



Appeal Decision

Site visit made on 17 September 2019

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2019

Appeal A Ref: APP/X0415/W/19/3232485

Land Adjacent to Jewsons, Chesham Road, Hyde End HP16 0RD

- 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 Stuart Wilbraham (London Reclaimed Brick Company Limited) against the decision of Chiltern District Council.
 - The application Ref CH/2017/0747/FA, dated 19 April 2017, was refused by notice dated 21 January 2019.
 - The development proposed is described as the "retention of the site's use for the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials".
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Appeal B Ref: APP/X0415/W/19/3232566

Land Adjacent to Jewsons, Chesham Road, Hyde End HP16 0RD

- 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 Stuart Wilbraham (London Reclaimed Brick Merchants Limited) against the decision of Chiltern District Council.
 - The application Ref CH/2017/1233/FA, dated 30 June 2017, was refused by notice dated 18 January 2019.
 - The development proposed described as "the temporary siting of a portacabin used in connection with Builders' Merchants use for 3 years."
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. For ease of reference I refer to the different cases as Appeal A and Appeal B in this decision letter as set out in the headers. I have dealt with each appeal on its own individual merits but to avoid duplication, I have considered the appeals together in this document. Although there are two appeals, I have used singular terms in places for the ease of reading.

Application for costs

4. For Appeal A, an application for costs was made by Mr Stuart Wilbraham (London Reclaimed Brick Company Limited) against Chiltern District Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are:

- Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- The effect of the proposal on the openness of the Green Belt and on the character and appearance of the area, including the Chilterns Area of Outstanding Natural Beauty (AONB);
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development; and,
- The effect of the development on the living conditions of adjoining occupiers with particular regard to visual amenity and disturbance.

Reasons

Inappropriate development

6. The Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 of the Framework states that the construction of new buildings is inappropriate development in the Green Belt, save for those circumstances as listed therein. The appellant leans towards paragraph 145 g) of the Framework which states that limited infilling or the partial or complete redevelopment of previously developed land need not be inappropriate development within the Green Belt, provided it complies with the exceptions listed therein. However, the Council's decision notice refers to a material change of use of the land and paragraph 146 of the Framework states that other forms of development, including material changes in the use of land, are not inappropriate in the Green Belt.
7. Thus, the developments need not be considered as inappropriate development within the Green Belt provided it preserves its openness and does not conflict with the purposes of including land within it.

Openness and character and appearance

8. Paragraph 133 of the Framework tells us that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and openness is an essential characteristic of the Green Belt. At the time of my visit the site contained a vast amount of bricks and slabs that were palletised, stacked and arranged in rows throughout the site and clearly visible through site entrance. For Appeal A, the storage of such materials at the site reduces the openness of the Green Belt, which is clearly visible through the existing access.
9. Turning to Appeal B, the appeal site is currently devoid of any buildings at the point where the structure would be placed which would inevitably mean that there would be a reduction to openness. It is an established principle that the openness of the Green Belt has a spatial as well as a visual aspect and the introduction of a building, albeit portable, has an effect on openness even

though in this case its scale is modest and is of a temporary nature mitigates against long term effects on that openness.

10. The site has mature boundary screening to the front and the appellant argues that the portacabin will not be visible from the public domain, though I noted on my visit that given the nature of landscaping to the front of the site, the structure would be partially visible through this landscaping and through the access. Although in this context there is a limited adverse effect given the nature of the development, openness would nonetheless not be preserved. This means that very special circumstances are also required to justify the proposal.
11. I therefore conclude that the use of the site for the storage of bricks and other building supplies and the temporary siting of a portacabin leads to a material and harmful loss of openness to the Green Belt, which undermines the essential characteristic of the Green Belt as defined in the Framework. It would be contrary to Policies GB2 and GB22A of the Chiltern District Council Local Plan 1997 (the Local Plan) and the Framework, and should not be approved unless very special circumstances can be demonstrated that clearly outweigh the harm by reason of inappropriateness, and any other harm, by other considerations.
12. Furthermore, the Framework also states at paragraph 172 that great weight should be given to conserving and enhancing the natural beauty of AONB's and not only does the proposed use alter the characteristics of the Green Belt, the introduction of a portacabin and such a large amount of material, stored openly on the site, is a stark, urbanising and incongruous feature that is out of keeping with the prevailing rural character of the area, and thus harmful to its appearance.
13. It would conflict with Policies GC1 and LSQ1 of the Local Plan, Policies CS20 and CS22 of the Chiltern District Council Core Strategy 2011 (the Core Strategy) and the Framework, which seek, amongst other things, to conserve and enhance the special landscape character of the AONB.

