



Appeal Decisions

Site visit made on 15 April 2024

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal A Ref: APP/N0410/C/23/3315700

Land at Berkshire Garden Centre, Sutton Lane, Langley, Slough, Buckinghamshire SL3 8AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr M Catrinoi-Cornea of London Stone Paving Ltd against an enforcement notice ('the Notice') issued by Buckinghamshire Council - South Area (South Bucks).
 - The notice was issued on 9 December 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, a material change of use of the land to a mixed use comprising of a garden centre (use class E) and storage and distribution (use class B8).
 - The requirements of the notice are 1. Cease the use of the land, shown hatched black on the plan attached at Appendix A, for storage and distribution falling within Use Class B8 of the Town and Country Planning (Use Classes) Order 1987 as amended; 2. Remove from the land, shown hatched black on the plan attached at Appendix A, all stone products and paraphernalia associated with the unauthorised use; and 3. Remove from the land shown hatched black on the plan attached at Appendix A all debris and materials arising from compliance with steps 1 and 2 of this Notice. These requirements are necessary to satisfactorily resolve the breach in planning control.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(c), (d), (g) of the Town and Country Planning Act 1990 (as amended) ('the Act').
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Appeal B Ref: APP/N0410/W/22/3312199

Berkshire Garden Centre, Sutton Lane, Langley, Slough, Buckinghamshire SL3 8AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr M Catrinoi-Cornea of London Stone Paving Ltd against the decision of Buckinghamshire Council - South Area (South Bucks).
 - The application Ref is PL/22/3077/FA, dated 31 August 2022, was refused on 26 October 2022.
 - The development proposed is Change of use of former garden centre (A1) to storage and distribution (B8) relating to stone products- retrospective.
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Decision

1. In respect of Appeal A: The appeal is dismissed and the enforcement notice is upheld.
2. In respect of Appeal B: The appeal is allowed and planning permission is granted for Change of use of former garden centre (E) to storage and

distribution (B8) relating to stone products at Berkshire Garden Centre, Sutton Lane, Langley, Slough, Buckinghamshire SL3 8AH in accordance with the terms of the application, PL/22/3077/FA, dated 21 May 2019, and the plans submitted with it, subject to the conditions in the attached Schedule.

Procedural Matters

3. As set out above there are two appeals on this site. Albeit that they relate to much the same development, there are important differences. In Appeal A, the case put forward by the Appellant is made on legal grounds and the period for compliance with the Notice. That appeal essentially relates to two areas at the front of the site. In Appeal B, the Appellant seeks planning permission for the use of all of the land at Berkshire Garden Centre for B8 purposes. Notwithstanding these differences, it is possible to deal with them in a single decision letter. Each appeal has been assessed on its individual merits and, to avoid duplication, I have dealt with the two schemes together, except where otherwise indicated.
4. In my decision, above, I have changed the use class in brackets that is attributed to a garden centre use, from that given in the description of development in the application form. This is to reflect changes to the Town and Country Planning (Use Classes) Order 1987, as amended ('UCO').

Reasons

Appeals A and B

The Appeal Site and the Relevant Planning History

5. The land, to which both the Notice in Appeal A and the application in Appeal B relates, lies to the east of Sutton Lane, a busy road at the eastern edge of the urban area of Langley. It consists of the whole of the land that has formerly been used as a garden centre.
6. The frontage onto Sutton Lane is bounded by a low wall with metal fencing. Access to the site is via an entrance at the northwest corner of the land. Roughly one-third of the way back from the Sutton Lane frontage there is a range of low buildings.
7. The site is bounded by residential properties on its southwest, east and north sides.
8. The whole of the land lies within the Metropolitan Green Belt ('GB').
9. The planning history shows that the whole of the land has been used as a garden centre. In 2008, planning permission was granted for the erection of a replacement garden centre building and DIY building, together with car parking and landscaping.
10. Planning permission was granted retrospectively in 2013, (Council reference 13/01405/FUL), for the change of use of the land to the rear of the low buildings from use Class A1 retail to use Class B8 storage and distribution relating to stone products. That land has been used for that purpose since then. The permission did not relate to the low buildings, nor the land between them and Sutton Lane.

