
Appeal Decision

Hearing Held on 25 October 2023

Site visit made on 24/25 October 2023

by J Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

Appeal Ref: APP/F1610/W/23/3323604

Boldridge Brake, Crudwell Lane, Long Newnton, Tetbury, Gloucestershire GL8 8RT

- 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 Melcourt Industries Limited against the decision of Cotswold District Council.
 - The application Ref 21/04342/FUL, dated 17 November 2021, was refused by notice dated 8 December 2022.
 - The development proposed is extension to yard used for the storage of horticultural products.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Melcourt Industries Limited against Cotswold District Council. A further costs application was also made by Long Newnton Parish Council against Melcourt Industries Limited. These applications are the subject of separate decisions.

Procedural matters

3. I conducted an unaccompanied visit of the local road network on the afternoon of 24 October 2023 and an accompanied site visit of the appeal site followed by a further unaccompanied site visit of the local road network on 25 October 2023.

Main Issue

4. The main issue is whether or not the proposed development would provide safe and suitable access for all users of the local highway network.

Reasons

5. The appeal site is an area of woodland contiguous with the existing business premises of Melcourt Industries, which comprises buildings and a yard. The business creates and distributes peat free horticultural products. Materials are brought to the site where they are combined and bagged before being distributed to professional growers and garden centres. The business is profitable and is growing year by year.

Use Class

6. There is disagreement between the main parties as to the Use Class of the proposed development. This in turn results in disagreement as to the likely number of extra trips likely to be generated by the proposal. It is therefore incumbent upon me to investigate this matter.
7. Both main parties agree that the existing business has a B2 Use Class, which is defined as *use for industrial process other than one falling within a Class E, excluding incineration purposes, chemical treatment or landfill or hazardous waste*. The planning application describes the proposed development as *an extension to yard used for the storage of horticultural products*.
8. The Council consider that the proposed use would be ancillary to the existing use and therefore intrinsically linked to the adjacent business operations. In their eyes the proposed development should therefore be classed as B2. In support of this stance they point to various sections of the appellant's application documents including question 19 of the planning application form, which requests the hours of opening. The appellant's response states *B2 – General Industrial* and then gives the opening hours. Question 20 of the planning application form asks whether the proposal involves the carrying out of industrial or commercial activities and processes. The appellant's have answered yes to the question, and go on to describe the proposed activities as *the storage of horticultural products linked to the existing site use*.
9. The Council also point to the appellant's planning statement at paragraph 5.1 which states that *the proposal seeks to enlarge a yard of an established rural employment site in order to provide more space for permitted operations, improve efficiency and create a safer working environment by allowing better separation between stocking and bulk handling operations and material deliveries and allowing modest growth of the business with minimal impact on the locality*, and paragraph 6.1 of the same document which states that *the proposed yard extension will support the modest expansion of an existing successful and well-run local business with additional yard space allowing a more efficient, consolidated operation and providing a safer working environment whilst helping to secure the long-term futures of the business and its employees and providing biodiversity net gain*.
10. Furthermore, I have also been provided with an Advice Note prepared by Mr Peter Goatley KC on behalf of Long Newnton Parish Council. Mr Goatley comments that *the application is for an extension to the yard comprising its existing site. I have seen nothing to indicate that the site would represent a discrete planning unit. Certainly neither the application nor the appeal statement appear to contain such*. He goes on to state that *to seek to subdivide those uses to create separate planning units would appear a wholly artificial exercise in the circumstances*.
11. The appellant in turn points to the wording of the description of the proposal contained in response to question 5 of the application form, *an extension to yard used for the storage of horticultural products* (my emphasis). They also point to a previous planning permission (17/00322/FUL) granted in 2017 which was for *the concreting of land to provide additional bulk storage for landscaping materials, and enhancement of existing pond as mitigation for concreting works* which was subject to a condition limiting its use to bulk storage for landscaping materials. The Council now say that this previous permission was in error. The

appellant meanwhile is happy to accept a similar condition regarding the future use of the appeal site. I will return to this matter later in this decision.

