



## Planning Committee

**Thursday, 17 January 2019 at 6.00 pm**

**Council Chamber, King George V House, King George V Road, Amersham**

### **S U P P L E M E N T A R Y   A G E N D A   1**

Item

6 Report on Main List of Applications (*Pages 1 - 37*)

**Great Missenden**

PL/18/3029/FA

Ward: Great Missenden

Page No: 2

Recommendation: Defer - minded to  
approve subject to the receipt of  
satisfactory amended plans

**36 Church Street, Great Missenden, Buckinghamshire, HP16 0AZ**

**Chalfont St Peter**

PL/18/3538/FA

Ward: Chalfont Common

Page No: 8

Recommendation: Conditional Permission

**3 Mark Drive, Chalfont St Peter, Gerrards Cross, Buckinghamshire, SL9 0PP**

**Chalfont St Peter**

PL/18/3563/FA

Ward: Austenwood

Page No: 15

Recommendation: Conditional Permission

**Stable Farm, Amersham Road, Chalfont St Peter, Buckinghamshire, SL9 0PX**

Chalfont St Peter

PL/18/3577/FA

Ward: Austenwood

Page No: 26

Recommendation: Conditional Permission

Stable Farm, Amersham Road, Chalfont St Peter, Buckinghamshire, SL9 0PX

Amersham

PL/18/4084/FA

Ward: Amersham On The Hill

Page No: 37

Recommendation: Conditional Permission

51 Highfield Close, Amersham, Buckinghamshire, HP6 6HQ

**Note:** All reports will be updated orally at the meeting if appropriate and may be supplemented by additional reports at the Chairman's discretion.

**Membership: Planning Committee**

Councillors: D Phillips (Chairman)  
M Titterington (Vice-Chairman)  
J Burton  
J Gladwin  
M Harrold  
C Jones  
P Jones  
J MacBean  
S Patel  
N Rose  
J Rush  
J Waters  
C Wertheim

**Date of next meeting – Thursday, 14 February 2019**

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CH/2017/0747/FA, ...1233/FA

& ...1228/AV



**CHILTERN**  
District Council

Land Adjacent To Jewsons, Chesham Road, Hyde End  
Buckinghamshire



Scale: 1:1,250

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Organisation	Chiltern District Council
Department	Planning & Environment
Comments	
Date	
SLA Number	100033578.2016

Classification: OFFICIAL

CHILTERN DISTRICT COUNCIL

PLANNING COMMITTEE - 17th January 2019

INDEX TO SUPPLEMENTARY REPORT TO MAIN LIST OF APPLICATIONS

**Great Missenden**

CH/2017/0747/FA                      Ward: Ballinger South Heath And    Page No: 2  
Chartridge

Proposal: Use of land for the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials (retrospective)

Recommendation: Conditional Permission

**Land adjacent to Jewsons, Chesham Road, Hyde End, Buckinghamshire**

**Great Missenden**

CH/2017/1228/AV                      Ward: Ballinger South Heath And    Page No: 17  
Chartridge

Proposal: Two non-illuminated freestanding advertisement signs (retrospective)

Recommendation: Conditional consent

**Land adjacent to Jewsons, Chesham Road, Hyde End, Buckinghamshire**

**Great Missenden**

CH/2017/1233/FA                      Ward: Ballinger South Heath And    Page No: 20  
Chartridge

Proposal: Siting of a portacabin for a temporary period of three years to be used incidental to the permitted/lawful use of the land.

Recommendation: Refuse permission

**Land adjacent to Jewsons, Chesham Road, Hyde End, Buckinghamshire**

Classification: OFFICIAL

# REPORT OF THE HEAD OF PLANNING & ECONOMIC DEVELOPMENT

## Supplementary Report to Main List of Applications 17th January 2019

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### CH/2017/0747/FA

Case Officer: Mrs Tracey Francis  
Date Received: 20.04.2017  
Parish: Great Missenden

Decide by Date: 15.09.2017  
Ward: Ballinger South Heath And Chartridge

App Type: Full Application  
Proposal: Use of land for the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials (retrospective)  
Location: Land adjacent to Jewsons  
Chesham Road  
Hyde End  
Buckinghamshire  
Applicant: London Reclaimed Brick Company Limited

### SITE CONSTRAINTS

Article 4 Direction  
Adjacent to A and B Road  
Adjacent to Unclassified Road  
Area of Special Control of Advertisements  
Within Chilterns Area of Outstanding Natural Beauty  
Within Green Belt other than GB4 GB5  
A and B Roads

### CALL IN

Councillor Jones has called this application to planning committee regardless of the officer recommendation.

