



Appeal Decision

Site visit made on 15 September 2020

by Simon Hand MA

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

Decision date: 28 September 2020

Appeal Ref: APP/X0415/C/19/3231506

**Land on the north-west side of Bramble Lane, Amersham,
Buckinghamshire, HP7 9DN**

- 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 PHD Modular Access services Ltd against an enforcement notice issued by Chiltern District Council.
 - The enforcement notice, numbered 2017/00246/AB/EN/1, was issued on 17 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the Land to a scaffolding storage yard (Class B8) and the associated stationing of storage containers and erection of scaffolding racks integral to that use.
 - The requirements of the notice are 5.1 cease the unauthorised use of the Land as a scaffolding storage yard; 5.2 remove from the Land all materials, shipping containers, scaffolding racks and scaffolding poles, clamps, boards and any other items associated with the unauthorised use; and 5.3 remove from the Land any resultant debris arising from compliance with the steps above.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Application for costs

1. An application for costs was made by the appellant against the Council and is subject to a separate decision letter.

Decision

2. It is directed that the enforcement notice be varied by substituting "*6 months*" for "*4 months*" as the time for compliance. Subject to this variation 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.

The Appeal on Ground (a)

3. The scaffold storage yard is accessed from a short lane leading off the A413. The opposite side of the A road is open fields and a river valley with the ground rising gently beyond to a line of hills. At the point where Bramble Lane joins the A road it is lined by houses. The appeal site is a large rectangle that sits directly behind some of these houses and its southern boundary runs next to their back gardens. Bramble lane is metalled, at least as far as the site and runs through a narrow gap in the otherwise built up frontage. The site slopes

gently uphill and from the back of the site are clear and wide ranging views across the houses and river valley to the hills beyond.

4. The site lies in the green belt where inappropriate development should only be allowed where there are very special circumstances. The main issues in this appeal are therefore whether the development is inappropriate and if so whether there are any very special circumstances that would enable it to be allowed.
5. It is not disputed the use falls within Class B8 of the UCO. There are a number of pre-existing buildings at the front of the site currently being used for storage, as an office and for repairs. Along the boundary with the houses the open space is used for staff car parking. Between the buildings and the side boundary is an open area used for training, beyond that on the western boundary is a line of shipping containers used for storage, but the rest of the site, about three-quarters is used for open storage of scaffolding equipment.
6. The company is a specialist supplier of scaffolding to jobs such as the Houses of Parliament, so the materials being stored are not the standard scaffold poles but more complex looking. Nevertheless there is a huge amount of storage of metal components stacked up, in many cases, to 3 or 4 metres in height.
7. The site has a longstanding lawful use as a sui generis gardening contractor's business, which was controlled by a planning permission¹ granted in 1985. That permission was subject to various conditions, one restricting the use of the buildings to the main use of the land which was "*servicing and storage of garden machinery*"; one restricting outside storage to areas first agreed with the Council; a time limit on the operation of machinery and a noise limiting condition.
8. This then is the lawful fallback position. The current use is a material change of use but that is not inappropriate in the green belt provided it preserve the green belt's openness². The appellants' argument is essentially that the current use has no greater impact on openness than the previous use and so is not inappropriate development, and given the various changes to working practices that are outlined in the representations and the imposition of conditions concerning operating hours and noise, the impact on neighbouring residents would be no greater than the previous use.

Inappropriate development?

9. The main question is therefore what was the previous use and what were its impacts? Ray Keen is the landowner and operated a landscaping business from the site for many years. He has provided a statutory declaration explaining what happened. He paints a picture of a thriving landscape business. In particular a number of vans, tractors and other vehicles were parked on the site, the top part was used for soil improvement where green waste would be imported and composted, there were considerable vehicle movements associated with landscaping contracts and moving of soil. He sold the business (but not the site) in 2004 to ISS Waterers Landscapes Group who carried on a similar business. Their lease expired in 2015 after which the appellants move in.

¹ CH/1984/2132/FA

² Paragraph 146 of the NPPF

10. Although the statutory declaration does try to suggest a busy and noisy yard, especially in terms of vehicle movements, it is noticeable that heavy lorries are largely associated with the soil element of the business, and this was largely confined to a few weeks in the Autumn. Landscaping gangs would presumably consist of vans and trailers with mowers and shredders etc. Mr Keen appointed consultants to consider how to market the site in 2007. They describe the current use in very much the same terms as above; *"essentially there are workshop and stores used for the repair and maintenance of garden machinery and vehicles and adjoining office building. Outside there are a number of storage containers and two polytunnels used for the storage of lawnmowers plus an extensive yard area. The site amounts to approximately 3 acres. To the rear of the site is an area used for waste management for which there is an appropriate licence"*. This does not sound to me anything like the intensity of the current use I saw on the site or as described by the Council and local residents. The consultants point out the existing use is *"clearly very specific"* and advise trying to find out what alternative uses would be acceptable to the Council to maximise the value of the land. An aerial photograph used in the marketing of the land in 2015 shows a much more low-key use, with vehicles lined up on one side and some storage on the other, but large clumps of trees and bushes on the site as well.
11. Also in 2015 consultants wrote to the Council to describe the current use (ie the landscaping business) in order to inform a pre-application meeting, presumably with a view to getting a wider planning permission. The description of the use was *"50 vehicles comprising small trucks, vans and 3.5 ton trucks, with 40 trailers; 80 staff including 7 administrators and 5 yard men; 800 items of equipment stored on site ranging from hedge trimmers, chainsaws to large grass cutting machines, diggers and tractors; red and white diesel tanks on site; bins for scalping's, ballast, sand and salt; staff parking is typically 20 cars on site all day; to the rear is a waste transfer site to manage logs trees, green waste for grinding and recycling"*. This is a much more detailed description and again is clearly an attempt to demonstrate the site is busy and so not a lot different from the prospective uses described as a container depot, scaffolding or aggregates storage. I do not know what happened as a result of this meeting, but no planning permission seems to have been applied for.
12. Looking in detail at the description it does not tell us how busy the site was, or if all these people and vehicle were on and off the site all day. After all 80 people are said to work there but only 20 cars for staff. 800 items of equipment could easily fit into one building, depending on what the equipment was. 50 vans and a further 40 trailers seems to be a huge number of vehicles, which if they were in and out every day would be a significant nuisance in terms of noise and disturbance. This does not tally with local residents who say the current use has considerably increased. I do not think a great deal of weight can be attached to this document, which was produced for different reasons and may well have been something of a 'puff piece' designed to throw the worst possible light on the use.
13. Looking at it from the other point of view, the 1985 planning permission was conditioned in order to *"prevent the undesirable establishment of separate commercial uses in the green belt"*. No enforcement action was ever taken against the landscaping businesses, which seem to have sat side by side with the houses without generating complaints. Now, there are a considerable

