



Appeal Decision

Hearing Held on 25 February 2020

Site visit made on 25 February 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/Z4718/C/19/3234456

Land at Garage, Penistone Road, New Mill, Holmfirth HD9 7DU

- 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 Yorkshire Trading Services Limited against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 25 June 2019.
 - The breach of planning control as alleged in the notice is: The unauthorised material change of use of the land from builder's store to retail and associated siting of shipping containers and the formation of a hard surface.
 - The requirements of the notice and the periods of compliance are:
Within 8 weeks from the date that this notice takes effect cease the use of the land for retail sales and associated storage
and
Within 8 weeks from the date that this notice takes effect remove all shipping containers, items displayed for sale, items stored and associated retail paraphernalia from the land
and
Within 4 months from the date that this notice takes effect remove the area of hardstanding land on the site and restore the land to its condition that existed prior to the unauthorised use.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (b) of the Town and Country Planning Act 1990 as amended. Since an application has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. It is directed that the enforcement notice be corrected in paragraph 3 by deleting the existing wording and replacing it with: "The unauthorised material change of use of the land to retail and associated siting of shipping containers used for storage, and the formation of a hard surface."
2. It is directed that the enforcement notice be corrected in step three of paragraph 5 by deleting the wording "hardstanding land" and replacing them with "hard surface."
3. Subject to these corrections the appeal is dismissed and 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.

Procedural Matter

4. Despite an initial indication from the appellant's appeal documents that there may have been issues which would be more appropriately considered under a ground (c) appeal, a brief exploration of the matter at the Hearing proved that this was clearly not the case. The appeal is therefore proceeding on the grounds set out in section 174(2) (a) and (b) of the Act.

The Enforcement Notice

5. The notice alleges that there has been a material change of use of the Land from a builder's store. However, from discussions at the Hearing in relation to the planning history of the site, it is clear that despite the Land having been used as a builder's store in the past, there has not been a grant of planning permission for that use. Furthermore, I have not been provided with any substantive evidence that would enable me to conclude that this previous use was lawful. The notice is not required to recite the previous use, therefore, to ensure that there is no uncertainty, I shall delete the text which says what the change of use was from.
6. In addition, it is not disputed that the shipping containers are used for storage. In the interests of clarity and to be precise I shall therefore correct the allegation in paragraph 3 by deleting the existing wording and replacing it with: "The unauthorised material change of use of the land to retail and associated siting of shipping containers used for storage, and the formation of a hard surface." These corrections do not alter the allegation of a material change of use without planning permission, and I am satisfied in making them there would be no injustice to either the Council or the appellant.
7. Step three of the requirements of the notice set out in paragraph 5 refer to "hardstanding land." To ensure consistency with the allegation I shall delete those words and replace them with "hard surface." There would be no injustice in making this correction to either party.

Appeal on ground (b)

8. The main issue is whether as a matter of fact the Land was in use for retail with associated siting of shipping containers and the formation of a hard surface.
9. The appellant agrees that the Land is used for retailing, with sales both to the general public and trade. Furthermore, there is no dispute that the shipping containers, which are used for the purposes of storage associated with the retail use, are sited on the Land. However, the appellant does not consider that a hard surface has been formed on the site.
10. The Council has submitted as part of their evidence Google images taken on various dates between 2006 and 2018. These appear to show some hard surfacing extending from the site's access to the centre of the site and in front of the stone buildings within it. The appellant and the previous Landowner, Mr Haigh, advised that this hard surfacing was a mixture of concrete, tarmac and hard core. Mr Haigh also advised the Hearing that soil had been tipped on the Land in more recent years and this had revegetated with some the builder's rubble incorporated within it. The Google images are not in enough detail to clarify this matter. However, the images show that the southern and eastern

sections of the Land have always been vegetated and there is no evidence of a hard surface existing in those areas.

11. At the Hearing the appellant stated that he had cleared the Land of the builder's rubble and soil and imported around three waggon loads of stone and gravel to lay across the whole of the site. He advised that a solid base was needed due to the muddy ground conditions.
12. At my site inspection I was able to see that where vehicles access the site and park close to its entrance there was an area of gravel which the appellant stated had been recently renewed as vehicle movements in this location were eroding the surface. The remainder of the site had been covered in loose stone. This stone was compacted along the walkways between the products and less so around the edges of the site and beneath the shipping containers. However, taking into account the evidence from the Google images, which are not disputed by the appellant, it is clear that although some areas of hard surface existed before the new stone was laid, those areas did not extend across the whole of the site. Moreover, the amount of stone that has been imported and laid to create a clean hard surface is, as a matter of fact and degree, much more than could be described as a maintenance and repair operation.
13. In conclusion, retailing and associated siting of shipping containers and the formation of a hard surface has occurred on the site as a matter of fact. The appeal on ground (b) does not succeed.