### SITE LOCATION

The site lies in the Green Belt and Chilterns Area of Outstanding Natural Beauty (AONB) on the north side of Chesham Road (B485) which links Chesham and Great Missenden. The site is directly opposite a row of houses in Hyde End, the houses being identified as a row of houses within the context of Policy GB4 of the Adopted Local Plan.

The application site itself was part of a larger area of land that extends to the west. The land in question was originally used as a sawmill as the planning history of the site details. By the early 1990s the former sawmill became a builders' merchants selling building products both to trade and to the public (albeit still retaining

the sawmill and capacity to cut timber). With the passage of time, after 10 years, the use of the entire site as a builder's merchants became lawful by virtue of it being immune from enforcement action.

Jewson's still currently occupy the main part of the site, selling off the site the subject of this application in 2005. The sites are now separated by metal palisade fencing and whilst the access to the application site is separate from it is at the same point as the Jewson's site onto the Chesham Road.

## **THE APPLICATION**

The application seeks permission for the use of the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials. The application is retrospective. Currently pallets of bricks are stored generally 3 stacks high, approximately 3m and the applicant's agent has indicated his client's willingness to accept a condition restricting this height should permission be forthcoming.

Towards the front of the site there is lower storage of some paving slabs and with some area for vehicles to turn, towards the rear there is a very small restroom facility for staff.

The current use of the site commenced end of 2014/beginning of 2015 having been vacant following compliance with the Enforcement Notice 2007/00019/EN (as detailed in the Planning History Section) in 2009. The applicant making submissions that the use was in accordance with the lawful use of the site as a builder's merchants.

The applicant's agent has submitted a Planning Statement in support of the application, the main points are noted under the relevant headings:

### Planning and Property History:

- Between 1997 and 2006, the site was owned and used by Jewson's as a builders' merchants, the Council accepts the lawful use as a sui generis use as a builders' merchants. Part of the site was sold in 2006, with Jewson continuing to operate a builders' merchant business from that retained land. The transfer of 8 February 2006 contained a covenant that the sold area of land must not be used for the purposes of a timber merchants and/or a builders' merchants and/or a plumbers merchants and/or as a DIY store. The new owners erected metal paling fencing to form a boundary separating the Property from Jewson's retained land and they created a separate means of access from Chesham Road.
- The parties' intentions relating to abandonment of the planning use at this point in time is in contention between the Council and the Owner.
- The applicant details the relevant planning history of the site.

### Planning Policy:

- Local Planning Policy - The applicant's agent draws attention to Saved policies of GB2 and GB22A of the Adopted Local plan, specifically Saved Local Plan policy GB2(f) which states that notwithstanding the general prohibition on development in the Green Belt, planning permission may be given for the categories of development including "engineering and other operations and the making of material changes in the use of land (as distinct from buildings) which maintain openness and do not conflict with the purposes of including land in the Green Belt." Policy GB22A goes on to confirm that "In the Green Belt planning permission for development for business, general industrial or storage or distribution purposes will only be granted on sites which: [...] are in accordance with the criteria in Policy GB2(f) and are currently used or were last used for business, general industrial or storage or distribution purposes where the use is authorised or otherwise lawful;"
- National Planning Policy Framework (NPPF) - The applicants agent acknowledges that greater weight should however be applied to the NPPF. At the time the application was submitted the original 2012 NPPF

was in effect and the applicant makes reference to material change of being inappropriate development in the Green Belt.

Assessment:

- The applicant's agent then considers whether "The potential harm to the Green Belt by reason of inappropriateness, and any other harm, clearly outweighed by other considerations so that 'very special circumstances' exist?"

- In this context the applicant's agent includes reference to the previous lawful use of the site and the fall back provisions contained in s57(4) TCPA 1990. It is argued that the fall-back position of the current existing lawful use of a builders' merchant (sui generis) could be reverted to. In the appeal, the Inspector stated that:

"builders' merchants use, a feature of which was outside storage, is lawful."