11. In 2020, under the terms of the decision on planning application PL/20/0149/FA, a temporary planning permission was granted retrospectively for change of use from garden centre car park (A1 use) to B8 use for storage and distribution of stone products from 1st January to 31st October. This permission expired on 31 October 2021. To a large degree, this permission related to the southernmost of the two parcels of land that are the subject of the requirements of the Notice in Appeal A. The reason given for the temporary permission was "To enable the Local Planning Authority to review the suitability of this proposed use at this location in the light of experience gained during the period of this permission".
12. On 26 October 2022, the Council refused the application for planning permission that is the subject of Appeal B.
13. From the history of the site I have been given, on the balance of probability the low buildings and the land between them and Sutton Lane have a lawful use as a garden centre.
14. When I visited the site, the areas between Sutton Lane and the low buildings that are hatched on the plan attached to the Notice were being used for the open storage of stone products. Amongst these products were brick paviors, paving slabs and the like, stacked on pallets. These were arranged between accessways that were used by fork-lift trucks that moved them from delivery lorries to their storage position and from there for despatch.

Appeal A

15. The thick black line denoting the land covered by the Notice, shown on its attached plan, encompasses the whole of the land at Berkshire Garden Centre. In essence, however, the appeal relates to the use of the two areas hatched in black on the plan attached to the Notice, lying between the low buildings and Sutton Lane.

Ground (c)

16. An appeal made under Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. This is a legal ground of appeal, where the onus lies with the Appellant to make his case on the balance of probability.
17. As no appeal has been made under ground (b), the Appellant acknowledges that the material change of use alleged in the Notice has occurred. The Appellant does not make the case that what is alleged is not development. I, too, find this to be the case, as there has been a change of use from Class E (formerly Class A1) to class B8 of the UCO, and this is development defined in s55 of the Act.
18. The Appellant's position is that the storage of stone products on the site is permitted. This is, he says, because a garden centre would typically store, sell and distribute stone products.
19. Be that as it may, the current use is not occurring as part of the lawful garden centre use. The evidence shows that the use is related to the B8 use of the land to the rear of the low buildings.

20. I find that there has been a material change of use of the land, from a garden centre that is a retail use falling within Use Class E, to a storage and distribution use that falls within Use Class B8. This mcu requires planning permission. There is no planning permission for this, nor is there a permitted change of use between these two classes in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. Therefore, the Ground (c) appeal fails.

Ground (d)

21. In the Ground (d) appeal, the onus lies with the Appellant to demonstrate that the breach of planning control has continuously occurred for a period of ten years, on the balance of probability.
22. Very little evidence has been provided by the Appellant. From his submissions, his case appears to be linked to his Ground (c) case. That is to say, that as there has been no breach of planning control, so the B8 storage and distribution use that he claims could be carried out lawfully has occurred for 10 years.
23. For the reasons given in relation to the Ground (c) appeal, above, this is wrong. There has been a material change of use that amounts to development requiring planning permission.
24. The temporary planning permission allowing part of the land to be used for B8 purposes expired on 31 October 2021. The evidence shows that the use did not cease then and, therefore, the alleged breach commenced at that time. This amounts to a little over a year at the date that the Notice was issued. Therefore, the breach has not occurred for 10 years.
25. For the above reasoning, the Ground (d) appeal fails.

Ground (g)

26. An appeal made under Ground (g) is that the period for compliance with the requirements of the Notice falls short of what should reasonably be allowed.
27. The Appellant has not said why the period falls short, nor what period would be reasonable.
28. On the evidence of my visit to the site, I found no reason why 3 months would fall short of what is reasonable to comply with the requirements of the Notice, and I have no doubt that the use of the land might cease and all materials associated with the breach be removed within that timeframe.
29. For these reasons, the appeal under Ground (g) is dismissed.

Conclusion on Appeal A

30. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice.

Appeal B

31. The appeal site, for which planning permission is sought for the change of use, is defined on Drawing Number BGC.LP1250 as being the whole of the land at Berkshire Garden Centre. It includes the land to the rear of the low buildings

that already benefits from planning permission for a B8 use, Council reference 13/01405/FUL.

32. Between the low buildings and Sutton Lane, open storage is proposed on the two areas that are, in essence, the subject of Appeal A. They would be separated by a parking area. The buildings would be used for covered storage; as would the majority of the land on their eastern side, save for a parking area for lorries and cars with an associated turning area close to the rear of the buildings. Access would be via the entrance at the site's northwest corner.

