

16. I appreciate that the appellant's business makes a significant contribution to the local economy and local employment, more so than was the case in the Hertz and other appeals. However, I also note that Dacorum has a thriving local economy with an unemployment rate of only 1.4% in September 2000, and that Policy 30 of the emerging Local Plan consciously aims to provide for less than the high forecast of demand for B8 floorspace. In the worst case scenario of the business closing, it seems unlikely that the local employees would be unable to find new jobs in such a buoyant employment market or that local firms would not in due course find new customers. However, I am not convinced that upholding the notice would necessitate the closure rather than relocation of the business. The appellant has only recently made any inquiries about alternative sites, with the inquiries through one agent being for a site of between 4 and 12 hectares, far in excess of the 0.76ha size of the existing appeal site. In addition the area of search has been confined to a very localised area around Hemel Hempstead, Berkhamsted, Kings Langley and Chesham, despite the fact that only 2 of the current 30 operational sites are anywhere near Bovingdon, or even in Hertfordshire, with the rest scattered over a wide area of London and the South East. While I do not dispute that finding an alternative site may not be easy, I do not believe that this would not be possible if a more thorough search were to be made covering a wider part of the business's area of operations.

17. In these circumstances, I do not consider that the nature of the appellant's business constitutes the very special circumstances necessary to justify inappropriate development in the Green Belt. Nor are there in my view any special circumstances arising from the complex planning history of the airfield to justify the present unauthorised use, which is very similar to the contractors' yard on the land to the north found unacceptable by the Inspector in the 1998 appeal decision. None of the suggested conditions would overcome the fundamental Green Belt objection. Planning permission will not therefore be granted on the deemed application and the ground (a) appeal fails accordingly.

The Appeal on Ground (g)

18. The appellant argues that the 6 month period allowed for compliance is far too short and that a minimum of 18 months is necessary. Clearly it would be desirable for the business and the employment it provides to be retained and for an alternative site to be found and I have acknowledged above that finding a new site may not be easy. In these circumstances I accept that 6 months is unlikely to be long enough for the use to relocate and that more time is needed. However, I consider that the appellant's request for a minimum period of 18 months is unacceptably long in view of the harm to an area of the Green Belt under pressure for development and the encouragement which may be given to other unauthorised uses from the continued presence of the appellant's activities. I shall accordingly increase the compliance period to 12 months, similar to that allowed in the recent scaffolding appeal decision. The ground (g) appeal succeeds to this extent.

19. I have taken account of all the other matters raised in the representations, including the

Harston and Tamworth appeal decisions referred to by the appellant, but they do not outweigh the considerations that have led to my decision.

Conclusions

20. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the notice with corrections and variations and refuse to grant planning permission on the deemed application.

Formal Decision

21. In exercise of the powers transferred to me, I direct that the enforcement notice be corrected by:

    (i) the deletion of the last 2 lines of paragraph 3 of the notice and the substitution therefor of the wording "the use of land as a contractors yard comprising the storage of plant, equipment, machinery, vehicles, materials used for building and engineering operations, and temporary buildings";

    (ii) the insertion before "machinery" in paragraphs 5(1) and 5(2) of the notice of the word "equipment";

    and varied by the substitution of "12 months" for "6 months" in paragraph 6 of the notice.

22. Subject to these corrections and variations, I dismiss the appeal, uphold the notice and refuse planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

Information

23. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.

INSPECTOR