Trips

12. The Highway Authority (HA) estimate that if the B2 use is accepted then there would be a daily increase of 24 trips. This is based on the use of TRICS (Trip Rate Information Computer System) which is an accepted industry standard where the trip rates from similar businesses are used to assess the likely trip rates from a proposed business. However, the appellant, already questioning the use of the B2 Class, also questions the validity of the figure of 24, on the grounds that their business is somewhat bespoke and that therefore the businesses used in the TRICS data are not representative.
13. If the Use Class B8 is taken the appellant has given a figure of an average of 12 extra movements per day, which could be reduced by two movements per day if one load were to be transferred to/from off-site storage. At the Hearing there was much discussion regarding fluctuations in trips over the various seasons, manufacturing capacity, and how provision of the proposed storage area could help to even out and potentially reduce trips. It was also pointed out that the business will continue to grow and that the increased trips will happen anyway. However, the figure of 12 (or 10) has been given by the appellant and they are the figures that are therefore in front of me.
14. The matter of offsetting the trips by employing different ways of working was discussed between the main parties during the application process. This was however eventually discounted on the grounds that in planning terms there would be no means of controlling such a process. I agree with this stance and will not therefore further investigate this matter.

Traffic and the local road network

15. On the surface, 10 or 12 extra trips per day, i.e. approximately one trip per hour during the period that the business is operating, is very small. However, any potential increase has to be taken within the context of the existing trips and the nature of the roads being used.
16. The business is accessed from the B4014 at Long Newnton via Church Lane and Crudwell Lane. Both Church Lane and Crudwell lane are narrow, with Crudwell Lane having a section with a width of only about 3.6m, and Church Lane having a minimum width of only about 4.6m. There are, therefore, very few sections where two HGVs can pass one another and in the worst case scenario an HGV will take up the whole width of the road. Furthermore, traffic turning left into Church Lane has no view of traffic approaching the junction from Church Lane and vice versa. This means that it is possible for two opposing HGVs to come across one another at the junction, resulting in one or both of them having to reverse, potentially onto the B4014.
17. I have been supplied with a considerable amount of photographic evidence to show that HGVs damage verges when trying to pass either other HGVs or other vehicles and such damage was visible during my site visit. I also observed traffic cones that had been placed alongside verges, some of the cones having been damaged by passing traffic. At the Hearing a number of videos were shown that evidenced occasions of HGVs trying to pass one another and also HGVs having to reverse, sometimes at junctions.

18. Both Church Lane and Crudwell Lane are essentially rural lanes that should be able to safely accommodate every form of movement, including walking, cycling and horses as well as motorised vehicles. There are no footways along Crudwell Lane and the verges are in some cases not conducive to walking on due to their height and lack of uniformity.
19. Various traffic counts have been conducted along Crudwell Lane and these are summarised on page 126 of the Transport Planning Statement of Case prepared by IMA Transport Planning. The summary shows that there have been five estimates of average daily HGV levels between 2021 and 2023. The first of these is from February/April 2021 and coincided with one of the lockdowns during the Covid pandemic. The appellants acknowledged this and I therefore intend to discount it. Of the other traffic counts two were produced by the appellant from logs of loads from/to the business and the other two were produced by an Automatic Traffic Counter and a 48 hour video survey respectively. The results are remarkably consistent and show 58 or 59 average HGV movements per day. These figures are average and trips vary with the seasons and demand for the businesses' products. The highest volume of trips was recorded on 26 April 2023 at 94.
20. From my own observations and evidence and testimonies given by interested persons before and during the Hearing it is clear that HGVs have to a large extent taken over both Church Lane and Crudwell Lane at the expense of pedestrians, cyclists and horse riders. I acknowledge that there have not been any recorded accidents and that the speed of HGVs is generally low. Nonetheless, the safety of a road should not always be evidenced by the lack of actual accidents. It seems to me that Church Lane and Crudwell Lane already take far more than their fair share of HGVs. Given the widths and nature of the lanes and the damage that occurs I consider that even a further 10 or 12 trips a day would further erode the safety of other users of the lane to such an extent as to be unacceptable. The question of whether the Use Class would be B2 or B8 does not therefore have a bearing on my decision.

