



Appeal Decision

Site visit made on 15 January 2025

by Chris Preston BA (Hons) Town and Country Planning, Bachelor of Planning (BPI) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Appeal Ref: APP/Z1510/C/24/3343646

Land West of Former Oil Depot, Hedingham Road, Gosfield, Essex, CO9 1PN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by D&B Scaffold Holdings Ltd against an enforcement notice issued by Braintree District Council.
 - The notice was issued on 3 April 2024.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land for storage of items connected with a scaffolding business, including but not limited to: scaffolding tubes, pipes, poles, base plates and walk boards, plus associated structures and racking which assist with the business use and storage.
 - The requirements of the notice are to:
 - a) Cease the use of the land for the storage of items connected to a scaffold business
 - b) Remove from the land all items connected to a scaffold business use, including but not limited to, scaffolding tubes, pipes, poles, base plates and walk boards.
 - c) Dismantle and remove from the land all associated structures and racking constructed in connection with the scaffolding business.
 - d) Remove and dispose of all waste and materials which result from compliance with the above requirements a to c.
 - The period for compliance with the requirements is: 6 months from the effective date of the notice.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (e) 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 is corrected by the substitution of the plan appended to this decision for the plan attached to the enforcement notice.
2. Subject to that correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of the land for storage of items connected with a scaffolding business, including but not limited to: scaffolding tubes, pipes, poles, base plates and walk boards, plus associated structures and racking which assist with the business use and storage at Land West of Former Oil Depot, Hedingham Road, Gosfield, Essex, CO9 1PN as shown on the plan attached to this decision and subject to the conditions set out in the schedule appended to this decision.

The Appeal on Ground (e)

3. The ground (e) appeal is made on the basis that copies of the enforcement notice were not served on all parties with an interest in the land to which the notice relates. In particular the appellant notes that the plan appended to the notice

includes a track to the north which does not form part of the land used by the scaffolding business and which is not in the ownership of any of the parties upon which the notice was served.

4. The Council accepts the above, which it claims is down to an administrative error, and has put forward an amended plan based on the Land Registry title. The amended plan removes any land out of the control of those upon which the notice has been served and I am satisfied that no injustice would arise if I were to substitute that plan for the original plan attached to the notice. Thus, whilst the appeal on ground (e) succeeds, it is not fatal to the appeal and I shall proceed on the basis of the amended plan.

The Appeal on Ground (a)

5. The stated reasons for issuing the enforcement notice focus on the effect of the development upon the character and appearance of the area and do not explicitly state that the location of the site is considered to be unsuitable, in principle, for the use. I also note that pre-application advice given in 2021, prior to the submission of an application for a related, albeit different, proposal suggested that the use would comply with the aims of policy RLP40 of the Local Plan, with regard to employment uses within the countryside, as well as paragraph 83 (now paragraph 88) of the Framework which supports the sustainable growth and expansion of businesses in rural areas.
6. Nonetheless, the previous refusal of planning permission and the Council's current appeal statement raise the issue of whether the site is suitable in principle for the use, having regard to the policies of the Braintree District Local Plan 2022 (the LP), specifically LPP1 and LPP7. Whilst it is incumbent upon a Council to clearly set out its reasons for issuing a notice, the appellant has commented upon the Council's statement of case and I have addressed the locational point as a main issue, given its importance to the principle of the use.
7. Accordingly, the main issues in the determination of the appeal on ground (a) are:
 - i) The effect of the development on the character and appearance of the area and the local landscape; and
 - ii) Whether the location of the site is suitable for the development in question having regard to the policies of the LP and other material considerations.

Character and Appearance of the Area/ Effect on the Landscape

8. It is common ground that the appeal site constitutes previously developed land, having been occupied as an oil depot and more recently as a skip hire business. The Council notes that the skip hire business did not benefit from planning permission or a certificate of lawful use. Whilst that may be the case, there is no doubt that the site was previously developed, as can be seen in overhead images dating back to 2000 when the oil refinery was still in situ.
9. Thus, whilst within the countryside in policy terms the land had the appearance of a previously developed site prior to the current use, with large areas of hardstanding, evidence of former buildings and some associated structures. Even in its dormant state it would not have added anything to the intrinsic beauty of the countryside to the north of Gosfield. That countryside is varied in character, with mature woodland plantation surrounding the site to the north, south and west and

arable and pastoral fields to the east, on the opposite side of Hedingham Road, which is a well-used A-road.

