



Appeal Decision

Site visit made on 26 November 2018

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2018

Appeal Ref: APP/B5480/C/18/3195604

**Former Hardy Plants Nursery premises, Southend Arterial Road,
Hornchurch RM14 1TE**

- 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 Uplettings Limited against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 30 November 2017.
 - The breach of planning control as alleged in the notice is: (i) Without planning permission, the material change of the former Hardy Plants nursery to unauthorised car sales and general storage. (ii) Erection of sales single storey office building and associated fencing.
 - The requirements of the notice are:
 - (i) Cease the use of the land for car sales and storage purposes; and
 - (ii) Remove all motor vehicles and equipment that assists in the unauthorised use;
 - (iii) Remove the single storey car sales office building;
 - (iv) Remove the unauthorised fencing;
 - (v) Remove all debris, building materials accumulated as a result of taking steps (i), (ii), (iii) and (iv)
 - (vi) Restore the land to its lawful use.
 - The period for compliance with the requirements is three months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, in relation to the appeal on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be varied by:
 - i) Appending the plan attached to this decision to the enforcement notice;
 - ii) The insertion of the words "(in the approximate position shown hatched in black on the plan appended to the notice)" immediately after the words "Erection of sales single storey sales office building" at section 3ii;
 - iii) The insertion of the words "in the approximate position as shown marked by the thick red line on the plan appended to the notice)" immediately following the words "associated fencing" at section 3ii;
 - iv) The insertion of the words "(in the approximate position shown hatched in black on the plan appended to the notice)" immediately after the words "single storey car sales office building" at section 5iii; and

- v) The insertion of the words "in the approximate position as shown marked by the thick red line on the plan appended to the notice)" immediately following the words "the unauthorised fencing" at section 5iv.
2. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The appeal is proceeding by the written method and an accompanied site visit was arranged for 23 October 2018. Unfortunately, nobody attended for the appellant. A gentleman working at the car sales business was on site and said he was happy for me to look around but he was unable to provide access to the secure compound at the rear of the car sales area and the gate was locked. Consequently, I was unable to see everything I needed and had to abort the visit.
4. Another visit was scheduled for 26 November but, once again, no representative of the appellant attended. The gate to compound was open and I was able to see inside that part of the site. Having explained to the officer of the Council that I would not be in a position to discuss the details of the appeal I proceeded to view the site without further discussion and am satisfied that I was able to view what I needed to make my decision. Consequently, I have proceeded without an accompanied visit.
5. Following my first site visit I wrote to the parties to suggest that it would be helpful if a plan could be provided to show precisely which fences were referred to in the notice. I could see numerous fences within the vicinity of varying styles and ages. Consequently, the Council has provided a plan which shows the fences affected by the notice in red and the car sales office hatched in black. In the interests of clarity I have varied the enforcement notice so that it refers to that plan which is appended to my decision. The appellant was copied in on correspondence regarding the plan but has not responded. In any event, there was no suggestion within the appeal documents that there was any confusion or dispute as to which fences were affected and the inclusion of the plan merely adds clarity. As such I am satisfied that no injustice will arise.
6. On the appeal form the appellant only indicated that the appeal was being made on ground (a). The relevant fee was paid. The short statement within the relevant section of the form is the only statement provided. Within that statement the appellant suggests that "the use has been established for a period in excess of 4 years" and that "the agreed planning use is commercial". Those arguments could be considered to fall within ground (c) with a suggestion that there has not been a material change of use or ground (d) to suggest that the time period for taking action has expired. I am mindful that the appellant appears to be unrepresented and, despite the fact that the correct box wasn't ticked, I shall address those claims under grounds (c) and (d) respectively.

The Appeal on Ground (c)

7. An appeal on ground (c) is made on the basis that there has not been a breach of planning control. Under the terms of section 55(1) of the Town and Country Planning Act 1990 (the Act) the making of a material change in the use of land or buildings is something that amounts to "development". Under section 57(1) of the Act planning permission is required for such development. As noted, the

appellant has stated that “the agreed planning use is commercial”. However, in planning terms the term “commercial use” is not a one size fits all scenario and the nature of the use dictates whether a change from one kind of business to another would require planning permission.