number of photographs from local residents showing articulated lorries coming and going to the scaffolding yard and having considerable difficulty negotiating the narrow entrance to Bramble Lane. It is reasonable to conclude therefore that however busy the landscape business might potentially have been it does seem there has been a qualitative increase in impacts since the current scaffolding business took over and the site would seem to be used much more intensively for storage.

14. Taking all this together, I am not convinced the landscaping use was particularly noisy or intrusive. The evidence would suggest to me that the use by a landscaping company was relatively low key, there may well have been many vehicle movements, but a van and trailer is quite a different proposition to an HGV. In views from the footpath on the hills opposite the site the scaffolding use stands out as particularly prominent and incongruous. I have no doubt the current use of the site has a considerably greater impact on openness than the lawful use. Therefore the development is not covered by the exemption in paragraph 146 and so represents inappropriate development in the green belt.

Other harms and benefits

15. Any harm to the green belt should be given great weight, and the current use is not only inappropriate but also harms openness. It is clear from the third party letters they also consider there is an issue of noise, that it is unsightly, Bramble lane is being damaged by the use of HGVs, which also cause a highway safety issue, and there is considerable run-off from the new hardstandings that have been created, causing mud to flood into people's garden and down the lane into the road.
16. The appellant suggests much of this can be overcome by the use of conditions and the re-organisation of the business on the site. A noise assessment has been carried out which recommends considerable mitigation measures, including perimeter fencing up to 3m in height, acoustic barriers in the buildings, relocating some of the machinery and what amounts to a sort of voluntary code of good practice for drivers. Also deliveries and operation of machinery should be limited to 08:00-18:00 Monday to Friday and 08:00-13:00 on Saturdays. Schemes showing where plant and machinery can be stored should be agreed as should a landscaping scheme.
17. These are all fairly typical conditions to control the operation of a commercial use in close proximity to residential properties, however, they assume that a general commercial use is appropriate at the site in the first place. The Council have clearly sought to prevent that happening, not least because of its prominent green belt location, but also in my view because of its sensitive situation accessed between and sitting directly behind houses. The noise report notes the residents are already subject to considerable noise from the A road to their front, so it seems to me somewhat problematic to add to that noise at the rear.
18. The success of the conditions also relies on the re-organisation of the business. The owners state that they have already rented another yard in Swindon and moved a lot of plant and equipment there and only store certain specialist equipment in the southern sections of the yard, closest to the houses. This has had the effect of considerably reducing vehicle movements. However, as I saw on site it is still intensively used. A haulage movements chart has been

provided, although it is not clear exactly what this means. However, it shows movements in June and July this year returning to the same numbers as in June and July the previous year - after a significant drop during lockdown. So there is no actual evidence of less vehicle movements, and given the site is still completely full, it's difficult to understand how the new arrangements are improving matters.

19. Finally, it is claimed there are no other suitable sites within 30 miles of Amersham. I have no doubt this is the case, the appellant's professional advisor notes there is a serious shortage of this sort of open storage in the south-east, not least because of the pressure for housing on brownfield land. If so, then losing the appeal will lead to a loss to the area of a number of jobs, although there is no evidence the business would have to cease operating altogether.
20. Bringing all this together, even if I accept at face value the appellants claim that by re-organising his business and applying appropriate conditions then the impacts on the amenities of neighbours and the visual appearance of the countryside would be overcome, and I am not convinced this would necessarily be the case, that merely removes those particular harms. The use is still inappropriate in green belt terms and, however well screened, harms the openness of the green belt. The possible loss of jobs and lack of sites to relocate too does not outweigh the harm caused to the green belt. I conclude therefore there are no very special circumstances to outweigh the green belt harm and according to paragraph 143 of the NPPF the development should not be approved. It is contrary to policy GB2(f) of the Chiltern district Local Plan and so also to GB22A and I shall dismiss the ground (a) appeal.

The Appeal on Ground (f)

21. The appellant's arguments are essentially a re-run of the ground (a) that a reversion to the landscaping contractor would be no different to the scaffolding yard. As I do not agree this would be the case there are no other lesser requirements that would remedy the breach other than ceasing the unlawful use and removing the storage and equipment associated with that use. The appeal on ground (f) fails.

The Appeal on Ground (g)

22. To allow a 12 month compliance period, which has been suggested, would be tantamount to a temporary planning permission. The harm being caused to neighbours and the green belt is immediate and on-going. However, given that I have already noted the difficulty the appellant is likely to face in relocating, an extension to 6 months would be reasonable and I shall vary the compliance period accordingly.

Simon Hand

Inspector