



Appeal Decision

Site visit made on 29 January 2024

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal Ref: APP/Z4718/C/23/3317973

18 Green Street, Meltham, Holmfirth HD9 5NP

- 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 Mr Max Bradley against an enforcement notice issued by Kirklees Metropolitan Council.
 - The enforcement notice was issued on 24 January 2023.
 - The breach of planning control as alleged in the notice is the change of use of the site from a mixed use to general storage and associated siting of metal storage containers to facilitate the use.
 - The requirements of the notice are as follows:
 - a) Cease the use of the site for storage.
 - b) Remove all the storage containers from the site.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on grounds (a), (c), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed on ground (a). See formal decision below.

Matter of clarification

2. The National Planning Policy Framework (NPPF) was revised on 23 December 2023. However, the policies in relation to this appeal have not been altered and remain unchanged. I have, therefore, considered any relevant policies under the revised paragraph numbers.

The Appeal site and the surrounding area

3. The Appeal site is located to the south-west of, and close to, the centre of Meltham. It is accessed from the main road through the town, the B6107, via Green Ends Road. The property is the last one before Green Street changes into Colders Green. The major part of the site frontage, to the south-east, is onto Colders Green and to the rear there are residential gardens which serve the houses in Colders Lane. The area is predominantly residential in character with a mix of traditional stone-built terraced dwellings and some more modern detached and semi-detached houses.
4. During my site visit I noted the street-facing office at No 18, advertising 'Meltham Self Storage'. Adjacent to this is the access to the large hardstanding area of the site. There were 8 metal storage containers along the fenced south-west boundary with the adjacent property at No 14 Colders Green. Another 6 containers were positioned parallel to No 18. There is a 1.8m fence along the north-west boundary separating the site from the rear gardens of Nos 29 to 35 Colders Lane.
5. As well as inspecting the whole of the site and the immediate surrounding area, I was able to view the site from within the gardens of adjacent properties. These

included those at No 35 Colders Lane and No 14 Colders Green. With regard to the former, I was able to note the positions of all of the rear windows and to assess the distances and views from those windows towards the rear of the appeal site.

Background information

6. There is a detailed planning history of the site, which is agreed and set out in the submissions of the main parties. A conditional planning permission was granted in 1997 for a change of use (COU) from a Workshop to a Children's Play Gym. In 2005 another COU from Childrens Play Area to a Day Nursery was granted permission.

7. In 2014 planning permission was granted (2013/62/92452/W) for a COU from a Children's Day Nursery/Play Centre to an Office and Storage facility for a cleaning and pest control business in Classes B1/B8 (the 2014 permission). One of the conditions restricted the use of the premises (including deliveries to, or despatches from, the premises) to 07:30 to 18:30 Monday to Friday and 08:00 to 16:00 on Saturdays. The use of the premises on Sundays and Bank Holidays was not allowed. The permission was lawfully implemented and did not restrict the use of the outdoor areas of the site in connection with the use of the buildings.

8. The site was later leased to a CCTV business and the yard was used for company vehicles and for the storage of high access equipment, again in accordance with the permission. From all of the submissions I consider that the current lawful use of the site comprises a composite B1 (now Class E [g][i]) and B8 use on a single planning unit. Thus, the use cannot fall within a single Use Class.

9. A Lawful Development Certificate (LDC) application (2021/CL/94467/W) was refused in July 2022 for the existing use of the site for B8 storage and distribution. On behalf of the Appellant, it is now stated that *'it is understood that the appellant did not have the benefit of professional planning advice at the time and as such, did not appreciate that such a description may not have reflected the true lawful position at the time'*. It is further stated that the LDC application was misconceived.

10. The parties have referred to various case law judgements including *Wipperman v Barking London Borough Council* (1965) 17 P. & C.R. 225 at 229, (Wipperman); *Philglow Ltd v Secretary of State for the Environment* (1984) 270 E.G., 1192 (Philglow) and *Hertfordshire CC v Secretary of State for Communities and Local Government* [2012] (Hertfordshire). In addition, references have been made to the Planning Encyclopaedia (PE) relating to caselaw and COU matters.

The Appeal on ground (c)

11. To be successful on this ground it must be demonstrated that there has not been a breach of planning control. On behalf of the Appellant, it is argued that the current use of the site does not constitute a material change of use (COU). The Council consider the opposite to be the case. In reaching my conclusions I have taken into account all references made to case law and the PE.