8. In this case, it would appear that the former use was as a plant nursery which would amount to a horticultural use, no doubt involving the growing of plants and perhaps ancillary sales. The character of the use alleged in the enforcement notice is quite different and involves a number of elements including car sales and storage. In visual terms it would appear to be a more intensive use of the site due to the presence of cars parked within the sales area and other cars and items stored in the other parts of the land identified in the notice. Historical photographs show that the areas of the site would have been more open and dedicated to growing plants.
9. Moreover, the allegation is effectively of a composite use or a mixed use involving sales and storage. Specific areas of the site have been fenced off for those purposes and the car sales office has been erected. Those physical works in addition to the storage of vehicles and other items have resulted in a notable change in the character of the site. It is also likely that the travel patterns and working arrangements associated with the use are different than those involved in the running of a plant nursery, albeit that little evidence as to the historic operation is before me.
10. Having regard to all of those matters I conclude that the use of the land for the purposes described in the enforcement notice is materially different to the former established use such that planning permission would be required. If an appeal was to succeed on ground (c) the onus is on an appellant to demonstrate his case and no information relating to the nature of the former use has been provided.
11. Accordingly, the appeal on ground (c) fails.

The Appeal on Ground (d)

12. The time limits within which enforcement action must be taken are prescribed by s171B of the Act. In relation to a material change of use, no action may be taken after a period of ten years beginning with the date of the breach. I have concluded that a material change of use has occurred and no evidence has been provided by the appellant to indicate when the unauthorised use commenced. The suggestion that it has been established in excess of four years does not assist the appellant because that is not the correct period of time. Even if the fencing and sales office had been in situ for more than 4 years, which is not proven to be the case, it would appear that those elements were erected to facilitate the unauthorised change of use and the ten year period would apply.
13. The photographs provided by the Council would indicate that the use has not been carried out for that length of time. The burden of proof rests with an appellant, on the balance of probability. The burden has not been met and the appeal on ground (d) fails.

The Appeal on Ground (a)

14. I consider that the main issues in relation to the appeal on ground (a) are:
 - i) Whether the development amounts to inappropriate development within the Green Belt;

- ii) The effect on the character and appearance of the area; and
- iii) If the development does amount to inappropriate development within the Green Belt, whether the harm to the Green Belt by way of that inappropriateness, and any other harm, is clearly outweighed by other material considerations to the extent that very special circumstances exist to justify a grant of planning permission.

Whether the Development Amounts to Inappropriate Development

15. The site is located in the metropolitan Green Belt where development is strictly controlled. National policy on the Green Belt is set out within chapter 13 of the National Planning Policy Framework (the Framework). Paragraph 143 identifies that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Those circumstances will not exist unless the harm to the Green Belt by way of that inappropriateness, and any other harm, is clearly outweighed by other material considerations. Moreover, paragraph 144 dictates that I must attach substantial weight to any harm to the Green Belt.
16. A closed list of the kind of development that does not amount to inappropriate development is set out at paragraphs 145 and 146. Paragraph 145 (g) notes that limited infilling or complete redevelopment of previously developed land need not be inappropriate providing that it would not have a greater impact on the openness of the Green Belt than the existing development¹. Paragraph 146(e) identifies that a material change of use may not be inappropriate providing that it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
17. Policy DC45 of Havering Borough Council's Core Strategy and Development Control Policies Development Plan Document (2008) (the CS) is broadly consistent with the Framework in respect of the approach to development within the Green Belt.
18. As set out above, the car sales and storage use has resulted in quite an intensive operation where large parts of the site have been used to park or store cars, either on the forecourt waiting for sale or elsewhere within the site. At the time of my visit the compound to the rear of the car sales area was being used to store skips, some of which were stacked on top of each other creating a significant visual impact. At the time the notice was served the photographs depict that the area was being used to store cars in a way that seemed distinct from the car sales use judging by the way the cars were parked nose to tail filling all of the available space.
19. It appears to me that the sheer number of vehicles and other items stored or parked on the land in association with the car sales business has quite a significant impact upon the openness of the Green Belt. In addition, the fencing and car sales office add to that impact. The fencing has quite an impact on its own due to the increased sense of enclosure created by the segregation of different parts of the site.
20. Thus, the cars, stored items and building works undoubtedly has an effect on the openness of the Green Belt in terms of the volume and physical presence. That impact is also manifest in a visual sense, being readily apparent from the

¹ Except where affordable housing is provided where a different test is applied.

public highway at the front of the site where the car sales element is most noticeable.

