
Appeal Decision

Site visit made on 12 July 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th October 2016

Appeal Ref: APP/B5480/W/16/3148191

The Moorings, Southend Arterial Road, Hornchurch, Essex RM11 3UB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Peter Arrowsmith, Essex Cabins LTD against the decision of the Council of the London Borough of Havering.
 - The application Ref P0896.15, undated, was refused by notice dated 14 October 2015.
 - The development proposed is use for the display and sale of timber buildings.
-

Decision

1. The appeal is allowed and planning permission is granted for 'use for the display and sale of timber buildings' at The Moorings, Southend Arterial Road, Hornchurch, Essex in accordance with the terms of the application, Ref P0896.15, undated, and the plans submitted with it, subject to the conditions on the schedule attached to this Decision.

Procedural Matters

2. Planning permission was granted in June 2009¹ for the use of the site for the display and sale of timber buildings. This planning permission was subsequently varied² to allow for an increase in the number of timber buildings being displayed (16) and their arrangement.
3. An extension of time was granted under a separate planning application³ dated 16 November 2012 and condition 1 of that planning permission states that '*this permission shall be for a limited period only, expiring at the end of 2 years from the date of this planning permission. The approved use shall thereafter be discontinued with the buildings sited, materials and other items stored, and works carried out under this permission being removed within 3 months*'. The proposal seeks a further temporary permission for a maximum of 16 display sheds. The description on the 2012 permission more accurately reflects the use of the site and I will determine the appeal on that basis i.e the 'use for the display and sale of timber buildings'.
4. I noted on site that the location of the display sheds were in a different position to that indicated on the Plan. Since the original permission was granted there has been a fire at the site and the canopy and some of the display sheds situated under the canopy are badly damaged. The canopy has collapsed in part on its south side. This part of the site is, therefore, in a very poor

¹ Planning application reference P0234.09

² Planning application reference P1556.10

³ Planning application reference P0802.12

condition. Consequently, at the time of my site visit a significant number of display sheds were located outside of the canopy.

5. However, I must determine the application on the basis of the plans which are before me. Of the 16 display sheds, 6 would be fully under the canopy; 6 would be partially under the canopy and 4 would be outside of the canopy when restored to the position shown on the Plans accompanying the application. At the time of my site visit there was also a trailer/caravan situated near to the entrance of the site, however, this is not shown on the Plans.

Main Issues

6. The appeal site is situated in the Metropolitan Green Belt and the main issues in this case are:
 - Whether or not the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - If the proposal is inappropriate development 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.

Reasons

Whether or not the proposal is inappropriate development in the Green Belt

7. Having considered the submissions made and the High Court Judgement⁴ brought to my attention I consider that as this scheme does not include wholly new buildings, or extensions to existing buildings or replacement buildings the appeal scheme falls to be considered under the fourth bullet point of paragraph 90 of the Framework. This includes the re-use of buildings which, includes any associated uses of land, are not inappropriate development provided that the buildings are of permanent and substantial construction and the development would preserve the openness of the Green Belt and it would not conflict with the purposes of including land in the Green Belt.
8. Policy DC45 of the Core Strategy and Development Control Policies Development Plan Document (2008) seeks to ensure that national Green Belt policy is applied. Whilst based on previous national policy and although there are some notable differences the broad thrust of Policy DC45 is consistent with the Framework.
9. There is no definition of openness in the Framework but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. The essential characteristics of Green Belts are their openness and their permanence and one of the purposes of the Green Belt is to keep land permanently open.
10. The appeal site is almost entirely hard surfaced and the canopy of the former petrol filling station remains in a central location within the site together with two single storey structures, a former sales kiosk and a small storage building located towards the southern side of the site. The surrounding landscape is

⁴ Timmons v Gelding BC [2015] EWCA Civ 10

predominately characterised by open fields screened by existing trees. There is no screening to the front of the site which is bounded by a brick wall and a pedestrian footway.

