



Appeal Decision

Site visit made on 30 November 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th JANUARY 2023

Appeal Ref: APP/C1625/C/22/3298813

**Yard and premises adjacent to Halmers End, Coaley, Gloucestershire
GL11 5DT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stephen Morgan against an enforcement notice issued by Stroud District Council.
 - The notice was issued on 7 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission, within the last ten years the change of use of paddock land to a scaffold yard (B8 storage or distribution) and within the last four years the formation of a large hardstanding and vehicle parking area.
 - The requirements of the notice are: 1 Cease the use as a scaffolding yard. 2. Cease all non-agricultural use of the land. 3. Remove all stored items from the land including but not limited to scaffolding racks, detritus and vehicles from the site (*sic*). 4. Remove the rough surfacing and tarmacked hardstanding. 5. Restore the land to its condition prior to the breach.
 - The period for compliance with the requirements is six 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by in paragraph 5, deleting step 2, with the consequential renumbering of steps 3 to 5 as steps 2 to 4 and the deletion of "from the site" at the end of the new step 2. Subject to these corrections the appeal is dismissed, 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.

Preliminary Matter

2. Step 2 of the requirements in paragraph 5 of the enforcement notice is an excessive remedy, as it could ostensibly prohibit other lawful uses, or as yet unsubstantiated future breaches of planning control. Therefore, I shall exercise the power in s176(1)(a) of the Act to delete this step, with the consequential renumbering of the subsequent steps. Also, I shall correct the notice to delete the superfluous text at the end of the new step 2. There would be no injustice to the appellant or the Council in doing so.

Ground (a) appeal

Main Issues

3. The main issues in the appeal are:

- Whether the appeal site is in a suitable location for use as a scaffolding yard, having regard to the Council's settlement strategy.
- The effect on the living conditions of occupiers of adjoining residential property, having regard to noise and disturbance.
- The effect on highway safety.

Reasons

4. The site is a roughly triangular shaped plot of land which lies alongside a raised embankment carrying the Bristol-Gloucester railway line, adjacent to the junction of two roads. The use as a scaffolding yard is centred around an area of rough hardstanding which together with a smaller tarmac surfaced area covers up to an around half of the site, the rest largely being laid to grass. On the hardstanding were significant quantities of metal scaffold tubes, many of which were stacked up to about 1.5 m high, on racks supported by vertical scaffold tubes about 3 m in overall height. Elsewhere on the hardstanding were quantities of other scaffolding components, including stacked timber planks, joints, brackets, sets of steps, roofing sheets, insulation, debris chutes and plastic containers. Couplings were housed in covered bays. A portacabin was stationed in one corner. A forklift truck used to assist in loading and unloading scaffolding components was present. Although only two scaffolding lorries were present, I understand that around five such lorries are used by the business and together with two transit vans also used are generally kept at the yard overnight.

Whether a suitable location

5. Policy CP1 of the Stroud District Local Plan (LP) states that planning applications that accord with the policies of the LP will be approved without delay, unless material considerations indicate otherwise. This reflects the presumption in favour of sustainable development set out in the National Planning Policy Framework (the Framework). Policy CP2 is an overarching policy which identifies the strategic locations at principal settlements and key employment market areas where new housing and employment development will be accommodated.
6. Policy CP3 sets out the Council's settlement hierarchy, ranking settlements according to their size and range of services and facilities. New development is required to be located in accordance with the settlement strategy in order to reduce the need to travel and to promote sustainable communities based on the services and facilities that are available in each settlement. Development outside of the strategic sites and settlements is limited to that which accords with other policies of the LP. Land outside the limits of a settlement is treated as open countryside, where development is restricted to that which contributes to diverse and sustainable farming enterprises, recreation, tourism and essential community facilities to accord with Policy CP15. Policy CP4 sets out the Council's spatial vision and promotes sustainable development to create attractive places.
7. Policy CP11 seeks to deliver the LP's strategic economic objectives by encouraging industrial or business development, including where it is of a type and scale of activity that does not harm the character, appearance or environment of the site or its surroundings or the amenity of occupiers of nearby properties and is readily accessible by public transport, bicycle and foot.

Policy CP13 requires development to amongst other things be located where there are, or will be, at the time of development, choices in the mode of transport available and which minimise the distance people need to travel. Development is also required to have no detriment to highway safety nor to cause or contribute to significant highway or traffic-related environmental problems.