10. The blocks of woodland are extremely effective in screening the internal parts of the site such that the visual impact of the scaffold racks, poles, parked lorries and associated items is well-contained. Even in mid-winter at the time of my site visit views into the site from Hedingham Road were limited and the visual impact was minimal. Fleeting glimpses are available, particularly at the entrance to the site, but the main storage areas are set back behind the access drive and gates some distance from the highway. Thus, from the front of the site the visual impact is contained.
11. Views are available from the public footpath to the rear; I understand that a former tree belt was removed prior to the current occupant's interest in the land. The use does have an industrial appearance from those angles which is at odds with the prevailing countryside, albeit that users of the path will have become accustomed to the fact that the site is previously developed. The appellant has also put forward a scheme of planting to provide a buffer between the areas of storage and the footpath and I am satisfied that this would adequately screen the development and soften views from the right of way.
12. The Council has referred to noise impacts from the public right of way to the rear. That appears to be in the context of the tranquillity of the countryside as opposed to any suggested impact upon residential amenity. However, no supporting evidence has been provided to substantiate that claim. The countryside is not devoid of noise, be it from forestry operations, agriculture or other rural based enterprises.
13. The nature of the scaffolding business is that activity will generally take place in the mornings, when lorries collect the scaffold equipment before taking it to site elsewhere and then in the early evening when the vehicles return. For large parts of the day little activity will take place, as was evident at my site visit, recognising that was only a snapshot in time. However, there is nothing to indicate that the use would result in a notable or harmful effect on the established character of the area in terms of noise.
14. Internally, the site is well-ordered, with racking systems and storage in defined areas and of limited height. A suggested condition to control the height of any storage has been put forward and that would ensure that the current pattern is maintained and ensure that views from public vantage points remain limited and acceptable.
15. Overall, given the previously developed nature of the land, the significant screening offered by existing woodland and the opportunity to further mitigate any impact through the imposition of conditions, the effect of the development on the character and appearance of the area and surrounding landscape is within acceptable limits. For those reasons I am satisfied that it responds to its context, in line with the aims of policy LPP47 of the LP and that the layout and height of the storage area is in harmony with the surrounding area, noting the established character of the site, in line with policy LPP52. Moreover, it causes no harm to the landscape character of the area, in line with policy LPP67 and is compliant with the aims of the Framework, nor does it harm the intrinsic value and beauty of the

countryside in line with the aims of paragraph 187 of the National Planning Policy Framework (the Framework).

Whether the Location of the Site is Suitable for the Use

16. The Council refers to policy LPP1 which seeks to limit new development outside of settlement boundaries to uses appropriate to the countryside. Precisely which uses are considered to be appropriate is not clearly defined from the information provided.
17. Policy LPP7 states that outside settlement boundaries, proposals for small-scale commercial development, which involve the conversion and re-use of existing buildings that are of permanent and substantial construction and capable of conversion without complete rebuilding will be acceptable subject to three criteria. Those relate to the effect on the road network, neighbouring amenity and the character and appearance of the area.
18. The policy does not define what is meant by small-scale. In this case, the site covers a large area, as is necessary given the bulky nature of the items stored. The committee report into the related planning application indicated that 40 jobs would be provided. Whilst the scheme before me is not identical, it is still substantial and not “small-scale” in terms of jobs, the general scale of operations and the size of the site, especially by rural standards¹. The policy also refers specifically to the re-use of buildings whereas the development is mainly a use of land, with associated operational development and the re-use of some minor structures.
19. Consequently, it appears to me that policy LPP7 does not fit the nature of the proposal neatly. Moreover, there is nothing within the Framework that would seek to limit rural developments to those that are small-scale. Paragraph 88 states that decisions should support the growth and expansion of all types of businesses in rural areas. Paragraph 89 states that policies and decisions should recognise that sites to meet local business needs in rural areas may need to be found adjacent or beyond existing settlements in locations not well-served by public transport. In those circumstances, the paragraph adds that the use of previously developed land should be encouraged where suitable opportunities exist.
20. It appears to me that the site performs very well against those criteria. It is brownfield land and although outside any settlement boundary is well served by an A-road and not remote or unduly distant from surrounding towns and villages. Whilst the Council suggests that a scaffolding business would be more suited to an industrial estate within a town, no alternatives have been suggested and the particular characteristics of the use and the bulky nature of the items stored would make urban sites difficult to find. It is essentially a land intensive use and one commonly found within the countryside on former farm yards and the like in my experience.
21. Overall, whether the use is one that could be considered appropriate to the countryside in the context of LPP1 is unclear. However, there would appear to be no obvious conflict with the re-use of a brownfield site for commercial purposes. Similarly, I am not satisfied that LPP7 is directly related to the development in question for the reasons set out. The development plan is essentially silent on how

¹ The committee report into the related planning application estimated 40 full-time equivalent jobs.

to approach employment development on previously developed land that is not small-scale. Or certainly no clear policies have been presented.

22. Even if I was to conclude that there was some conflict with the LP in respect of the location of the site, the policies referred to are notably more restrictive than those of the Framework in my view, especially in terms of the national support for rural businesses of all kinds and the re-use of previously developed land to meet local business needs. For those reasons I am satisfied that the site is suitably located for the use in principle. In fact, given the ease of access and well-screened nature of the site it would be difficult to find a more suitable location for a use of this kind.