Appeal on ground (a), deemed planning application

Main Issues

14. The main issues in this case are:

- Whether the material change of use would be inappropriate development in the Green Belt;
- The effect on the character and appearance of the area;
- The effect on highway safety;
- Whether or not the site is suitable in principle for retail purposes having regard to local and national planning policies;
- The effect of the development on the living conditions of neighbouring residents, with particular regard to noise and disturbance; and
- If it 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 required to justify the proposal.

Reasons

Inappropriate development

15. The Land is located within the Green Belt and the deemed application is for retail and associated siting of shipping containers and the formation of a hard surface.

16. Paragraph 146 of the National Planning Policy Framework (the Framework) states that certain forms of development, including material changes in the use of the land, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
17. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. The Council has not referred to any relevant development plan policies for the control of development in the Green Belt and advised at the Hearing that there were no specific policies in the Kirklees Local Plan Strategy and Policies, 2019 (LP) which would relate to this type of development. However, they stated that the overall Green Belt Strategy in the LP was consistent with the Framework. My decision therefore relies on national planning policy in this regard.
18. The appeal site relates to an area of approximately 0.1 hectares which is situated to the south of Penistone Road (A635) and at its junction with Spring Lane. It is approximately 500m from the centre of New Mill. Whilst the land opposite the site is generally built up, with cottages fronting onto the road, the southern side of Penistone Road has a much more open character and appearance, albeit it has a verdant setting. Built development on the southern side of the road is loose knit, with just a cluster of larger detached dwellings situated on the hillside above Spring Lane.
19. The appeal site comprises a single storey stone and block building which is divided into three sections and situated adjacent to its western boundary. Adjacent to it is a small portal framed garage. The garage and part of the building are used for storage, with other areas within the building used by a florist to display, arrange and retail flowers. The remainder of the site is used to store and display bulky retail goods. The existing retail products are predominantly large ceramic plant pots, although the appellant advised that he also sells some garden furniture and related products, including Christmas trees and pot plants. The products are stored in the three shipping containers and stacked on pallets across the remainder of site. At the time of my visit there was also a marquee on the site which was providing cover for some products on display, and there was a portable toilet.
20. The operations of the florist are largely contained within the existing building on the site. The retailing element which takes place within the building, including the arrangement and display of cut flowers and other products, does not in itself affect the openness of the site. However, the shipping containers have a solid form, and albeit they are not permanent buildings, when they are stored on the site their physical presence and bulk form reduces openness. Furthermore, prior to the breach of planning control, the site was in a disused state with no activities taking place on it. The current/proposed use attracts customer and delivery vehicles to the site, and when taken together with the bulky goods stored, the development further reduces the site's openness. Taking into account the extent of the outside retail area, the scale and bulk of the stored product and the shipping containers, the harm from the proposed use to openness is moderate at least.
21. The site has an existing access and some buildings within it. In view of its location within an area of loose knit development on the fringe of the

settlement of New Mill and its containment by Spring Lane, a joinery workshop/yard and residential development, the change of use has not involved encroachment into the countryside or a conflict with any other of the purposes of the Green Belt. Nevertheless, as a result of a loss of openness the change of use is inappropriate development for the purposes of the Framework.

22. I conclude that the material change of use to retail and associated shipping containers and hard surface area would not preserve openness. There is conflict with paragraph 146 of the Framework and the development is inappropriate development in the Green Belt. The harm to the Green Belt has substantial weight.