11. The 6 display sheds shown to be situated under the canopy would be visually contained within the existing structure and would not, therefore, affect the openness of the Green Belt. However, the 6 display sheds which are shown to be partially under the canopy and the 4 shown to be entirely outside of the canopy would result in structures where there were none when the site was in its former use as a petrol filling station. The additional structures by virtue of their physical mass and bulk would inevitably affect the openness of the Green Belt.
12. However, the majority of the display sheds would be either wholly or partially underneath the canopy and the remainder would be within the wider curtilage of the site which is well screened on the south and west boundaries. Consequently, I consider that the development would lead to only a limited loss of Green Belt openness. Furthermore, the loss of openness would be temporary and thus the essential characteristics of the openness and permanence of the Green Belt would not be compromised in the long term.
13. Moreover, as the development is contained within the boundary of the former petrol filling station and is well screened to the south, east and west, the development would only result in limited encroachment into the countryside and thus limited conflict with this particular Green Belt purpose would arise.
14. I, therefore, conclude that the proposal would lead to a limited loss of Green belt openness and conflict with one of the Green Belt purposes. It, therefore, follows that the proposal is inappropriate development. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Other Considerations

15. The appellant considers that there has been no change in circumstances since the original planning permission was granted in 2009 and that the special circumstances which were considered to exist in 2009 still remain.
16. The appellant points to the fact that the majority of the timber sheds would be sited underneath the canopy and within the wider curtilage of the site and I agree that as a consequence the harm to the openness of the Green Belt would be limited. Furthermore, the temporary nature of the proposal ensures that the essential characteristics of the Green Belt are maintained in the longer term. Consequently the limited harm which I have identified to the openness and purposes of the Green Belt would be time limited which weighs in favour of the scheme. I give this consideration substantial weight in my Decision.
17. The potential for landscaping improvements is advanced as a material consideration in this case. Planning permission was granted on a temporary basis for two years with a view to making it permanent in the future should the appearance of the site be substantially improved. However, the Council consider that there has been very little improvement to the appearance of the site since the granting of temporary planning permission and that consequently, very special circumstances do not exist. Although the Council may have hoped for visual improvements in previous schemes it, nevertheless,

did not require them by condition. In these circumstances, the fact that the appellant did not undertake the hoped for landscaping is a neutral factor in my Decision.

18. I note the appellant is willing to consider a landscaping condition which could secure visual improvements to the site. Taking into account the poor condition of the site, I consider that the visual improvements which would arise from landscaping improvements weigh significantly in favour of the proposal. It is also suggested that the re-use of a previously developed site and the physical nature of the site is a material consideration. Attention is drawn to the improvements which the appellant has made to the site including the removal of rubbish; the maintenance of the rough land to the immediate east and the provision of new landscaping treatments. I noticed on site that there were some planters situated to the rear of the site, however, I acknowledge that these planters have a limited effect on the visual appearance of the site.
19. The site is disused and parts of it are in a derelict condition as a result of the fire. Under the circumstances, the re-use of the site and the potential to secure visual improvements through the provision of additional landscaping weigh significantly in favour of the development. This approach is consistent with paragraph 81 of the Framework which states that once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to, amongst other things, retain and enhance landscape, visual amenity and biodiversity or to improve damaged and derelict land. Moreover, the landscaping improvements would be consistent with the environmental dimension of sustainable development as set out in paragraph 7 of the Framework. I, therefore, attach great weight to the environmental benefits of the proposal in my Decision.
20. The use provides local employment and helps to support a local small business. The use also helps to support the appellant's supplier. Consequently, the proposal is consistent with paragraph 18 of the Framework which states that the Government is committed securing economic growth in order to create jobs and prosperity. Moreover, there would be consistency with the economic dimension of sustainable development as set out at paragraph 7 of the Framework. I, therefore, attach great weight to the economic benefits of the proposal in my Decision.
21. The appellant also considers that the use retains a presence on the site, helping to reduce the opportunities for and fear of crime and that the alternative would be for the site to be left empty. This is a neutral factor in my decision.

