



Appeal Decision

Hearing Held on 9 July 2019

Site visit made on 9 July 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/R5510/C/18/3213390

Inglenook, Sipson Lane, Sipson, West Drayton, Middlesex UB7 0JG

- 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 Ha Meem Foundation against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 6 September 2018.
 - The breach of planning control as alleged in the notice is without planning permission the installation of 2 portable cabins ("the breach").
 - The requirements of the notice are:
 - i. remove the 2 portable cabins from the land as shown in the approximate position hatched in blue on the plan attached;
 - ii. remove from the land all debris, waste, building materials, plant equipment and machinery resulting from the removal of the portable cabins.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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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 installation of 2 portable cabins at Inglenook, Sipson Lane, Sipson, West Drayton, Middlesex UB7 0JG as shown on the plan attached to the notice and subject to the conditions set out in the schedule below.

Preliminary Matters

2. At the beginning of the hearing the Mr Volley for the Council asked if consideration could be given to limiting the numbers of school pupils within the portable cabins to 20. However, my powers to consider changing the notice through this appeal are limited even if such a revision to incorporate a limitation like that could be achieved through an enforcement notice. My powers to alter a notice are very limited to where they relate to the grounds of appeal or if correcting a defect, when it would not cause injustice.
3. The initial appeal statement on behalf of the appellants said that it was proposed to only use the portable cabins until 21 December 2020. This is the point at which the break clause within the lease of the property could be invoked. However, the appellants would prefer to stay beyond that date and for the proposal to be considered on a permanent basis.

The Appeal on ground (a) and the Deemed Planning Application

4. It is agreed between the parties that the 2 portable cabins are buildings and I agree. These buildings have been placed at the rear of the main school building and they contain 2 classrooms.
5. The main issues are:-
 - Whether the matter as alleged is inappropriate development in the GB having regard to the revised Framework and relevant development plan policies, including the effects on openness;
 - The effect on the purposes of including land in the GB;
 - The effects on the character and appearance of the area;
 - The effect of the development on highway and pedestrian safety;
 - If the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Green Belt Planning policies

6. The London Plan (LP) was adopted prior to the publication of the latest version of the National Planning Policy Framework (the Framework). However, Policy 7.16 refers to the need to give protection of the Green Belt from inappropriate development. It goes on to state that this should be in accordance with national guidance. Local Plan: Part One Strategic Policies (SP) adopted November 2012 Policy EM2 requires all proposals for development in the Green Belt to be assessed against national and LP Policies. These policies are therefore consistent with the framework.
7. London Borough of Hillingdon Unitary Development Plan which was adopted in 1998 but saved on 27 September 2007, (UDP) Policies OL1 and OL4 are expressed in very different terms to the Framework and are inconsistent with it. Mr Volley for the Council considered that more weight should be given to the Framework rather than these policies.
8. Given the above I will consider the appeal on the basis of the policies in the Framework and those policies that are consistent with it.

Reasons – whether inappropriate development

9. The appeal site includes a large 2-storey traditional building with a short front garden, larger open area to western side where parking is available. On the other side of the building, there is an area which is used as an outside play space which is also partially enclosed. Beyond that is an open area beneath the canopy of trees and the 2 portable cabins are in the north-east corner. Along the northern boundary there is a close boarded timber fence and around the eastern boundary, there is a wire mesh fence.
10. Paragraph 145 of the Framework states that the construction of new buildings should be regarded as inappropriate development in the Green Belt. There are however some exceptions and in this case, I am directed to sub-paragraph (g) which excludes from being inappropriate development:

“limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would:

- Not have a greater impact on the openness of the Green Belt than the existing development”

The second bullet point to sub-paragraph (g) is not applicable as it relates to developments making a contribution housing needs.