The current lawful use of a builders' merchant (sui generis) and the proposed use of the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials are not materially different from one another in respect of their potential visual impact on the Green Belt in that they both contain elements of open storage. As this use is established by way of an established use rather than through an express grant of planning permission, its visual impact could be far greater than this application in which its visual impact could be mitigated through use of planning conditions. The fact that an alternative scheme benefiting from an existing use would have an even greater effect amounts to a very special circumstance which justifies the granting of this application.

- Saved Policy GB22A(c) of the Local Plan seeks to support development for business, general industrial or storage or distribution purposes where sites currently used or were last used for business, general industrial or storage or distribution purposes where the use is authorised or otherwise lawful. The policy also states that "for the purpose of this Policy, the Council will consider carefully the precise nature of a sui-generis use and if its main purpose and function is closely similar to uses in Classes B1, B2 or B8, the Council will treat the development proposals as falling within the scope of Part B." Weight should therefore also be given to the fact that the proposed use is not dissimilar from the current lawful use, reuse of existing sites is generally supported and the proposal would bring (small-scale) economic benefits to the local community in the form of employment and business thus outweighing the harm to the Green Belt and any other harm.

Summary:

- The proposed use is inappropriate development;
- This inappropriate development is harmful to the Green Belt and should only be approved in very special circumstances;
- The harm to the Green Belt includes loss of openness and visual amenity;
- This has to be counterbalanced with the great weight which should be given to the extensive planning history and long use of open storage at the site, the fact that open storage use is already lawful at the site as a fall back as well as economic benefits that the proposal will bring;
- The potential harm to the Green Belt by reason of inappropriateness and any other harm is outweighed by these other considerations; and
- Therefore planning permission should be granted.

**RELEVANT PLANNING HISTORY**

The wider Jewson's site, including land to the west of the current site, has an extensive planning history relating to its original use as a sawmill and later uses as a builders' merchants. These are detailed below by way of completeness and to provide background to the development.

**The following applications relate to the application site together with land to the west occupied by "Jewson"**

Classification: OFFICIAL

CH/1974/1370/OA - Construction of timber storage buildings, sawmill, timber impregnation plant and small office Refused

CH/1976/0074/FA - Demolition of existing buildings and erection of replacement industrial buildings with floor area of 18,000 sq. ft. Conditional Permission

CH/1976/0771/OA - Demolition of existing office and erection of new building containing 800sq.ft. of ancillary office floor space. Conditional Permission.

CH/1976/1904/FA - Temporary cover for sawmill operator. Conditional Permission

CH/1978/2306/OA - Demolition of existing buildings and erection of replacement industrial buildings. Conditional Permission

CH/1980/1092/FA - Erection of temporary portacabin. Conditional Permission

CH/1981/0979/FA - Proposed second vehicular access Refused

CH/1981/0980/FA - Erection of timber mill and storage shed kilns and toilet block. Conditional Permission

CH/1982/0830/FA - Renewal of temporary permission granted under CH/1092/82 of portacabin for office use in connection with sawmill. Conditional Permission

CH/1983/1102/FA - Renewal of planning permission granted under CH/830/82 for the retention of portacabin for office use in connection with sawmill. Conditional Permission

CH/1982/1128/FA - Erection of single storey office block. Conditional Permission

CH/1982/1224/FA - Use of building materials to be sold in association with existing timber manufactured products. Refused

CH/1983/1292/FA - Construction of 3 portal framed buildings, one with ancillary showroom and office accommodation for storage preparation and selling of timber products. Conditional Permission

CH/1983/0576/FA - Renewal of planning permission for temporary cover for sawmill operator. Conditional Permission

CH/1985/2208/FA - Use of timber preparation unit as ancillary offices & showroom. Resiting of sawdust hopper to materials unit, recladding front & side walls of materials units. Removal of temporary office and erection of security unit. Conditional Permission

CH/1985/1631/FA - Retention of portacabin for ancillary office use (renewal of planning permission CH/1102/83) Conditional Permission

CH/1985/0516/FA - Alterations to design of office/showroom/storage building permitted under planning permission 83/1292/CH Conditional Permission

CH/2002/0069/AD - Retention of three non-illuminated signs Conditional consent

**The following relate specifically to the application site:**

Classification: OFFICIAL



CH/2007/0731/FA - CP - Alteration to existing access onto Chesham Road. Conditional permission.