21. I am mindful that the land is previously developed and that the previous use would have had some effect on the openness of the Green Belt. It is difficult to draw a direct comparison because very little information has been presented that would enable me to assess the impact of the previous use. Overhead photographs indicate that the development on the ground was less intensive but by their nature those photographs are two dimensional and do not allow a full assessment of the volume or size of any structures that may have been on the land. In any event, it seems likely that any previous structures had been demolished before the new use commenced.
22. Consequently, I consider it likely that the development has reduced the openness of the Green Belt quite substantially and no evidence has been presented to suggest that a contrary view should be taken. It follows that the development amounts to inappropriate development within the Green Belt, having regard to local and national planning policy.

Character and Appearance

23. The second of the reasons for issuing the notice refers to the effect on the rural character of the area. Whether the immediate surroundings have a rural feel is open to question. The busy arterial road passes directly to the front of the site and various developments straddle the highway in the local area, including uses such as caravan sales and builder's merchants. Thus, whilst the site is in the Green Belt, it does not have a strong rural character.
24. That said, the visual impression of the development is not attractive and the conglomeration of different uses segregated by industrial style fencing is less than sympathetic. Similarly, the rows of parked cars create a somewhat sterile environment and no attempt has been made to soften the impact of the development through landscaping or tree planting. As above, little information is before me to enable a full appreciation of the character of the former use in terms of its appearance. However, the overhead photograph produced at LBH5 of the Council's statement appears to show the built development set to the rear of the site with a relatively open area to the front and what appear to be rows of planted beds in-between.
25. To my mind the current use is inherently less attractive than the former use as a plant nursery and the visual impression on the ground is not favourable. Notwithstanding the previously developed character of the immediate surroundings I find that the development has caused harm to the character and appearance of the area. In that sense it is contrary to the aims of policies CP17 and DC61 of the CS both of which seek to ensure that development takes account of and responds positively to the character and appearance of the area.

Other Matters

26. No specific matters have been put forward in favour of the development by the appellant, other than to state that the arterial road has many other businesses that set a precedent. I have noted the effect of adjacent businesses on the character of the area above and I am mindful that the land is previously developed. The employment related benefits of bringing the land back into use do amount to a positive consideration in favour of the proposal but the number of employees would not seem to be substantial and little information is before

me regarding the economic impact of the development. Consequently I attach limited weight to that matter.

Very Special Circumstances

27. In line with the Framework, very special circumstances will only exist if the harm to the Green Belt by way of inappropriateness, and any other harm arising from the development, is clearly outweighed by other considerations. The development does amount to inappropriate development that has caused harm to the openness of the Green Belt and I must attach substantial weight to the harm in those respects. It has also caused harm to the character and appearance of the area and I attach moderate weight to that matter, taking account of the established character of the vicinity.
28. Whilst the development has taken place on previously developed land little information is provided to suggest that any substantial economic benefit or employment has arisen. The fact that a previous use existed does not dictate that a different use will be acceptable having regard to the constraint of the Green Belt. Consideration of the particular characteristics of any proposed use is necessary, including the effect on openness.
29. For all of the reasons stated it is apparent that the matters in favour of the development do not clearly outweigh the harm. The balance is clearly tilted in the opposite direction. Accordingly, the very special circumstances necessary to justify the development do not exist and I shall dismiss the appeal on ground (a) and refuse to grant planning permission.

Overall Conclusion

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice, as varied to include reference to the additional plan, and refuse to grant planning permission on the deemed application.

Chris Preston

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by Chris Preston BA(Hons) BPI MRTPI

**Land at: Former Hardy Plants Nursery premises, Southend Arterial Road,
Hornchurch RM14 1TE**

Reference: APP/B5480/C/18/3195604

Scale: Not to scale