11. Although with respect to paragraph 145 it is necessary to consider whether redevelopment of “previously developed land” is involved, that is only the case if the development would not “have a greater impact on openness”. I will therefore look first at openness.
12. The appellant has referred to various legal authorities regarding the matter of how to consider the effect of a development upon openness. Particular reliance is given to the Euro Garages case¹ and at the hearing, the basic implications of this case were discussed. Not only the spatial but also the visual aspects of openness need to be considered and rather than treating any change as having a greater impact on openness of the Green Belt, the correct approach is to consider the impact or harm, if any, wrought by the change. This and other judgements are reflected in the recent update to the Planning Practice Guidance² (PPG). Both main parties have been given an opportunity to consider this update to the PPG since the hearing was closed. Whether or not any change will have an adverse impact and so cause harm to openness, might depend on factors such as the scale of the development, its locational context and its spatial as well as visual implications.
13. It was agreed at the hearing that no buildings were on the site of the cabins before they were installed although the land around them has been used as a children’s’ play area which may include use of some moveable play equipment similar to what I saw on the site close to the main school building. Although enclosed, the lack of buildings on this part of the site previously provided an open setting for the school building on the edge of the settlement within the margins between built up area and less development rural areas.
14. The 2 portable cabins protrude considerably above the surface of the land. Due to their size and bulk, they have taken up a substantial volume of space that had previously not contained any buildings. This additional amount of built development leads to a loss of openness in spatial terms. This has created a more developed setting to the school building therefore harming the previous openness of this site in the sensitive urban fringe of Sipson.
15. The school building and front boundary hedge along the back edge of the highway leading to the site, which is a no through road, prevents all but limited glimpses into the site from that direction. From within the site, I could see over the timber fence and into the land on the northern side of the site which is covered in vegetation and lines of mature trees. I could see a large boat and other paraphernalia to the north which the Council confirmed is subject to enforcement investigations. The land to the east was difficult to see through the mesh of the fence due to the density of vegetation on that adjoining land.

¹ Euro Garages Ltd v SOS & Cheshire West and Chester Council [2018] EWHC 1753 (Admin)

² Paragraph: 001 Reference ID: 64-001-20190722, revision date 22 July 2019

16. Even though they are dark green in colour, the cabins will still be noticeable from the adjoining land due to their protrusion above the level of the timber fence and to a more limited extent through the mesh of the fence along other boundaries. The loss of openness is apparent and not just in terms of a change in the environment of the site itself but also due to the position of the buildings on the margins of the settlement and visibility from outside of the site from that adjoining land. This greater amount of development on the site has a limited but nevertheless harmful impact upon openness of the area both in spatial and visual terms. The development therefore has had a greater impact which causes a moderate degree of harm to the openness of the Green Belt than the previous lack of built development on the site.
17. I am required to give substantial weight to any harm to the Green Belt. Even if the site could be considered to be previously developed land, it is inappropriate development as it does not fall within any of the exceptions within paragraph 145 of the Framework. In accordance with the Framework and therefore LP Policy 7.16 and SP Policy EM2, the development 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 is clearly outweighed by other considerations.

The effect on the purposes of the Green Belt

18. The construction of the substantial buildings has caused a greater urbanisation of this site which is noticeable from adjoining land. This creates a further protrusion of urban development. As such, the development goes against the purposes of checking unrestricted sprawl of large built up areas and also failing to safeguard the countryside from encroachment.

Character and appearance

19. The appeal site is on the margins of the building up area of Sipson and more rural surroundings. The site is within the Harlington Open Gravel Terrace as defined within the Council's Landscape Character Assessment. This defines the area as a flat, open landscape predominantly with large scale open fields of arable farmland. The site relates more to the settlement than the adjoining rural area and does not directly contribute to these rural characteristics. The buildings have flat roofs although the dark green colour helps them to visually recede.
20. Although noticeable from adjoining land, the cabins have a very limited impact upon the broader landscape or surrounding built environment. The buildings are within the grounds of the school and have a utilitarian appearance that is not unusual with school buildings in my experience. The development maintains the quality of the built environment, is not visible from the street-scene and generally harmonises with and compliments the character of the area. The cabins are close to a large tree which is the subject of a Tree Preservation Order but which also helps to soften the impact of the buildings. The Council is not concerned about the effect of the development upon the health and lifespan of that tree and I have no evidence to suggest that the development has been harmful in those respects.
21. In relation to this main issue, the proposal does not have a harmful impact upon the character and appearance of the surrounding area. This complies with SP Policies BE1 as well as UDP Policies BE13 and BE19.