Enforcement Notice 2007/00019/EN served September 2007 alleging:

"Without planning permission, the change of use of the Land from the lawful use as part of a builders' merchants (a sui generis use) to use for the commercial storage of vehicles, plant, machinery and other equipment, together with ancillary repairs and maintenance thereof".

The notice requires the use of the Land for the commercial storage of vehicles, plant, machinery and other equipment, together with ancillary repairs and maintenance thereof and remove all such vehicles, plant, machinery and equipment from the Land to cease with a 6month period for compliance.

The notice required the use of the land for the above storage to cease and it also required the removal of all vehicles, plant, machinery and equipment from the land within a 6 month period.

The reasons for the Notice in summary were as follows:

Whilst it is acknowledged that the lawful use of the site was part of a builder's merchant with the associated commercial activity, the introduction of another planning unit of storage purposes and ancillary repairs clearly adds to the prominence of the use of the site and intrusion on the Green Belt. The type of commercial equipment and plant associated with piling and drilling of foundations and tunnels particular large and bulky and together with the associated repair/maintenance of such plant and equipment is considered to result in any an unacceptable increase in activity on the site to the detrimental of the visual amenity of the locality...which has a significantly detrimental impact on the open and rural character of the Green Belt and high landscape character of the AONB. The equipment is readily visible from the surrounding area and is considered to be inappropriate development and harmful to the openness of the Green Belt. Use therefore contrary to Development Plan policies

CH/2007/1808/EU - Application for a Certificate of Lawfulness for an Existing Use relating to the use of the land for B8 open storage of building materials, plant, machinery and associated vehicles and equipment. Certificate refused for the following reason:

On the balance of probabilities, the Local Planning Authority is not satisfied that the evidence submitted with the application demonstrates that the land the subject of this application has been used for the purposes of open storage of building materials, plant, machinery and associated vehicles and equipment for at least ten years prior to the date of the application. Therefore, there is insufficient evidence for the certificate to be granted.

2008 Appeal against Enforcement Notice and refusal of Lawful Development Certificate CH/2007/1808/EU): Appeal dismissed, planning permission refused, enforcement notice upheld. **Copy of Inspector's Decision Letter dated 27 August 2008 - referred to as "2008 Appeal Decision" is attached as Appendix SP1.**

Enforcement Notice subsequently complied with early 2009.

CH/2011/1943/FA - Freestanding wind turbine. Refused permission.

CH/2012/1452/EU - Application for a Certificate of Lawfulness for an existing use relating to the use of the site as a builder's merchant. Certificate refused for the following reason:

The Council was not satisfied that on the balance of probabilities that the site can revert to a pre-existing lawful use as a builder's merchant. The Council consider that in 2006, when a new planning unit was created, that there was clear evidence, in the form of a covenant on the transfer document, of the intention of all parties (previous owner and current owner) to abandon the established use of the site as a builder's merchant. Since that time the site had not been used as a builder's merchant.

CH/2014/1783/FA - Erection of single storey office building Refused for following reasons:

1. Within the Green Belt, most new development is considered to be inappropriate and there is a general presumption against such development. Development which is not inappropriate is set out in Local Plan Policy

GB2 and the National Planning Policy Framework. The construction of a new office building within the open Green Belt is inappropriate in accordance with the above guidance and policy. The proposal therefore represents inappropriate development which by definition is harmful to the Green Belt. Furthermore, the proposed building would be large in size and the proposal would also include a large area of hardsurfacing to provide car parking to serve the site. The introduction of such a building and associated hardstanding onto an otherwise undeveloped site would result in a loss of openness which is an essential characteristic of the Green Belt. It would also fail to safeguard the countryside from encroachment which is one of the main purposes of including land in the Green Belt. No very special circumstances exist that are sufficient to outweigh the harm caused to the Green Belt by the reason of inappropriateness and other harm identified. As such, the proposal is contrary to Policy GB2 of the Adopted Chiltern District Local Plan 1997 (including the Adopted Alterations May 2001 and July 2004) and Government guidance set out in the National Planning Policy Framework.