8. Policy CP15 seeks to protect the separate identity of settlements and the quality of the countryside, by not approving development outside identified settlement limits except where certain principles are complied with. These include the development being essential to the maintenance or enhancement of a sustainable farming or forestry enterprise and/or it being essential for the development to be located there in order to promote public enjoyment of the countryside and support the rural economy through employment, sport, leisure and tourism. This and the other LP policies identified above are all consistent with the Framework, including chapter 6 concerning supporting a prosperous rural economy, and bring forward and apply national policy at District level.
9. The site is located in an area of scattered development, outside the development limits of any settlement identified in the LP and is therefore treated as open countryside. With between thirteen and nineteen full-time equivalent employees, the number of jobs sustained by the use and the contribution made to supporting the construction industry provides an appreciable economic benefit. Even so, there is no firm evidence to indicate that the use, which is taking place in open countryside, is essential to the maintenance or enhancement of a sustainable farming or forestry enterprise or that it is essential to be located there to promote public enjoyment of the countryside and support the rural economy through employment, sport, leisure or tourism. Consequently, the use is in conflict with Policy CP15.
10. The village of Coaley, ranked in the LP as a 'third tier' accessible settlement with limited facilities, is over half a km from the site, whilst the towns of Cam and Dursley, ranked in the LP as 'first tier' accessible local service centres and the primary focus for growth, are around eight kms away. Whilst the site is a convenient walk or cycle from Coaley, I understand that most persons employed by the business do not reside in the immediate locality. Convenient and safe walking from further afield is largely precluded by the distances involved, together with the lack of continuous pedestrian footways and street lighting. To cycle to the site from nearby towns, including from Cam and Dursley railway station, entails travel along rural roads with limited street lighting and where for the most part the national speed limit applies. Consequently, although the distances involved may not be excessive, it is also unlikely that cycling to the site would be perceived as a practical or safe travel option by most employees. The village has links to bus services, enabling access to larger settlements. However, those services are relatively infrequent and are unlikely to be conveniently timed for most employees wishing to travel to and from the site. As a result, buses are also unlikely to provide a realistic travel option for most of the employees. Moreover, rural bus services are vulnerable to cuts in services or changes to service patterns, especially outside of typical working hours, having the potential to further erode any ability to reach the site by public transport.
11. I acknowledge that in rural areas it is not always possible to locate businesses within or adjacent to a settlement and that the ability to maximise sustainable transport options will be more limited compared to, for example, an urban situation. Nevertheless, given the significant number of employees the scaffolding yard has generated considerable additional travel movements compared with the previous agricultural use of the site. There is currently little scope for accessing the site by means other than the private car and it is unlikely that the mode by which employees travel to and from the site would

alter significantly in the foreseeable future. Consequently, in practice it is likely that most of the employees will always be reliant on the private car for travelling to and from work. Given the limited information before me regarding the proposed future growth of Cam in the forthcoming LP review, I am unable to afford this any weight in terms of assessing the accessibility of the site. I therefore find the use to be contrary to criteria in Policies CP4, CP11 and CP13, as it is not readily accessible by public transport, bicycle and foot, there is limited choice in the mode of transport available and it does not minimise the distance people need to travel.