Highway and pedestrian safety

22. The appeal site is located alongside a spur off-of Vineries Close although the address is Sipson Lane which is the main road linking Sipson with Harlington. This spur is a no through road for vehicular traffic where a footpath through to what I was told is private land has a barrier across to prevent entry by vehicles. There is some space for parking and turning in front of the school but this cannot be ensured to be available by school related traffic as it is outside of the ownership of the appellant.
23. The junction of the main part of Sipson Lane with Vineries Close includes good visibility in both directions. I saw vehicles parked alongside the carriageway of the main road that did not appear to affect the safety of vehicles driving along that road or turning into Vineries Close. Vehicles were parked close to the junction with Vineries Close but again, these did not affect highway safety at that time.
24. The Council considers that the numbers of pupils attending the school can be limited to a maximum of 40. The appellants refer to the current number of pupils as being 60. That number of pupils is the basis for the modal split survey provided which the Council's highway witness confirmed had made a difference to his view of the highway issues when the appeal documents were exchanged (although that officer refers to 57 pupils). That officer has carried out site visits during school pick-up and drop-off times and considered that his objection could be withdrawn subject to the school entering into an active school travel plan. It was not clear to me from what was discussed what the travel plan would need to include or how it could be enforced but the suggested condition also related to the physical layout of the access and turning area. I return to that below.
25. There are limitations in the width of the turning area as well as parking spaces outside of the site as well as that within the school grounds. There is no defined footpath leading to the site. Pedestrians will inevitably be walking close to turning vehicles when parents are dropping off and picking up their children. This will happen to an extent whether or not this development is allowed but with a greater number of pupils, there is more chance of problems occurring. On the other hand, there is no evidence about specific incidents that have occurred due to this number of pupils attending the school since the classrooms have been operational including during the Council's highway officer's visits.
26. Ofsted have indicated that the school is suitable for up to 80 pupils but their considerations do not include an analysis of the planning merits. I have insufficient evidence before me to demonstrate that up to 80 pupils can be accommodated without harmful impacts upon the surrounding highway network. The evidence that I do have however indicates that the situation when the evidence was compiled was reasonably safe and heard no evidence to convince me otherwise. I encouraged debate at the hearing regarding whether I could attach a condition relating to overall numbers of pupils as suggested by the Council. I consider that given the unauthorised development is within the same planning unit as the school, doing so would be relevant to the development under consideration. The numbers of pupils overall will have an impact upon highway conditions and it would be reasonable and necessary to provide an enforceable limitation.

27. There is a parking area within the school grounds which is informally laid out. I agree with the Council's suggestion that the increase in pupil numbers at the school makes it necessary to ensure the layout is organised to make parking and turning within the site as effective and as safe as possible. This is a matter that can be subject to a planning condition to ensure the submission of a suitable layout and alteration of the access, for agreement by the Council. I do not consider that the other highway related conditions suggested by the Council are necessary.
28. In relation to this main issue, with these safeguards the development does not have a harmful effect on highway and pedestrian safety. This does not therefore conflict with LP Policies 6.3 and 6.13 UDP or Policies AM2, AM7 and AM14.

Other considerations

29. It was explained at the hearing that the school would not be viable without the 2 classrooms provided within the cabins. Removing these would result in the loss of at least 12 pupils. Even if the school were able to stay open in spite of the resultant loss of income, it would no longer be possible to offer education to GCSE level. This would cause substantial disruption to all of the pupils, particularly those in their GCSE year and would mean the school would no longer be a secondary school.
30. The school provides a pleasant environment for pupils and that appears to have been important when the site was inspected by Ofsted. This is the only Muslim faith school within the Council's area and it is also a girls' school. Of the current pupils 20% come from Hillingdon and the remainder from surrounding boroughs. The school clearly plays an important part in the mix of education choice in this and surrounding boroughs.
31. From my inspection of the building, it is clear that each room is utilised and that it would not be possible to comfortably sub-divide the existing rooms within the main part of the school to provide replacement classrooms whilst retaining current standards and pupil numbers. Furthermore, the property is leased by the school and extending the building itself rather than using the cabins, in a manner that the Council indicated may be more appropriate, would be expensive with no guarantee of long-term tenure. Extending or sub-dividing would not appear to be viable alternatives.
32. The premises have been accepted by Ofsted as meeting the requirements relevant to the 'material change' of circumstances due to the relocation. It is clear from the submitted evidence and what was discussed at the hearing that finding suitable premises is difficult because of the need to provide the right kind of accommodation in the right location. The change of location from Hounslow took place in 2018 as that accommodation had been unsuitable. The leaders of the school had also previously considered other premises, such as a property in Isleworth which were also less suitable. As well as needing to accommodate pupils on site, accessibility to other facilities such as sports centres, is also important and is a significant consideration for the location of the school. Finding suitable premises for a school involves many factors.
33. The Framework states that it is important that a sufficient choice of school places is available to meet the needs of existing and new communities. It is necessary to take a proactive, positive and collaborative approach to meeting