2. The application site is located within a countryside location within the Chilterns Area of Outstanding Natural Beauty and has a particularly rural character. The proposed building would be large in size and would be located on a site that is currently free of built form. It would be sited towards the front of the site occupying a significant proportion of the site frontage and would be visible from Chesham Road, through the entrance to the site and also through the boundary trees, especially during winter months. The proposal would therefore intrude into this rural and open countryside location and appear prominent in the street scene. This impact would be further exacerbated by the laying of a large area of hardstanding to serve the building. Given this the proposal would not conserve or enhance the special landscape character and distinctiveness of the Chilterns Area of Outstanding Natural Beauty and is contrary to Policies CS20 and CS22 of the Adopted Core Strategy for Chiltern District (November 2011) and Policies GC1 and LSQ1 of the Adopted Chiltern District Local Plan 1997 (including the Adopted Alterations May 2001 and July 2004).

3. Policy CS4 of the Adopted Core Strategy District seeks to ensure that development is sustainable and sets out sustainable development principles for new development within Chiltern District. These principles refer to locations which are easily accessible by local transport, walking and cycling. The application site is in a remote location away from the most accessible settlements within the District. The proposal would therefore result in a reliance on car journeys for users of the development. In addition, the proposal only incorporates limited measures that meet the sustainable principles for Chiltern District. The proposed location would also be contrary to the Spatial Strategy for Chiltern District which seeks to protect the Chilterns Area of Outstanding Natural Beauty and Green Belt by focusing new development on land within existing settlements not covered by those designations. As such the proposal would constitute an unsustainable form of development and is contrary to Policies CS1, CS3 and CS4 of the Adopted Core Strategy for Chiltern District (November 2011) and Government Guidance set out in the National Planning Policy Framework.

CH/2017/0746/EU Application for a Certificate of Lawfulness of an existing use relating to the use of the site for the storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials such a use being a builder's merchant (sui generis). Refused for following reason:

The Local Planning Authority considers that, on the balance of probability, the evidence submitted with the application does not satisfactorily demonstrate that the Land ...(the application site)...has been used for the storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials (sui generis use) as described .....for a period of ten years prior to the date of the application, the current use as such being materially different from the lawful use of the land as identified in the Inspector's decision letter dated 27 August 2008 further to the appeal (appeal reference APP/X0415/C/07/2059918) against Enforcement Notice 2007/00019/EN and Certificate of Lawful Existing Use Application reference CH/2007/1808/EU (Application for a Certificate of Lawfulness for an Existing Use relating to the use of the land for B8 open storage of building materials, plant, machinery and associated vehicles and equipment).

CH/2017/1233/FA Siting of a portacabin for a temporary period of three years incidental Pending consideration, see separate report on this Committee Agenda

CH/2017/1228/AV Two non-illuminated freestanding advertisement signs (retrospective). Pending Consideration, see separate report on this Committee Agenda

## PARISH COUNCIL

Great Missenden Parish Council comments received 15 August 2017, confirming no objection.

## REPRESENTATIONS

9 Letters of objection received from nearby residents (or their representatives), including from a letter from the chairperson of Hyde End Residents Group (HERG) representing 30 local households following grounds:

a) Original builder's merchants on the land was a small timber yard - Harcross. It was set back from the road, with two unobtrusive buildings, some timber storage, and minimal traffic accessing the site. That was sold to Jewson who developed half of the site extensively to transform it into a wider 'builder's merchant', selling a broader range of goods. They sold part of the site and partitioned. As per the applicant's letter, the new owner created secondary access from the B485 and began operating a plant storage and maintenance site. They were evicted on various ground after extensive concerns from neighbours and CDC planning.

b) Owner of Reddings Farm, notes acquired Farm in 1995 at which time the only non-agricultural use on Chesham Road at Hyde End was a builder's merchants business now operated by Jewson on the land that was formerly a sawmill. Understand that the land adjoining the builders merchants premises has at some time been used for timber storage but that use was discontinued when the sawmill ceased trading and the use had been abandoned and land reverted to original agricultural use. Note Jewson sold the land the subject of this application some years ago as surplus to requirements. Casagrande used the site for machinery storage and that use was thwarted by enforcement action and a subsequent appeal decision. After Casagrande vacated the site it was left vacant for 4-5 years until LBC acquired land. The applications now under consideration are in effect a repeat of earlier attempts to secure commercial use and should be resisted on grounds of Green Belt and AONB - the proposed use results in an intensification of the sue detracting from character of area, the portacabin signifies an intention to employ staff permanently.