Mitigation measures

21. During the application process mitigation measures were proposed by the appellant in the form of a series of passing bays, four along Crudwell Lane and one along Church Lane. These were initially accepted by the HA but were eventually rejected when the Council and HA concluded that the Use Class of the proposed development would be B2 rather than B8. In other words the HA considered them suitable to mitigate the extra 12 trips, but not the extra 24.
22. In terms of safety the proposed passing places would certainly make the route to the appeal site somewhat safer. Having said that however, despite the positioning of the passing bay towards the junction of Church Lane and the B4014, this junction would still, in my view, remain a safety problem, due to the lack of visibility for HGVs turning into Church Lane.
23. Furthermore, there are other considerations regarding these proposed passing places, the primary ones being the effect on the local landscape and the setting of the Long Newton Conservation Area (CA). In respect of the landscape impact I note an objection at the application stage from the Cotswold National Landscape Board regarding the potential effect of the proposed development on the Cotswold Area of Outstanding Natural Beauty (AONB).

24. It seems to me that to adequately accommodate HGVs the proposed passing places would have to be relatively large and well-engineered. This would undoubtedly have some impact on the local landscape as well as the setting of the CA. I note that the question of the passing places was not discussed within the landscape impact section of the officer report to committee and I consider that it would be misplaced of me to arrive at a definitive conclusion regarding the passing places without further consideration by the Council and their consultees.
25. It follows that, in light of my above reasoning, there would be conflict with Policy INF4 of the Cotswold District Local Plan 2011-2031 (LP). This policy seeks, amongst other things, to ensure that development creates safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians and also provide safe and suitable access. I consider that there would also be conflict with paragraph 111 of the National Planning Policy Framework (the Framework), which makes clear that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, and I have found that this would be the case.
26. I am aware that the business is successful and employs a number of people. I also note that Policy EC3 of the LP permits small scale employment development that facilitates the retention or growth of a local employment opportunity. However, this policy also makes clear that that small scale employment development must be appropriate to the rural area.
27. In arriving at this conclusion I acknowledge that further organic growth of the business may be likely to occur and that from my observations there is a need for a further storage area. I was also made aware at the Hearing that the appellant is undertaking future work in the form of a dedicated phone line for incoming drivers and a more thorough method of recording trips, all designed to lessen the impact of the HGVs serving the business. I have no doubt that the appellant is genuine in his concern and in his search for solutions. This does not however lead me to a different conclusion regarding the proposal before me.

Conclusion

28. For the above reasons, and having taken into account all other matters raised, I conclude that the appeal should be dismissed.

John Wilde

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Susan Hughes, Consultant, Land and Mineral Management
Ms Lucy Binnie, Director, Land and Mineral Management
Mr Paul Greatwood, Director, IMA Transport Planning Ltd
Mr Andy Chalmers, Managing Director, Melcourt Industries Ltd
Mr James Harriss, Transport Manager, Melcourt Industries Ltd
Mrs Catherine Dawson, Technical Director, Melcourt Industries Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Moody, Senior Planning Officer, Cotswold District Council
Mr Jose dos Santos, Principal Development Coordinator, Gloucestershire County Council

INTERESTED PERSONS:

Ms Di Thomas, Chair of Long Newnton Parish Council
Mr Andrew Tucker, local resident and business owner
Mr Richard Warrington, local resident
Mr David Wright, local resident
Ms Ind, local Councillor
Mr Paul Barker, local resident
Mrs Dawson, local resident
Mrs Angela Tucker, local resident and business owner
Ms Kate Honeyborne, local resident

PLANS HANDED IN DURING THE HEARING

- A 026A Possible revisions to passing place scheme
- B Long Newnton Conservation Area