12. In the above judgements, the courts have held that whether or not a material COU has occurred is a matter of fact and degree. It has also been held that the nature of the uses, both before any apparent change, and after, need to be examined. The courts have found that whether or not a COU has occurred relies upon the particular planning considerations of the situation and that the crucial test is whether there has been a *'change in the character of use'*. Therefore, in this case what must be examined and compared is the character of usage of the previous office and storage uses, with the current self-storage business use being carried out on the site.

13. From the submissions, including the Appellant's Statutory Declaration, I accept that the current storage (Class B8) use has not 'subsumed' the former B1 (now Class E (g)(i) offices). As referred to on behalf of the Appellant, the PE states that *'The starting point in asking whether development is involved in any change of use is to examine the primary use to which the premises have been put in the past. The judge in Hertfordshire CC v Secretary of State for Communities and Local Government [2012] EWHC 277 (Admin) stated that it is essential to establish a 'baseline' of what may be encompassed within the permitted use. It is the change from the boundary of the permitted use which must be material'*.

14. In this case it is evident that the building at No 18 and the yard have been granted planning permission for both office and storage use. It is also clear from the planning history that a variety of different business have used the buildings as offices and the yard for storage purposes. The Council accepts that the red-line boundary of the site (in the 2013 application) covers the whole of the site including the land and buildings.

15. With regard to the current use there is no functional or physical separation and there is still an ancillary link between the office use and the fact that the site is being used for Class B8 storage purposes. I accept that the use is a composite use and that in situations such as this, some fluctuation in the level or type of office use or type of storage use can occur without constituting development. However, it is also the case that a point can be reached whereby the particular planning circumstances tip the balance and trigger a material COU.

16. I accept that this case is not concerned with the cessation of one of the uses, that is the office use, and that this use is not dissimilar in character to the previous office uses, all which appear to be administratively linked to the businesses.

17. I have noted the references to the Hertfordshire case and the question of intensification and acknowledge that the office use has remained fairly constant in that it has served the B8 storage uses. However, the latter uses have changed in character as the businesses have changed. In relation to any external storage use, whether that be vehicles, or equipment relating to the business uses, these have all been different in their character of usage. But, in general, the major items stored on the site appear to have largely been used off-site by the operators of each business.

18. In contrast the external storage containers are permanently stored on site for self-storage use on site by customers who utilise, rather than operate, the business. Thus, there are very different planning implications relating to on and off-site usage of the stored items. Although there might not be any significant intensification of either office or storage use in terms of the area of the site, it is certainly the case that the character of usage of the overall site for Storage within the separate containers, as well as within the building, is different to the earlier storage uses.

19. As referred to above, all of the previous lawful composite uses have been carried out in a manner by which some of the items 'stored on the site' have generally been used by the people operating the businesses. Most of the stored items have basically been stored overnight and over weekends and holiday periods because they have not been in use. These items have included, for example, company vehicles and the high access equipment used for the CCTV business. There must also have been other items left permanently on the site for storage purposes.

20. I acknowledge that customers may well have visited the 'office' in the same way as current self-storage clients use the administrative facilities provided by the Appellant. However, for the previous businesses the general activity within the yard area would have been restricted to the comings and goings of staff using the vehicles

and other equipment and staff dealing with other daily storage and maintenance tasks. Furthermore, the overall uses of the site was restricted by the time-limiting condition attached to the 2014 permission which did not permit use after 18:30 Monday to Friday: after 13:00 on Saturdays or on Sundays or Bank Holidays.

21. In contrast to the previous business uses, the self-storage use is a completely different pattern of usage with members of the public physically having to enter the site to use their rented storage facility. In addition, instead of periodically being removed from site the 'stored items' in the form of the metal containers (and their contents) are permanently positioned on the appeal land. Although the use of storage rooms within the office building will remain basically as before, there will in my view still be a different character of usage.

22. To a certain extent, therefore, I can understand the LPA view that the B8 storage use is now the predominant use and in effect has weakened the argument that the office use is a separate ancillary use. Clearly the office use and the use of the rest of the building at No 16 is inextricably linked to the self-storage business.

23. It is evident that the comings and goings to the site and parking associated with the use are significantly different to the previous uses. Whilst accepting that there is a low intensity of movements with *'only one or two customer visits per day on average'*, the character of the use is materially different to the previous business uses. Currently customers visit their on-site storage facility on a daily basis between the hours of 07:00 and 19:00. Thus, the site can be in use during weekend and holiday periods when it is most likely that they might disturb residents.