c) Since purchasing the site, London Brick Co (LBC) have further developed the site removing trees and shrubs from site frontage, installing additional fencing, erecting a security camera on a new post, installing prominent signage and portakabin on the site. The land is increasingly industrialised, both in appearance, practical use, noise, pollution and from a highway's perspective. This is detrimental to the residential amenities of nearby properties.

d) Site is within the AONB / Green Belt land where "There is a general presumption against inappropriate development in the Green Belt and such development should not be approved unless there are very special circumstances". Further CDC's website states - "A high degree of protection is given to the AONB by planning policy at all levels national, regional, county and local. The purpose is to conserve wildlife as well as landscape features". What was once an unobtrusive business, screened largely by mature trees and with minimal signage, is now akin to an industrial estate, with ugly metal fencing, security cameras, floodlighting, overbearing commercial signage, and all the associated use by their own delivery vehicles and commercial, industrial traders and businesses detrimental to the character of the area.

Large construction sites and associated traffic should not be allowed/encouraged within the AONB

e) LBC have been operating from the site in breach of planning consent with disregard for local residents. No attempt has been made to keep the yard screened and the boundary of the site is unsightly with ugly metal fencing, signs and lighting all blighting the area.

f) It matters what is stored on the site - millions of bricks are stacked up to several meters high for more or less the majority of the site - brick dust is known to be the cause of respiratory disease and the appearance of the brick storage is overbearing for residents of Hyde End and detrimental to the appearance of the area.

g) Use is detrimental to amenities of nearby residential properties. Site operates erratic hours, and has proved cause for concern on a number of occasions, with excessive noise with deliveries, large volumes of brick dust in the air, plant noise, constant beeping while vehicles manoeuvre around the site, banging as work is conducted, etc creating a variety of unpleasant and sometimes harmful environmental pollutants for the local community and exacerbates health issues. Unpleasant to be at home with windows open or in gardens - this work / environmental impact is not limited to weekday office hours but has been endured evenings and weekends.

h) There have been several noxious fires on the site, sending thick black smoke across the surrounding area. The gates have been locked at the time, and the fire brigade has been in attendance.

i) The use is detrimental to highway safety. LBC have large articulated lorries delivering and collecting from the site, which frequently park on the B485, opposite the junction with Browns Road, or even on Browns Rd, causing dangerous obstruction. This is already a dangerous road with a 50 mph speed limit and an accident hotspot. Turning in to the site, paired with the Jewson access, is inadequate to deal with the increased volume and nature of traffic. Lorries drive over the public footpath on the opposite side of the ride, adjacent to the bus stop (which children use for the school bus in the morning). The increased number of large vehicles turning into the site has seen a large number of overtaking vehicles on the B485, as the site traffic slows to enter the access point. The road is already dangerous and has become more so due to the double access made from a single access without planning consent, and the nature of the large vehicles using the site.

j) Hyde End is a small rural hamlet, which has always been subject to strict planning rules. Everyone who lives in Hyde End chooses to do so because we value the surrounding countryside. Did not choose to live next to an industrial estate and object to the blatant disregard for residents and our concerns.

k) As a community, we have successfully lobbied government and HS2 for the proposed high-speed railway to be tunnelled through this stretch of the Chilterns AONB, believing the area should be protected from development and industrialisation, and preserved for future generations. It is imperative that our own district council fulfils its own duty to do the same.

l) Chartered Surveyors acting for one local resident point out that Application CH/2017/0747/FA is for open commercial storage and there is no reference to this relating to the site being used as a builder's merchants. This application seems to be more for the use that was refused under the 2008 Appeal Decision. Application/2017/1233/FA is for a portacabin on the site in connection with Builder's Merchants and application CH/2017/1228/AV is for 2 non-illuminated existing signs advertising a builder's merchant business. - this needs clarification.

m) The Chartered Surveyors acting for a local resident draws attention to specific paragraphs of the NPPF. The NPPF stipulates (paragraph 81 of the now superseded NPPF, repeated in para 141 of the current NPPF 2018) "Once Green Belts have been defined, local planning authorities should plan positively to enhance their beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreations; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land." The proposals the subject of these applications are clearly inappropriate development within the Green Belt and do not fall within any of the exemptions set out in para 89 of the 2012 NPPF which refers to the construction of new buildings in the Green Belt (officer note - para 145 of the current NPPF 2018 is closely similar in wording). The NPPF states (para 88 - now replaced in para 144 of NPPF 2018) "When

considering any planning application, local planning authorities 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 proposals is clearly outweighed by other considerations." No special circumstances exist - as stated in the NPPF "inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances (Para 87 - now replaced in para 143 of NPPF 2018). There do not appear to be any other considerations to be taken into account which would outweigh the damage caused to the Green Belt by granting permission for the use of the land for the storage of materials, equipment etc as sought or use as a builders yard and for the placing on the land of a structure in the form of a portacabin (and also the erection of obtrusive signs so as to be clearly visible in the Green Belt.