Very Special Circumstances

22. Paragraph 87 of the Framework sets out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
23. I have concluded that the proposal is inappropriate development and is therefore, by definition be harmful to the Green Belt. I have also concluded

that the proposal harms the openness of the Green Belt and that there would be conflict with one of the Green Belt purposes. However, I consider that due to the location of the majority of the timber sheds underneath the canopy and within the curtilage of the site together with the temporary nature of the proposal harm to the openness of the Green Belt is limited. Nevertheless, paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt.

24. Set against this are the substantial benefits I have identified in terms of retaining a previously developed, partially derelict site in use; the opportunity to secure visual improvements to the site through additional landscaping and the contribution which the proposal makes to the local economy. I attach great weight to these considerations.
25. In this case I consider that the substantial weight given to the harm arising from inappropriate development and its effect on the openness of the Green Belt is clearly outweighed by the great weight which I have given to the totality of economic and environmental benefits of the proposal. Consequently, the very special circumstances exist to justify the development.

Conditions

26. I have imposed a condition requiring that the use is granted for a temporary period of 8 years only. In doing so I am mindful of the advice set out in paragraph 014 (Reference ID: 21a-014-20140306) of the Planning Practice Guidance (PPG) which states that conditions limiting use to a temporary period only will rarely pass the test of necessity. It also states that it will rarely be justifiable to grant a second temporary permission.
27. However, paragraph 014 of the PPG also states that a temporary permission may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of that period. In this case, the Appellant's lease on the site will expire in 8 years. Whilst the Council have suggested a 3 year time period, I consider that 8 years would reflect the remaining time of the Appellant's lease and would also be long enough to justify the appellant's investment in landscaping in order to make meaningful visual improvements to the site.
28. The PPG also states that a temporary permission may be appropriate on vacant land/buildings to enable use for a temporary period prior to any longer term regeneration plans coming forward or more generally to encourage empty property to be brought back into use. There is no evidence before me relating to the longer term plans for the site; however, as the appellant has a lease on the site for 8 years it is unlikely that the owner has any short term plans. The appeal proposal would make good use of a vacant and partially derelict previously developed site in the short term and provide the opportunity to secure some improvements through landscaping.
29. The Council have suggested a condition restricting the use of the land to the Appellant. Paragraph 015 of PPG (Reference ID: 21a-015-20140306) states that planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. A condition used to grant planning permission solely on

grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building. However, as I have imposed a condition ensuring that the use of the site is temporary, there is no evidence before me to justify why such a condition would be required in order to protect the openness of the Green Belt.

30. The use is currently operating on the appeal site and, therefore, the application is a retrospective one. Under these circumstances a standard Plans condition would not normally be applied. However, due to the fire, the display sheds are not in the broad locations as shown on the Plans and consequently I consider it necessary to apply the condition to ensure that the proposal reflects the proposed plans in the interests of protecting the openness of the Green Belt.
31. I have imposed a condition restricting the hours of operation of the use in order to protect the living conditions of residential properties in the area. A number of conditions are imposed relating to staff and visitor parking and the parking of trade and goods vehicles in order to ensure that parking provision meets the relevant standards and to protect the character and appearance of the surrounding area. Some minor amendments have been made to the wording of the conditions in order to reflect the six tests set out in paragraph 206 of the Framework.
32. A condition restricting outside storage of goods or materials is necessary in order to protect the character and appearance of the area. The Council has also suggested a condition requiring that the number of display buildings on site shall not exceed 16 at any one time; that the buildings are positioned only in those areas shown on the approved plan; and that the maximum size of any one of the display buildings shall not exceed 30 square metres in area and that they shall not exceed single storey.
33. I have retained most elements of the condition as I agree that such a condition is necessary to protect the openness of the Green Belt. However, I accept the appellant's point that the stock will change over time. That said, I consider that the location of the display buildings do affect the openness of the Green Belt and to this end I have reworded the condition to state that the display buildings should be located in the broad locations shown on the approved site layout plan and that no more than 4 display sheds shall be located wholly outside the canopy at any one time.
34. A condition restricting the use of the premises to the display and sale of timber buildings and conservatories and no other use within Class A1 is necessary to ensure control over any future use of the land given that this use is permitted in exceptional circumstances.
35. Finally, the Council has suggested a condition requiring that the use shall cease and all equipment and materials brought onto the land shall be removed within two months of the date of failure to meet a number of requirements relating to hard and soft landscaping and boundary treatments.
36. The purpose of condition 10 is to require the appellant to comply with a strict timetable for dealing with a number of detailed landscaping matters which need to be addressed in order to make the development acceptable.
37. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective

grant of planning permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place.

38. The condition, therefore, provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority (the LPA) or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be in line with the strict timetable, then the planning permission falls away.
39. The various landscaping requirements set out at criteria i. of condition 11 are necessary in order to protect the openness of the Green Belt and the character and appearance of the area.

Conclusion

40. For the above reasons I conclude that the appeal should be allowed subject to the conditions on the schedule attached to this Decision.

Caroline Mulloy

INSPECTOR

Schedule

Conditions

- 1) The use hereby permitted shall be for a limited period being the period of 8 years from the date of this decision. The uses hereby permitted shall cease and the display buildings, materials, equipment and other items associated with the use hereby permitted shall be removed within 3 months of the expiry of the permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing number 1, 9161 dated 'Location Plan' dated March 2014; Block Plan (1:200) dated 1/6/15.
- 3) The use shall not take place other than between the hours of: -
0800 -1800 Mondays to Saturdays
1000-1600 Sunday, Bank or Public holidays
- 4) No goods or materials, other than temporary display buildings, shall be stored on the site in the open air. Storage within the display buildings themselves shall be limited to materials for onward shipping to customers. No assembly or manufacturing activities shall take place at the site, other than the assembly of units for display on the site.
- 5) The premises shall be used for the purposes of the display and sale of timber buildings and conservatories only and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 6) The number of display buildings on the site shall not exceed a total of 16 at any one time with the buildings being positioned in the broad locations shown on the approved site layout plan. No more than 4 of the display buildings shall be located wholly outside of the canopy at any one time. The maximum size of any one of the display buildings shall not exceed 30m² in area. No display buildings shall exceed single storey height.
- 7) The area set aside for staff car parking, denoted by the bays numbered 1 to 4 on the approved site layout plan, shall be made available for the accommodation of staff vehicles only and shall not be used for any other purposes for the duration of the use hereby approved.
- 8) No trade or goods vehicles shall be parked within the hatched area shown on the approved site plan unless it is located to the west of the security fence on the approved site layout plan and to the south of the canopy edged red on the approved site layout plan and/or to the south of the building labelled 'Office' on the approved site layout plan.
- 9) The area set aside for customer car parking, denoted by the bays numbered 5 to 18 on the approved site layout plan, shall be made available for the accommodation of customer vehicles only and shall not be used for any other purposes for the duration of the use hereby approved.

- 10) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within two months 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 a scheme of hard and soft landscaping and boundary treatments shall have been submitted for the written approval of the local planning authority. The boundary treatment element of the scheme shall include the type to be used including the position, design, materials of the boundary treatments. The landscaping element of the scheme shall include indications of all existing trees and shrubs on the site and details of any to be retained, together with measures for their protection during the course of the development. All planting, seeding or turfing comprised within the scheme shall be carried out in the first planting season following completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless agreed in writing by the Local Planning Authority. This scheme shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision, if 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 valid 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 scheme shall have been carried out and completed in accordance with the approved timetable.