Main Issues

33. The reasons for issuing the Notice and refusing to grant planning permission are the same, save that the former sets out that the use has already occurred and the latter relates to a proposal. Notwithstanding this, the main issues for both are:
- i) Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - ii) The effect of the proposal on the openness of the Green Belt;
 - iii) The effect of the proposal on the character and appearance of the area; and
 - iv) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Whether Inappropriate Development and Openness

34. Chapter 13 of the Government's National Planning Policy Framework 2023 (the 'Framework') sets out the Government's policy aims for land within the GB. It attaches great importance to it and its fundamental aim is to prevent urban sprawl by keeping land permanently open.
35. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances. Paragraph 153 states that when considering any planning application, decision-makers should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
36. Paragraphs 154 and 155 set out forms of development that can be considered as not inappropriate in the GB, provided they preserve its openness and do not conflict with the purposes of including land within it. Amongst these paragraph 155 e) cites "material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)".
37. The approach in the Framework is effectively mirrored by that of Policy GB1 of the South Bucks District Local Plan, adopted March 2011 ('SBLP').
38. A material change of use is proposed here, so the nub of my decision is whether this would preserve its openness and not cause conflict with the

purposes of including land within the GB. If my finding is that this would be the case, I would not need to assess any special considerations, but an assessment of the effect of the development on the character and appearance of the area would be necessary.

39. I have not been provided with a copy of a planning permission for the garden centre use of the site. However, the Appellant set out in his submissions for both appeals before me that there was no restriction on the use, including in respect of external storage. The Council does not counter this, and reference is made to this claim in its Officer report on planning application PL/20/0149/FA. Therefore, on the balance of probability, I take this to be the case.
40. The Appellant argues that were the storage and distribution use to cease and the garden centre use to recommence, the areas to the front of the low buildings could be used for storage without any control. This, he says, represents a fall-back position. To my mind, this is clearly defined and there is more than a theoretical chance of the land being used for external storage by a garden centre were the appeals to be dismissed.
41. As the Council has granted planning permission for the land to the rear of the buildings to be used for B8 purposes not associated with the garden centre, the only land available for the sort of external storage that is commonplace in garden centres is between the buildings and Sutton Lane.
42. In respect of the effect on openness, I find that the situation is quite different from that addressed by the Inspector in appeal APP/N0410/A/12/2186823. That Inspector acknowledged that a garden centre would generate a significant amount of external storage, but it would not have been at the intensity that the proposal before her would have been. That proposed use, she opined, would have failed to preserve openness in the GB. In the proposal before me, the significant amount of external storage associated with a garden centre would have to take place on a much-reduced area to the front of the low buildings. Thus, external storage would be significantly intensified in spatial terms and increased in terms of height. With the conditions I propose, I find that the B8 use would preserve openness.
43. The use of the two areas to which the Notice and application relate for B8 purposes would be likely to have a greater effect on openness than the parking presently carried out there. However, this is not the test as the use of the frontage is not restricted to parking. Nor, as I have said, is there any control on the use of the land as a garden centre over where or how goods might be stored externally.
44. In his submissions, the Appellant has provided an indicative illustration showing how the site might be laid out. This shows that to provide the necessary manoeuvring area for a forklift truck, an aisle of 6.5m is required between rows of stored goods. These rows, it shows, would run for much of the depth between the front boundary and the garden centre building. Thus, the open space between the rows would greatly exceed the area on which the storage would take place. He proposes that the rows be limited to 3m in height. These would maintain openness in the GB. Using the interior of the low buildings for storage could have no effect on openness.

Character and Appearance

45. The character of the site is commercial. That of the area is of a mix of uses, and includes, on the opposite side of Sutton Lane which carries a heavy flow of traffic, some very large commercial buildings that are seen from the site. Notwithstanding the presence of residential development close-by, the character of the area is busy.
46. Part of the land that is the subject of the application already benefits from planning permission and, therefore, the proposal would make no difference to its character and appearance. Given the manner in which the land to the front of the site could be used, I find that, subject to the use of the conditions I set out below, there would be no adverse effect on the area's character and appearance.

Conclusion on the Main Issues

47. For the reasons I give above, I find that subject to compliance with the conditions I propose, the use that is proposed is not inappropriate development within the GB and it would preserve its openness. It would not harm the character and appearance of the area. Thus, the development that has been undertaken, and that which is proposed, accords with the terms of the Framework and SBLP Policy GB1.