Other Matters

23. The Council has not raised the impact on the living conditions of neighbouring residents as a concern in the present appeal. Residents of the neighbouring dwelling have been notified but no representations are before me and there is nothing to indicate that the use of the site has had any harmful effect in that regard. Nonetheless, I am satisfied that a condition is necessary to control operating hours of any plant and machinery and hours of vehicular movements, as agreed by the appellant, in order to ensure that the site continues to operate within acceptable limits in the interests of neighbouring amenity.
24. The Highway Authority have raised no objection to the use and the access arrangements and visibility onto the main carriageway are suitable for the nature of vehicles using the site.
25. The use of the site also brings benefits in terms of the jobs created and the impact on the local economy. Whilst the scale of current operations is less than was proposed in relation to the planning application, or at least the extent of buildings proposed is less, it is clear that the site will support numerous full-time jobs and that is a matter that carries moderate to significant weight in the planning balance.

Conditions

26. The Council has put forward a number of conditions, all of which are accepted by the appellant. For the reasons set out above, I am satisfied that conditions relating to the implementation of a landscaping scheme and to control the hours of operation, including vehicle movements, are necessary in the interests of the character and appearance of the area and residential amenity. The Council's suggested wording was of a generic nature and I have amended the required details to ensure that the landscaping provided is a visual buffer between the site and adjacent footpath, that being the area where mitigation is necessary to make the development acceptable in planning terms. Given that the development would be unacceptable without that planting and due to the retrospective nature of the development, it is necessary to include specific timings, with remedial measures, such that the benefit of the permission will fall away if the required steps are not taken in line with the required timetable.
27. I am also satisfied that the suggested condition to limit the use to the present scaffolding use, and no other uses within the same use class, is necessary because other storage and distribution uses could have quite different implications in terms of traffic movements or the noise or odour from items stored.

28. A condition to limit the height of any items stored is also necessary in the interests of the character and appearance of the area.

Conclusion

29. For the reasons given, I am satisfied that the development has not caused undue harm to the character and appearance of the area or the local landscape and that views into the site from the surrounding right of way can be mitigated through the implementation of a planting scheme that can be secured by condition.
30. It is hard to conclude whether the proposal complies with policy LPP1 and I am not satisfied that LPP7 is easily applied to the development in question. However, I see no reason why the use is inherently unsuited to a countryside location. In those circumstances there would be no obvious conflict with the development plan as a whole and no reason to withhold permission.
31. Even if a contrary view were taken and the development was considered contrary to policies LPP1 and 7, resulting in conflict with the development plan, I find that other material considerations would be sufficient to outweigh that conflict and the presumption in favour of the development plan. In particular, the policies of the Framework are generally supportive of the growth of all types of rural businesses, not limited to those that are small scale, and encourage the re-use of previously developed land for rural employment purposes, even when outside of defined settlements. In addition, the use brings economic benefits through employment provision within the rural area.
32. There are no other impacts that cannot be controlled through the imposition of conditions and the nature of the site is well-suited to the use. For those reasons, the balance of material considerations would suggest that planning permission should be granted even if there was conflict with the development plan in terms of the location of the site.
33. Accordingly, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice and the enforcement notice will be quashed.

Chris Preston

INSPECTOR

APPENDIX 1: SCHEDULE OF CONDITIONS

- 1) The material change of use and building operations hereby permitted shall cease and be demolished and all equipment and materials brought onto the land for the purposes of such use and materials resulting from the demolition shall be removed within 90 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - Within 3 months of the date of this decision details of a landscaping scheme designed to provide a visual buffer between the site and the adjacent public right of way which runs to the rear (west) of the site shall be submitted to the Local Planning Authority for approval. The scheme shall include a plan indicating the location of the planting, along with a detailed specification including plant/tree types and sizes, plant numbers and distances, written specifications including cultivation and other operations associated with plant establishment, together with a strategy for the watering and maintenance of the new planting. The scheme shall also include a timetable for implementation.
 - Under the submitted maintenance schedule any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season.
- i) If within 11 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.
- ii) 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.
- iii) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, the landscaping shall be completed and maintained in accordance with the approved maintenance schedule.

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.

- 2) The use of the land hereby permitted shall only be for storage and transportation in association with the scaffolding business currently occupying the site and for no other purposes including any other purpose in Use Class B1, B2 or E of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order).
- 3) There shall be no external storage of materials exceeding 4 metres in height above ground level.
- 4) No plant or machinery shall be operated on the premises in association with the scaffolding use outside the following hours:

Monday to Saturday 07:30 hours – 18:30 hours

Sundays, Public and Bank Holidays - No operation of machinery

- 5) There shall be no vehicular movements to, from or within the premises in association with the scaffolding business outside of the following hours:

Monday to Saturday 07:30 hours – 18:30 hours

Sundays, Public and Bank Holidays - No vehicular movements

APPENDIX 2:



Plan

This is the plan referred to in my decision dated: 28 February 2025

by Chris Preston BA(Hons) BPI MRTPI

Land at: Land West of Former Oil Depot, Hedingham Road, Gosfield, Essex, CO9 1PN

Reference: APP/ Z1510/C/24/3343646

Scale: Not to scale

Title: ArcGIS Web Map



Scale: 1:1,654

Date: 11 Sep 2024

Author: ArcGIS Web AppBuilder

0 0.02 0.04 0.06 0.08 km