24. In using the site in this manner, the Appellant will not have full control of the actions of customers and it is evident that some residents, particularly in Colders Lane, have been disturbed during some visits. There is evidence of disturbance by virtue of noise, including that generated by vehicles and the opening and closing of the metal doors to the units. There is also concern about light pollution from the floodlighting used to illuminate the yard and entry to the containers and parking. Although some residents have written in support of the Appellant's business and consider that the overall appearance of the site has been improved it is evident that the differences in character of usage are noticeable and distinctive.

25. In conclusion I agree with the LPA that a material COU has occurred. I consider that the current use represents a change from the boundary of the permitted use, which is material, and that the change has brought about a 'definable (material) change in the character of the use currently made of the appeal site. I do not agree with the argument made on behalf of the Appellant that the current activities within the lawful baseline office/storage use of the site, are not dissimilar to the previous two businesses occupying the site since planning permission was granted in 2014.

26. Neither do I accept the contention that the current storage and office use is comparable with the previous businesses using the site or that the degree of comings and goings would have been apparent for the previous businesses, as they are now. I agree with the LPA that there are material implications arising from the way the site has altered from being used by one business as a 'facility' from which they would base their operations (including offices), to what is now used by a greater number of users and in a less cohesive/organised manner.

27. The fact that there is reduced parking area available within the site and matters relating to the effect on the character and appearance of the area are dealt with below in consideration of the appeal on ground (a).

28. In summary on this ground of Appeal I conclude as a matter of fact and degree that there has been a material change in the character of usage which has resulted in a material COU of the Appeal site. It follows that the appeal must fail on ground (c) and I now turn to the planning merits on ground (a).

The Appeal on ground (a)

Relevant Policy

29. The most relevant development plan policy is Policy LP24 (Design) of the Kirklees Local Plan Strategy and Policies (LP), adopted 27 February 2019. The NPPF is a major material consideration and policies set out within Section 12 (Achieving well-designed and beautiful places) are the most relevant. These local and national policies relate to the necessity to achieve good design and amenities (living conditions) in all developments.

The Main Issues

30. The main issues in this appeal are as follows:

- The effect of the current self-storage use on the character and appearance of this part of Kirklees,
- The effect of the self-storage use on the living conditions of the occupants of neighbouring properties, with particular reference to outlook, noise and disturbance and light pollution, and,
- The effect relating to traffic generation and on-street parking.

Character and Appearance

31. The site has been a commercial site for some considerable time. From its use as a workshop, a nursery, a cleaning and pest control operation and a CCTV business, its character and appearance has changed over the years. It appears to have always been in a business use and the evidence indicates that at times it has not always been a neat and tidy site.

32. The photographic evidence, from 2016 and 2018, indicates that there were large areas of vegetation and greenery at that time. In addition, the hardstanding area was considerably smaller and there was a 'green buffer' between the site and the properties immediately to the north-west in Colder Lane. This has disappeared and residents look out onto a stark fence and the tops of containers as opposed to a green landscaped area.

33. Many other nearby residents and others have referred to the improvements in the appearance of the site when viewed from Green Street, when compared with the previous uses. In particular, reference has been made to the improvements to the landscaping along the road frontage and the acceptable appearance of the office and the neat interior of the site.

34. During my site visit I was able to view the site from several viewpoints. From Green Street itself I noted the landscaping to the frontage, as well as the neat and tidy state of the hardstanding area. I also viewed the site from the adjacent properties as referred to above. Whilst acknowledging that the appeal site is a commercial site, amidst this predominantly residential area, from Green Street itself I do not consider that it is unduly unattractive. It clearly has the appearance still of a commercial site and the containers themselves are stark and somewhat obtrusive. In addition, a lot of the greenery and soft landscaping has disappeared. With so many containers on the site I also consider that it has a cramped appearance.

35. However, there is some planting still to the street frontage and an attempt has been made to screen some of the containers with planting on a trellis. Although this

has improved the overall appearance it is not sufficient, in my view, to successfully mitigate the starkness of the hardstanding, the industrial looking containers and the cramped appearance of the site.