Character and appearance

23. The site's context is a location on the edge of the settlement, adjacent to a main arterial route which leads through the valley to open countryside. The nature of surrounding development is predominantly residential, with some historic former industrial buildings.
24. The shipping containers and open storage associated with the retailing is not in keeping with and seriously detracts from the visual qualities of the area. The site is clearly visible from the adjacent carriageway, a Class A road, with only a low boundary wall separating it from the pavement. In addition, it is overlooked by residential properties. The materials and form of the containers, together with products stacked on pallets to a height of over two metres across the whole of the site, has an urbanising effect on the appearance of the area.
25. I understand that the appellant believes that the site was derelict, and I recognise his efforts to keep it in a clean and tidy condition. However, from the evidence I have before me, prior to the appellant taking over the site it was free from stored material and there were no containers on it. The development has resulted in the site now having a cluttered and unattractive appearance with conflicts sharply with its previous open character and its verdant setting.
26. I have taken into account the presence of the joinery workshop and the building contractor's premises which adjoin the site. However, the site frontage of those premises is laid out as a car park and open in character. Although there is some open storage associated with their use, this is located in an enclosed yard to the rear of the workshop where it is not readily visible to public views. On the contrary, the use of the appeal site with items stored in a prominent location, has resulted in an uncharacteristic urbanising intrusion into the visual qualities of the area.
27. I conclude that the development has a harmful effect on the character and appearance of the area. There is conflict with the development plan, and in particular with Policy LP24 of the LP which seeks to ensure that new development, amongst other things, respects and enhances the character of the townscape, heritage assets and landscape.

Highway Safety

28. The site has an existing vehicular access which is located at the junction of Spring Lane and Penistone Road. Directly in front of the site on Penistone Road there is a parking layby which has one of the spaces within it dedicated to a Police Vehicle. I was told at the Hearing that this space is used regularly by Police Camera Vehicles because it is a location where speeding regularly

occurs. The speed limit in this location is 30mph, but vehicles approaching from the east, downhill, are often travelling faster. I was able to witness this at my site visit. There are no parking restrictions on the either Spring Lane or Penistone Road in the vicinity of the site.

29. The site access is only single vehicular width and the existing front boundary wall and gatepost is of a height that restricts visibility in an easterly direction for drivers exiting the site. It is therefore necessary for vehicles to position themselves within the adjoining deep pavement before entering the carriageway. Only by positioning themselves in the pavement area are drivers then able to have a clear view of vehicles approaching from the east.
30. The appellant advised that the space he has available for the parking of customer vehicles within the site can vary depending on how much space the stock is taking up within the yard. Generally, there are between three and six spaces available for employers and customers. Whilst it is possible to turn small vehicles and transit vans within the site to enable them to enter and leave the site in a forward gear, the appellant advised that when the bulky stock is delivered, the larger delivery vehicles need to reverse into the site and the services of a banksman are required.
31. I understand that the site has been previously been used by a builder as his store and was told at the Hearing that builder's tools were generally stored within the buildings, with some larger equipment, e.g. scaffolding poles, stored outside. The yard was also used in part to store some building materials and waste. From the evidence available to me, the vehicular activity associated with its previous use would have been considerably less than that associated with the retail use of the site. Although the builder's store may have taken the delivery of some building materials, deliveries of bulky building materials are generally made directly to a building site. In addition, there would be no customers visiting throughout the day. The appellant considers that he has sufficient space within his site for customers to park, albeit some customers find it more convenient to park in the layby. In addition, I was advised that the delivery of bulky products currently only takes place two or three times a year. However, the grant of a planning permission for a retail use on this site, as sought by the deemed application, would not be restricted to the existing operator. Planning permission would be for the use of the Land. Future operators may require deliveries every day and have a larger customer base. Given the position of the site access at the junction of a busy class A road, its restricted visibility and width, any development that results in an intensification of its use would not to my mind be in the best interests of highway safety.
32. I appreciate that it would be possible to create a larger space within the site for customer parking and a dedicated area for deliveries to be made. However, creating more space for vehicles to park within the site would not mitigate the harm derived from the intensification in use of a substandard access. Some improvements to visibility could be achieved by reducing the height of the front wall and gatepost. However, I have not been provided with any substantive evidence that would demonstrate to me that the access in this location is suitable for the vehicular traffic that would be associated with its retail use.
33. I conclude that the proposed development would have a harmful effect on highway safety. There is conflict with the development plan and in particular with Policy LP21 of the LP which seeks to ensure, amongst other things, that

the new development does not have a detrimental impact on highway safety and the local highway network. I also find conflict with the Framework which advises that development should be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.