n) In terms of "conserving and enhancing the natural environment" (Section 11 (in particular para 115), now replaced by Chapter 15 (para 172) of NPPF 2018, great weight should be given to conserving and enhancing landscape and scenic beauty of ...AONBs which have the highest status of protection..... These proposals cannot be justified in the AONB.

o) Attention is drawn to the 2008 Appeal Decision. The applicant is claiming that notwithstanding the appeal decision and the restrictive covenant placed on the land precluding the use as a builder's merchant, that the use had not been abandoned. Whilst the restrictive covenant is not material to the planning decision it is to the lawful use certificate application and together with the lack of use of the land means the lawful use certificate should be refused.

p) Taking into account the location of the site in the Green Belt and AONB together with the previous appeal decisions and the clear abandonment of the use as supported by the Restrictive Covenant, planning permission should be refused.

## **CONSULTATIONS**

### **Bucks County Council Highways**

Chesham Road is classified as the B485 and in this location is subject to a speed restriction of 50mph. Proposals include the use of land for the open commercial storage of bricks and other building supplies. I understand the storage would be ancillary to the main use of the site.

Given the speed limit along this section of road and visibility splay of 2.4m x 113m are applicable. I am confident that these are achievable either within the land in control of the applicant or the Highway Authority. The existing access is constructed to a commercial specification, which will allow opposing vehicles to pass.

Mindful of the above as the existing access benefit from adequate visibility splays and an adequate width, no objection in this instance and no conditions.

**District Environmental Health Officer - Environmental Health, Sustainability and Resilience Team:**  
Comments awaited

## **POLICIES**

National Planning Policy Framework (Revised July 2018) (NPPF). In particular Section 4 - decision making; Section 6, para 83, 84 - Supporting a prosperous rural economy; Section 13 - Protecting Green Belt land; Section 15 - Conserving and enhancing the natural environment.

National Planning Policy Guidance

Core Strategy for Chiltern District - Adopted November 2011: Policies Policy CS1, CS3, CS4, CS16, CS19, CS20, CS22, CS25 and CS26.

The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011: Saved Policies GC3, GB2, LSQ1, TR11 and TR16.

## EVALUATION

### 1. Background and use of the site

1.1 The application site has a complex planning history with a series of unauthorised uses on the site following its severance from the wider Jewson's site in 2005 when the site was sold resulting in a new planning unit.

1.2 As noted in The 2008 Appeal Decision , the separation of the site in itself does not mean that there has been a material change of use and the Council has accepted that the lawful use of the application site was as a builders merchants, such a use being a "sui generis" use and not falling within any specific use class. As such planning permission will be required for any alternative use which is materially different. However, material to the consideration of this application is whether it is possible for the use of the site to revert to its previous lawful use as a builders' merchants, or whether that right been lost because the use had been abandoned such that the site now has a nil use.

1.3 The issue of whether existing use rights have been lost through abandonment arises where a use has ceased for a time and where, in the meantime, the land has not been used for any other purpose. If it is held that a use has been abandoned the land will have a "nil" use and the resumption of any previous use will require planning permission. A use is not abandoned where it is followed by a different use if that different use amounts to a material change of use but that it is unlikely that the previous use could at any point be resumed. Further there is the right to resume a use following the service of an enforcement notice in respect of a subsequent unlawful use. Section 57(4) of the 1990 Town and Country Planning Act states that "where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it would lawfully have been used if that development had not been carried out." This includes reversion to a lawful use by established use.