Other Considerations

14. Paragraph 144 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm. Historically, an enforcement notice was served on the appeal site for its unauthorised change of use from a builders' merchants to the commercial storage of vehicles, plant, machinery and other equipment, together with ancillary repairs and maintenance thereof. The appellant at that time, applied for a certificate of lawful use for a similar use of the land which the Council subsequently refused. The appellant appealed the enforcement notice and the refused certificate of lawful use, both of which were subsequently dismissed¹ in 2008.
15. In considering the appeals, the Inspector reported that use of the site as a builders' merchants had been accepted by the Council as being a lawful use of the site since 2001 as it had become immune from enforcement action as a result of the passage of time. Nevertheless, the Council now argue that the use of the site as a builders' merchants has been interrupted and abandoned

¹ APP/X0415/C/07/2059918 & 2059919 and APP/X0415/X/07/2062615

and is therefore no longer a legitimate fallback position on which the appellant can rely. However, this is not an issue for me to consider as other mechanisms exist to resolve such matters.

16. Nevertheless, the appellant places great weight on the fact that should this appeal fail, the lawful use of the site has not been abandoned and it does indeed have a legitimate fallback position where it could revert to its use as a builders' merchants. Moreover, the appellant also argues that the lawful use of the site as a builders' merchants (*sui generis*) and the proposed use for open storage (B8 storage or distribution) are not materially different from one another as both contain elements of open storage. Thus, this equates to the very special circumstances required to tip the balance in favour of the proposed use.
17. However, I am not persuaded by the appellant's assertion that the use of the site for storage of materials or as a builders' merchants are not materially different from one another. Firstly, the uses do not fall within the same use class² and the Inspector considering the appeals in 2008 found that they were functionally and physically different from one another. Moreover, given that I have found the proposed use to be harmful to the character and appearance of the area and to the openness of the Green Belt, I am also not persuaded by the appellant's assertion that use of the site as a builders' merchants would have a no more physically or visually intrusive impact on the openness of the Green Belt than the proposed use for the open storage of bricks and other building supplies. The adjacent site operating as a builders' merchants does not have the same visual impact as that at the current use of the site where the storage of materials is not spread across the site to the same degree and are more confined around the core of the site and buildings. Furthermore, it would not render the proposed use to store materials in the open as not inappropriate development within the Green Belt, as it still fails to preserve its openness.
18. In addition, I acknowledge that officers had recommended approval of the planning application and stated in the report to its development management committee that limiting the height of the storage across the site would also mitigate the impact of the site to some degree, the storage of materials at the site would still be clearly visible through the site's entrance and palisade fencing. In any event, I do not have any details of the extent of the storage and its configuration within the site that was the subject of the previous appeal decisions or the evidence that was provided during the public inquiry.
19. Moreover, even if such a use has not been abandoned, I have no substantive evidence before me that the appellant would revert to the lawful use of the site as a builders' merchants as it is clearly not a use that it seeks to employ. Indeed, it is the open commercial storage of materials at the site, and not a use as a builders' merchants, albeit with an element of open storage, that the appellant seeks and is one that has existed since the appellant took possession of the site in March 2014.
20. As such, I do not find the fallback position of the use of the site as a builder's merchants directly comparable to the use of the site before me thus, the weight I afford this position is limited. I do not find the appellant's argument to amount to the very special circumstances required to clearly outweigh the harm to the Green Belt.

² Town and Country Planning (Use Classes) Order 1987 (as amended)

21. Turning to the portacabin, I accept that for health and safety reasons the appellant is required to provide adequate welfare facilities for employees. However, the provision of such facilities would apply equally to most businesses such as that operating at the site and thus, do not amount to the very special circumstances required to clearly outweigh the harm to the Green Belt.

Living Conditions

22. The Council argue that the use of the appeal site would harm the living conditions of occupiers of the residential properties that exist opposite the site. However, the appeal site lies adjacent to an existing and operating builders' merchants so that even if the use of the site were to cease, it is clear that customers would still visit the site, creating noise and disturbance. I also note that the Council's Environmental Health Team did not object to the development, subject to a condition restricting the hours that the site could operate. In the absence of any substantive evidence to the contrary, I see no reason to disagree with that assessment.
23. Thus, the development would not result in material harm to the living conditions of adjoining occupiers. It would not be in conflict with Policy GC3 of the Local Plan and Policy CS4 of the Core Strategy of the which seek, amongst other things, to protect the amenities enjoyed by the occupants of existing adjoining and neighbouring properties.

Green Belt Balance and Conclusion

24. In accordance with the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the proposal and to the loss of openness of the Green Belt resulting from the development. I also attach substantial weight to the impact of the development on the character and appearance of the area. Against this, I do not find the circumstance's identified to be very special in order to outweigh the harm to the Green Belt.
25. I therefore conclude that the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist. Thus, I conclude that the appeals should be dismissed.

Graham Wyatt

INSPECTOR