36. As it stands, therefore, I find that due to the loss of landscaping, and the fact that there appear to be too many containers on site, the development detracts from the character and appearance of the area. However, I consider that appropriate conditions requiring a landscaping scheme to be provided and a reduction in the number of containers could mitigate any harm caused to the character and appearance of this part of Meltham. The landscaping condition would enable a meaningful scheme to be achieved, particularly between the rear of the site and the gardens to the dwellings in Colder Lane.

Living conditions

37. Clearly the outlook for the occupants of the dwellings to the rear of the site has changed quite considerably with the removal of the vegetation and greenery. There is also evidence to indicate that there have been noise issues relating to use of the site, as well as light pollution. During my visit I noted that the opening and closing of the containers could result in the noise caused by the banging of doors and the opening and closing mechanisms. I consider that these noises could be detrimental to the quiet enjoyment of people living close to the site and acknowledge the points made by the Council and residents in Colders Lane.

38. From all of the submissions the above noise, together with some comings and goings relating to vehicle noise, have clearly disturbed the residents who live in properties which back onto the site. However, having regard to the commercially based activities which have taken place on the site for many years, it is difficult, in my view, to conclude that this latest use has resulted in excessive and unacceptable levels of noise.

39. My conclusion in this respect is reinforced by the positive comments made by other residents living in Colders Green and other nearby properties. These have reported less comings and goings to the site than some of the previous uses. It is also the case that other nearby residents have no undue concerns regarding excessive noise and disturbance with regard to the self-storage use.

40. However, I do share the Council's and some residents' concerns about light pollution. Having seen the positions of and the types of light fittings used, I consider that they will be significantly noticeable from the Colders Lane properties and particularly in the winter months. With the present lighting scheme, I consider that the fittings are too high, inappropriately mounted and will result in annoying and unacceptable living conditions for residents living closest to the site.

41. In summary on this issue I do not consider that noise from visitors to the site and the operation of the units will result in an unacceptable impact on living conditions over and above those emanating from the previous commercial uses. I also acknowledge though, that currently, light pollution is an issue. However, I consider that the latter can be mitigated by the imposition of a condition requiring an appropriate lighting scheme to be provided and I deal with this further below.

Traffic generation and on-street parking

42. There is insufficient evidence that the self-storage use has generated more traffic movements than any of the previous commercial uses. The stated patterns of usage are evident and it is also the case that most third party comments do not support the Council's contention that there are parking or highway safety issues.

43. Neither is there any evidence to suggest that the use has resulted in additional traffic generation or issues relating to on-street parking. In fact, from most of the third party comments (several of whom live immediately adjacent or opposite the appeal site), it is indicated that that the noise, parking and highways issues raised by the Council are not recognised.

44. In the absence of such evidence I agree, therefore, with the contention made on behalf of the appellant that there cannot be a justifiable reason to withhold planning permission for the use on the basis that there are unacceptable impacts relating to excessive traffic generation, highway safety or on-street parking.

Overall conclusion on ground (a)

45. I have concluded above that the use has resulted in some harm to the character and appearance of this part of Meltham as a result of the loss of greenery and planting. This is in part due to the number of containers on the site. This has resulted in a stark, and somewhat cramped looking site. I have also found that, currently, light pollution is an issue. However, in my view appropriate conditions can mitigate the harm caused with regard to all of these matters. On this basis I consider that the appeal should succeed on ground (a). The Appeal on grounds (f) and (g) do not, therefore, fall to be considered.

Conditions

46. With regard to hours of operation the previous B1/B8 storage permission restricted the use of the premises (including deliveries to, or despatches from, the premises) to 07:30 to 18:30 Monday to Friday and 08:00 to 16:00 on Saturdays. The use of the premises on Sundays and Bank Holidays was not allowed. Similar times for Monday to Friday and Saturdays are now proposed by the appellant, but additional times of 09:00 to 16:00 are now proposed for Sundays and Bank Holidays.

47. Whilst acknowledging that Sundays and Bank Holidays might be popular times for customers to access their storage facility, I do not consider that such Sunday and Bank Holiday use can be justified. This is still a predominantly residential area and those living close to the site have had to live side by side with the previous uses.

48. However, in doing so, they have not had to endure any activities, comings and goings to the site, or associated noise and disturbance on Sundays and Bank Holidays. I consider therefore, that they should have a reasonable expectation of continuing to enjoy relative peace and quiet on such days. I shall, therefore, impose a similar condition to that imposed on the 2014 permission and consider this to be reasonable, necessary and appropriate in the overall circumstances.