this requirement and to development that will widen choice in education. Furthermore, great weight needs to be given to expansion or alterations of schools through decisions on applications. The change of location has helped the school develop and improve and the development has enabled substantial positive social benefits.

34. It was also explained to me that prior to the school opening, that the site suffered from fly-tipping, infestation and incidence of anti-social behaviour.

Very special circumstances

35. I am required to give substantial weight to the limited harm to openness and the purposes of including land within the Green Belt. I have found that the development does not cause any harm with respect to the third and fourth main issues which are therefore neutral factors in my overall balancing exercise.
36. I attribute substantial weight to the harm that would be caused to students studying for GCSEs if those classes could no longer be offered. I give further substantial weight to the impact that the loss of classes and potentially the loss of the school would have for education choice generally and significant weight to the harm that would be caused to this community within this and neighbouring boroughs. The active use of the site adds a little further weight in favour of retaining the development in order to maintain the active use of the site.
37. For these reasons, I therefore consider that collectively the weight that should be attributed to allowing the development clearly outweighs the harm that I have identified to the Green Belt. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.

Conditions

38. The Council suggests a condition to make the benefit of the planning permission to the appellants only. As the PPG clarifies, planning permission usually runs with the land and it is rarely appropriate to provide otherwise. I do not consider that such exceptional circumstances apply in this case but I have attached a condition limiting the overall numbers of pupils as explained above. Included within the suggested personal condition is also a proposed requirement for removal of the classrooms when they are no longer used as part of a school. Given that the appeal has been allowed on the basis of very special circumstances, I have included a condition with a similar provision.
39. The Council suggests that permitted development rights should be removed for fences, gates walls and other means of enclosure. They also suggest that no buildings should be erected without planning permission. There are currently no such limitations although planning permission and the condition in part at least would merely double-up existing controls over development. I do not consider that the development being considered makes such exclusions any more necessary than at present.
40. The purpose of condition 3 is to require the appellant to comply with a strict timetable for dealing with details of parking and turning within the site which needs to be addressed in order to make the development acceptable. 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 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. 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 or on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusion

41. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the installation of 2 portable cabins as described in the notice.

A Harwood

INSPECTOR

Schedule of conditions:

- 1) The number of pupils at the school shall not exceed 60 at any one time.
- 2) The 2 portable cabins hereby permitted shall be removed from the site within 3 months of the site ceasing to operate as a school.
- 3) The 2 portable cabins hereby permitted shall be removed and all equipment and materials brought onto the land for the purposes of their operation shall be removed within 1 month 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 for parking and turning within the site shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii. If within 11 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 scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme for parking and turning specified in this condition, that scheme shall thereafter be remain in use.

APPEARANCES

FOR THE APPELLANT:

Mr Cheung	Planning Consultant
Dr Saleem	Co-founder and Governor
Mrs Butt	Co-founder and head
Mr Khan	School accountant
Mr Qadri	

FOR THE LOCAL PLANNING AUTHORITY:

S Volley MSc Dip TP MRTPI	Planning officer
Mr Akram	Highways officer
Mr Briginshaw	Planning officer
Mr Lord	Planning enforcement officer

DOCUMENTS

- 1 Planning decision ref:26758/E/90/1850
- 2 Planning decision ref:26758/G/97/604