12. Furthermore, the scaffolding yard use does not relate well visually to the site's rural setting. The scaffold components have largely linear profiles and a metallic finish and the vertical racking tubes are of a considerable overall height. Together with the angular forms and shiny metallic finishes of the vehicles on site in conjunction with the use and the utilitarian characteristics of associated structures, the scaffold components are viewed as obviously man-made features which contrast starkly with the more muted colour tones and naturalistic shapes characteristic of the rural environs. External lighting associated with the use is also largely at odds with the darker night skies and intermittent lighting more typical of a rural situation. As a result, the use has given a significant portion of the site a more 'industrialised' appearance that might normally be associated with a trading estate and is viewed as an alien feature in the surroundings. This has contributed to a greater feel of urbanisation in the environs, significantly and appreciably eroding the rural visual qualities of the locality. Enclosing the yard with a 2 m to 3 m high noise barrier by means of either fencing, walls or earth bunds is likely to exacerbate the adverse visual impact, by introducing obviously built or engineered features of considerable height and length into the rural context.
13. The hedges close to the site boundaries mean that there are limited views of the scaffolding yard from the adjacent roads, particularly during the summer. Nevertheless, activities in the yard are seen from the accessway and there are glimpses available through the hedges during the winter months and in spring. Consequently, the adverse visual consequences arising from the use are not confined to within the site. In any event, that public views are limited is not a good reason for approving otherwise unacceptable development as it could be repeated, further eroding the visual qualities of the countryside. For this and the reasons set out above I find that the use has also caused unacceptable harm to the character, appearance and environment of the site in conflict with other criterion in Policy CP11. Also, by not conserving the natural environment and not being of an appropriate design and appearance respectful of its surroundings, there is conflict with criterion in Policy CP14. This policy requires high quality development which protects, conserves and enhances the built and natural environment. Additionally, by not protecting the sense of place there is conflict with other criteria in Policy CP4.
14. The appellant claimed that there are no other sites suitable and available for the use which met the business needs in terms of good accessibility to customers and for employees. A firm of property agents reported that no alternative site had become available despite a twelve-month search and that there were continuing shortages in the supply of commercial land in the area. Nevertheless, it is highly probable that the use serves a customer base not just in the locality but spread over a wider geographic area, including larger settlements. That being the case, to limit the search for an alternative site to within three miles from Dursley seems unusually restrictive. Moreover, there was no firm evidence of any proactive steps being taken as part of the search exercise to identify land that potentially might be suitable for occupation by the appellant's business.

15. For the above reasons, I am not persuaded that the search exercise involved a detailed and comprehensive investigation of the sum of potentially suitable commercial land available in the immediate and wider area. That a number of interested local residents could provide details of commercial land in the locality which had recently been available reinforces my misgivings regarding the robustness of the site search exercise. On this basis, it remains entirely possible that there are suitable alternative sites within or adjacent to nearby settlements which are equally or more conveniently located in relation to the national road network and for employees. Relocating the appellant's expanding business would undoubtedly be challenging. However, there is no firm evidence to indicate that the business would either have to close completely or relocate beyond the District or that the site cannot be used for agriculture. In the absence of further information, it is difficult to speculate on why strategic employment allocations in the LP have not come forward for development; this could be due to a number of reasons, including aftereffects of the COVID-19 pandemic and a continuing uncertain economic environment. Whilst a growth in employment opportunities in the area is encouraged generally, that does not outweigh all other considerations. Accordingly, the available evidence fails to show why the use cannot be located in accordance with the settlement hierarchy set out in Policy CP3.
16. In conclusion, given the unsuitable location of the site having regard to the settlement strategy, its limited accessibility and the unsympathetic relationship with the rural setting, the economic benefit notwithstanding the use has adverse impacts conflicting with Policies CP1, CP2, CP3 and CP15, also conflicting with criteria in Policies CP4, CP11, CP13 and CP14, and is inconsistent with the Framework.

Living conditions

17. There are a number of substantial residential properties adjoining the site, in addition to 'Halmers End', which is occupied by the appellant. Occupiers of the adjoining residential properties are most likely to experience incidences of noise and disturbance from road-borne vehicular traffic and occasionally from passing trains. Additionally, the sound of traffic travelling along the M5 in the middle distance is apparent in the locality. However, there were few other sources of significant noise in the immediate surroundings, apart from the scaffolding yard use. As farming activity is mostly seasonal, it is unlikely that any agricultural machinery is operating in the locality for a sustained period. As a result, whilst the background noise levels might be higher at certain times, prior to the use commencing adjoining residents might for the most part reasonably have expected to enjoy relatively good levels of peace and tranquillity consistent with the rural setting, particularly early in the morning and at evenings and weekends.
18. According to the appellant's noise assessment, activities on site typically commence at around 0700 on weekdays, with scaffolding lorries mostly being loaded and leaving the site by 0745 to return around 1600, employees leaving by about 1630. The assessment identified several sources of noise from activities associated with the use, including the scaffolding lorries' engines idling, forklift vehicle movements, loading and unloading of scaffolding components and use of power tools, as well as vehicles including scaffolding lorries moving to and from the site. The assessment indicated that without mitigation and also taking account of the impulsive elements of noise from some of the activities, the use resulted in an increase in noise above background levels at three of the adjoining residential properties (excluding 'Halmers End'), at or around a level which is likely to be indicative of a significant adverse impact. In respect of scaffolding lorries moving along the vehicular accessway, the assessment indicated that there was no increase in noise above background levels. Interested local residents also highlighted a

number of other sources of noise emanating from the use including raised voices, amplified music, use of reversing alarms and sounding of vehicle horns.