Suitable Location

34. The deemed application is for a retail use of the site. Policy LP13 of the LP advises that main town centre uses, which would include retailing, should be located within defined centres as shown on the Policies and Town Centre Maps. This policy is consistent with the Framework and recognises that that main town centre uses, which are appropriate in scale, help to retain an existing centre's market share and enhance the experience of those visiting the centre and businesses which operate in that centre will be supported.
35. The nearest town centre to the appeal site is Holmfirth, with New Mill being its nearest Local Centre. The site is located some 500m from New Mill centre and outside of its Primary Shopping Area (PSA). Policy LP13 states that proposals for main town centre uses which are located outside of defined centre boundaries will require a Sequential Test. Main town centre uses shall first be located in the defined centres, then edge of centres, and only if there are no suitable sites shall out of town centre locations be considered.
36. In this case the appellant has not undertaken a Sequential Test (ST). Whilst this would not be required for proposals for offices and small-scale proposals of 150sqm and under in non-urban areas, including areas of Green Belt, in this case the overall site area used for retailing is much greater than 150 sq. m and a ST is therefore required.
37. I appreciate that the nature of the appellant's business is that it requires a large area for storage of bulky goods for wholesale and retail. However, in the absence of any evidence to demonstrate otherwise, there is no reason to suggest that an out of centre location is essential for this business. Indeed, the appellant acknowledged at the Hearing that the absence of overheads had been a main consideration in choosing this site, as well as its location close to his and his partner's home.
38. Taking into account the size of the site, scale of retailing and location outside of the nearest Local Centre's PSA, in the absence of a ST to demonstrate otherwise, the site is not suitable in principle for retail purposes. There is conflict with the development plan and in particular with Policy LP13 of the LP, the aims of which are set out above. I also find conflict with Section 7 of the Framework which requires planning policies and decisions to support the role that town centres play at the heart of local communities.

Living conditions

39. The Council are concerned that noise and disturbance associated with a retail use of the site would have a harmful effect on the living conditions of neighbouring residents. In particular, by reason of noise from deliveries, use of forklift trucks and movement of bulky goods. They confirmed at the Hearing that no such complaints had been received on these grounds but were mindful that future operators may operate in a different manner and there was potential for harm to arise.

40. There are residential properties which have direct views over the site, with the closest properties situated on the opposite side of Penistone Road. However, these properties do not abut the site and the most dominant source of noise in this location would appear to come from traffic using Penistone Road. It would not be unreasonable to impose conditions on any planning permission granted which could limit the hours of opening and deliveries times as suggested by the Council. I am satisfied that the imposition of those conditions would provide suitable mitigation for any harm that would arise from a retailing use on this site.
41. I conclude that subject to the imposition of conditions as set out above, the proposal would not have a harmful effect on the living conditions of neighbouring residents. There would be no conflict with the development plan, including Policies LP52 and LP24 of the LP which seeks to protect and improve environmental quality, and which require development to provide a high standard of amenity for neighbouring occupiers.

Green Belt balance

42. My conclusion is that the harm to the Green Belt has substantial weight and that the harm to the character and appearance of the area has very significant weight. In addition, the concern over the adverse impact on highway safety and impact on vitality of the town/local centres also has significant weight. The absence of harm to living conditions does not carry any positive weight in the planning balance. On the other side of the balance the provision of employment with flexible working hours for two local people has a small benefit to the economy of the local area. In addition, the history of the site and reuse of existing resources each add some positive weight in support of the development.
43. On the analysis above the harm by reason of inappropriateness, and the additional identified harm, are not clearly outweighed by other considerations. Very special circumstances do not exist to justify the development. The development fails to comply with national planning policy in the Framework to protect the Green Belt.

Conclusion

44. The change of use is not compliant with the development plan and no considerations merit a decision other than in accordance with the development plan and the Framework. The appeal on ground (a) does not succeed.

Overall Conclusion

45. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Adrian Dickinson	The Appellant
Mr Geoffrey Haigh	The Landowner

FOR THE LOCAL PLANNING AUTHORITY:

Mr Lee Stoney	Development Management Compliance Team Leader
Hannah Thicket	Planning Enforcement Officer
Sandra Haigh	Legal Officer

THIRD PARTY

Mr Ian Jessop	Local Resident
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DOCUMENTS submitted at the Hearing

Document 1: Aerial Images dated, 2000, 2002, 2006, 2009, 2012, 2016, 2018 and 2019. Street View Images dated, 2009, 2015 and 2019.