Other Matters

48. Objections to the proposed development have been received from occupants of properties in Sutton Lane and Little Sutton Lane. They raise points relating to highway safety and the effect of the development on their living conditions.
49. In respect of the former, I saw lorries waiting on the short section of highway that loops off Sutton Lane, at its junction with Little Sutton Lane, that then entered the site. I also saw that the grass verges here had been cut up by large vehicles.
50. There are double yellow lines in the area where lorries wait and, as such, there is control over lorries parking here and this is a matter for the enforcing authority. Although I did not see the reportedly dangerous manoeuvres on Sutton Lane that have been reported, I note that no objection to the development has been raised by the Council's Highways team, nor is highway safety given as a reason for refusal by the Council. In the light of the evidence before me, I do not find that the effect of the development on highway safety might be used as a reason to refuse planning permission.
51. In respect of the comments regarding noise and disturbance arising from the site, I note that the two properties, whose occupants made these comments, are located next to the area for which planning permission was granted for the B8 use in 2013. They are separated from those areas that would newly benefit from the B8 use and, as such, I find that there would not be any ill-effects on their living conditions that might justify refusing planning permission. I will, however, reapply the conditions from planning permission 13/01405/FUL that related to noise generation and hours of operation to protect their living conditions.

Conditions

52. Two conditions were proposed by the Council: a restriction on hours of use; and adherence to submitted plans. The Appellant also proposed two

conditions: one restricting the height of storage to 3m; and the other restricting the layout of the storage on the site, based on indicative schemes in his statement.

53. The Appellant's condition relating to the layout of the site was suggested to be of a pre-commencement form, which was inappropriate as the development has commenced. I wrote to the parties seeking their views on my condition 7, below, and that relating to a height restriction. I also invited the Council to submit further conditions for consideration, should it wish to.
54. No response was received from the Appellant. The Council did not suggest any further conditions and stated that it had "no comment or objection to the wording of the condition should the appeal be allowed". I read this as referring to both conditions I wrote about. Given the potential for conflict between my conditions 2 and 7, I have amended the wording suggested by the Council in respect of compliance with the plans to allow for the scheme in condition 7.
55. In their submissions, both parties referred to the decision under planning permission 13/01405/FUL that granted planning permission for the B8 use of the land to the rear of the low buildings. The Appellant did not make the case that the conditions attached to that permission did not meet the tests of conditions. Given the red line on the application site plan, the permission I grant covers the whole of the site. I find there is a need to transfer those conditions relating to restricting the use of the land to Use Class B8 and noise across to this permission with amendments where necessary. These are required to protect the living conditions of the occupants of nearby residential properties and accord with the terms of chapter 8 of the Framework.
56. The area covered by the decision in 13/01405/FUL was not controlled by conditions regarding layout and height. Therefore, I have tailored the layout and height conditions to relate to the land to the front of the low buildings only.

Conclusion on Appeal B

57. In respect of Appeal B: I allow the appeal and grant planning permission for Change of use of former garden centre (A1) to storage and distribution (B8) relating to stone products, subject to conditions.

Roy Curnow

INSPECTOR

SCHEDULE OF CONDITIONS – APPEAL B

1. The application site shall be used for storage and distribution (and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended), (or in any provision equivalent to those classes in any statutory instrument revoking and/or re-enacting that Order with or without modification).
2. Save for where the approved details in respect of condition 7, below, allow otherwise, the development hereby permitted shall be carried out in accordance with drawing numbers BGC.LP1250 and BGC.SP500.
3. The use hereby approved, including deliveries to and from the site, shall take place only between the following hours: 08.00-18.00 Mondays to Fridays; 08.00-16.00 on Saturdays; and at no time on Sundays or bank or public holidays.
4. Deliveries to and from the site, and vehicle movements on-site associated with the storage and distribution of the stone products, shall only take place between the hours of 08:00 and 18:00 on Monday to Friday, 08:00 and 16:00 on Saturdays, and at no time on Sundays or Bank Holidays.
5. Noise levels from all works associated with the permitted use when measured at a distance of at least 1.5 metres from the façade of the nearby residential dwellings shall not exceed a daytime value of 55dB(A) at any time.
6. All equipment capable of generating noise, including motorised equipment such as forklifts, shall at no time during the permitted hours of operation exceed a daytime noise level of 55dB(A) on any boundary of the site.
7. The use hereby permitted on that part of the site between Sutton Lane and the buildings to be used for covered storage shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 56 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the layout of that part of the site between Sutton Lane and the buildings to be used for covered storage shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme 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 scheme shall have been approved by the Secretary of State. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
 - iv) Upon implementation of the approved scheme for the layout of the site specified in this condition, that scheme shall thereafter remain in use.In the event of a legal challenge to this decision, or to a decision made

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.

8. External storage allowed by this permission, on that part of the site between Sutton Lane and the buildings to be used for covered storage, and laid out in accordance with the details in condition 7, shall not exceed 3m in height measured from ground level.