19. Therefore, the occupiers of at least three adjoining residential properties experience substantial levels of noise and disturbance from the use, significantly and unacceptably eroding their living conditions. Mitigation was suggested in the form of a 2 m high acoustic barrier around the yard, increasing to 3 m high on the sides closest to 'Halmers End'. There was no dispute that such a barrier would be likely to be sufficient so that noise arising from the use could not be ascertained above background levels at adjoining residential property. It is likely that a restriction on the height at which the scaffolding components are stacked would also be necessary, to maintain the effectiveness of the barrier. Be that as it may, as set out above the provision of such a barrier would have an unacceptable adverse impact on the surroundings in visual terms. Also, I am uncertain whether the management measures suggested would effectively address noise from the other activities detailed by interested local residents. Consequently, I am not convinced that there are acceptable measures that would satisfactorily mitigate the adverse effects of noise and disturbance associated with the use on the living conditions of adjoining residential occupiers.
20. The unacceptable level of noise and disturbance from the use conflicts with criterion in Policy ES3, which seeks to maintain the quality of life within environmental limits, whilst the harm to the amenity of occupiers of nearby properties also conflicts with other criterion in Policy CP11. Furthermore, for similar reasons there is conflict with other criteria in Policy CP14. Additionally, not creating a high standard of amenity for existing and future users is inconsistent with the Framework, as is the failure to mitigate and minimise the adverse impacts of noise from development.

Highway safety

21. The scaffolding yard utilises a previously existing vehicular accessway from the highway to 'Halmers End'. The highway in the vicinity of the site is sufficiently wide for vehicles to pass in opposite directions and is subject to a 30 mph maximum speed limit. Based on my own observations and the appellant's assessment, visibility for vehicles emerging from the accessway onto the highway is in all likelihood in excess of the 2.4 m by 43 m recommended minimum in the *Manual for Streets (MfS)*¹. Therefore, the accessway provides sufficient visibility to drivers of vehicles egressing the site.
22. The appellant estimated that there were around thirty-four daily vehicle movements to and from the site directly attributable to the use. The Council did not query the accuracy of this figure nor express concern from a highway safety perspective regarding the amount and nature of additional vehicular traffic on the local highway network generated by the use. The site is adjacent to a road junction, whilst railway overbridges in the vicinity restrict the highway in terms of forward visibility as well as width and clearance height. I have taken account of these and other highway safety concerns expressed by interested local residents, as well as Coaley Parish Council. Even so, there is no firm evidence before me which would support reaching a different view to that of the Council in these respects.
23. The Council's outstanding highway safety concerns related to the accessway, which for the most part is of insufficient width to allow scaffolding lorries to pass side-by-side with ease. Although the appellant stated that most vehicles arrived and departed from the site at similar times, there could conceivably be occasions when a vehicle has had to wait on the highway for another vehicle to

¹ Department for Transport, 2007.

exit the accessway, or they have had to reverse back onto the highway for a similar reason. The appellant also showed however that based on the 43 m recommended minimum stopping sight distance in MfS, there is sufficient forward visibility between vehicles travelling on the highway and those accessing/egressing the site, thereby minimising the potential for conflicting vehicular movements. The absence of firm evidence of vehicle collisions in the vicinity of the accessway is not necessarily an indication of what might happen in future. Even so, given that the use has been operating from the site for some years, albeit at a reduced scale, this factor does provide a modest measure of support for concluding that an increase in the use of the accessway does not pose an unacceptable risk to highway safety. Moreover, a scheme for widening the accessway could have been secured by condition, had I otherwise been minded to grant approval for the use.

24. Therefore, in respect of the absence of any detriment to highway safety or contribution to significant highway problems the use accords with other criterion in Policy ES3 and two of the criteria in Policy CP13. It is also consistent with the Framework as there is no unacceptable impact on highway safety. However, my findings on this matter do not outweigh the objections to the use in respect of the other main issues identified above.

Conclusion

25. The use of the site as a scaffolding yard fails to accord with the Development Plan, taken as a whole, and is inconsistent with the Framework. Therefore, 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.

Stephen Hawkins

INSPECTOR