49. For the reasons set out above, I consider that the number of containers on the site should be reduced from 14 to 12. I acknowledge that this will have some effect on the self-storage business. However, without more space being created on the overall site, it would not be possible to carry out a meaningful and necessary landscaping scheme between the site and the gardens to Colders Lane.

50. In turn, the harm to character and appearance, through loss of greenery and vegetation would not be mitigated. I also agree with the conditions suggested on behalf of the appellant that the storage containers shall be maintained and retained in their existing dark green colour and that the parking and turning areas to the south and east of the containers shall be kept clear of obstructions at all times.

51. Because the use has already commenced and I have decided that the above conditions are all necessary, a condition to ensure that the landscaping and lighting

schemes are carried out is also required. Without such a condition the mitigating factors which I have identified would not be achieved.

52. In circumstances such as this a specified period needs to be set out. However, if the LPA refuses or fails to approve the submitted schemes then a definite mechanism involving the requirement for an appellant to appeal that decision or failure must be set out. See condition 7 in Schedule of Conditions.

Other Matters.

53. I have concluded that the character of the storage usage is materially different from the previous uses and the failed on ground (c). However, I have also concluded that the appeal should succeed on ground (a), subject to the imposition of conditions. In the formal decision, therefore, I have used the same wording as set out in the enforcement notice. I consider that this is appropriate in relation to the differences between the previous uses and the general self-storage and ancillary office use.

54. In reaching my decision I have taken into account all of the submissions made on behalf of the Appellant, by the Council and by third parties both in support of, and against, the self-storage use being carried out on the appeal site. These matters include the full planning history; the detailed appeal statements; the officer report; all references to local and national planning policies; the final comments and suggested conditions and all of the photographic evidence.

55. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal or the main issues. Nor is any other factor of such significance so as to change my decision that planning permission should be granted subject to the conditions referred to above.

Formal Decision

56. The Appeal is allowed on ground (a) and the enforcement notice is quashed. Planning permission is granted for the '*change of use of the site from a mixed use to general storage, and associated siting of metal storage containers to facilitate the use*' at 18 Green Street, Meltham, HD9 5NP, subject to the conditions set out in the Schedule below.

Anthony J Wharton

Inspector

Schedule of Conditions

1. No activities shall be carried out at the premises, including deliveries or dispatches, outside of the hours of 07:30 to 18:30 Monday to Friday and 09:00 to 16:00 on Saturdays. No activities including deliveries or dispatches shall take place on Sundays or Bank Holidays.
2. There shall be a maximum of 12 metal storage containers stationed on the site at any one time and no vertical stacking of the containers shall occur. The externally sited storage containers shall be retained in a dark green colour.
3. The parking and turning areas to the south and east of the metal storage containers shall be kept clear of any obstruction at all times.
4. A scheme of landscaping of the site shall be submitted to the local planning authority within 6 months of the date of this decision and shall be subject to the requirements of condition No 7 below. The landscaping scheme shall include details of the existing planting and hedgerow to the Green Street frontage and proposed planting to the rear of the site along the boundary with the properties in Colders Lane. The landscaping scheme shall be maintained and retained thereafter.
5. All planting and seeding shall be carried out in the first planting and seeding seasons following approval by the local planning authority or by the Secretary of State if approved on appeal. Any trees or plants which, within a period of 5 years from the completion of the scheme, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
6. A scheme of lighting for the site shall be submitted to the local planning authority within 6 months of the date of this decision and shall be subject to the requirements of condition No 7 below. The lighting shall be predominantly low level and no lighting fittings shall be fixed at a height in excess of 1.8m above ground level.
7. The use hereby permitted shall cease and all metal containers and equipment used for the purposes of that use shall be removed within 60 days of the date of failure to meet any one of the requirements i) to iv), set out below:
 - i) Within 6 months of the date of this decision schemes for the landscaping and lighting of the site (as detailed above in condition Nos 4 and 5 and 6) shall have been submitted for the written approval of the local planning authority and the schemes shall include timetables for implementation.
 - ii) If within 9 months of the date of this decision the local planning authority refuse to approve the schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted schemes shall have been approved by the Secretary of State. The approved schemes shall have been carried out in accordance with the approved timetable(s) and shall thereafter be maintained and retained.
 - iv) In the event of a legal challenge to this decision, or to a decision pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Schedule