1.4 In the case of the application site, following the sale of the site the site in 2005 a material change of use did occurred, namely to the use for the commercial storage of vehicles, plant, machinery and other equipment, together with ancillary repairs and maintenance thereof. The Council issued an enforcement notice in respect of that use, that enforcement notice being upheld on appeal "The 2008 Appeal Decision". In 2009 the Notice was complied with. The site remained vacant until late 2014/early 2015, when the current owner commenced the storage of bricks - this being a component of a builder's merchants and the owners have submitted that this accorded with the lawful use of the site prior to the service of the enforcement notice namely, as a builder's merchant and as such no breach of planning control.

1.5 The Council's position in determining Certificate of Lawfulness CH/2012/1452/EU - was the use of the site as a builders' merchants had been abandoned and the pre-existing use of the site as builders' merchant had been forfeited. This was based on the information available to the Council at that time, namely the 2008 Appeal Decision where the Inspector considered the possible reversion to a builders' merchant did not seem likely or even a possibility and further it had subsequently came to light that with the sale of the site in 2005 there was a restrictive covenant entered into between Jewson and Mr and Mrs Finch who purchased the site in 2005 not to use the land for "purposes of a timber merchants and/or a builder's merchants and/or a plumbers merchants and/or a DIY store". The applicant failed to convince the Council that there was a clear intent to resume the lawful use.

1.6 However in the context of the current planning application and Lawful Development Certificate CH/2017/0746/EU the applicant's agent has argued in reference to the case of Hughes v Secretary of State for

the Environment, Transport & Regions [2000] ( the leading authority on the question of abandonment) which states "whether or not a lawful use has been abandoned is to be judged by reference to the view objectively to be taken by a reasonable man with knowledge of all the relevant circumstances" The applicants agent has submitted that the Council needs to look afresh at the factors to be taken into account namely:

1. The physical condition of the site
2. The length of time over which the site has not been used
3. Whether the land has been used for any other purpose following cessation of the use;
4. The intentions of the owners of the building

1.7 In terms of this assessment, the applicant's agent has pointed out:

the physical condition of the site has not changed - reference has been made to removal of trees and erection of fencing, however this could in any event have occurred has the use as a builders merchants continued. The fencing as erected is no different to that on the Jewson site;

the length of time the site has not been used is not excessive;

the site has been used for alternative purposes - but as noted these uses are unauthorised and there is the right to revert to the former lawful use pursuant to section 57(4) of the 1990 Act;

and lastly whilst there is a private covenant restricting the use, this may not be enforced and can be revoked by agreement between the parties at any time. Implicit in the submission of the current planning applications is that the applicant may well seek to have the Restrictive Covenant waived (either generally or on an individual basis) or are prepared to accept the possible consequences of non-compliance which would be a civil matter. Either way there seems a clear intent that the current owners would or could seek to revert to a builder's merchant and indeed the current use is clearly a component of that former use. The Councils current position is therefore for that the use as a builder's merchants remains lawful albeit that it is not accepted that the current use is as a builder's merchants as set out in the refusal of Lawful Development Certificate CH/2017/0746/EU refers.

1.8 The former (lawful) use of the site as a builder's merchants remains a material consideration.

## **2. Main issues**

2.1 The main issues are

- Whether the development is inappropriate development in the Green Belt for the purposes of the NPPF (revised 2018) and the development plan
- Whether any harm by way of inappropriateness, and any other harm, is clearly outweighed by other circumstances that justify the development
- Impact on the AONB
- Impact on Highway Safety
- Impact on Amenity of Local Residents

## **3. Principle of development**

Whether inappropriate development in the Green Belt

3.1 The site lies in the Green Belt where development is strictly controlled. Policy GB2 sets out the types of development that may be permitted in the Green Belt and these includes (f):

...the making of material changes of use of land (as distinct from buildings) which maintain openness and do not conflict with the purposes of including land in the Green Belt

In furtherance of Policy GB2, Policy GB22A specifically relates to development within the Green Belt for business, general industrial, or storage and distribution purposes. Criterion c) is relevant referencing sites which are in accordance with Policy GB2(f) and are currently used or were last used for business, general industrial, or storage and distribution purposes where the use is authorised of otherwise lawful

3.2 The NPPF contains the most up to date national policy. Para. 133 states that the Government attaches great importance to the Green Belt and that the fundamental aim is to prevent urban sprawl by keeping land permanently open. The essential characteristics are its openness and permanence. Para. 134 of the NPPF lists the purposes of the Green Belt, pertinent to this application is "to assist in safeguarding the countryside from encroachment"

3.3 Para. 143 states that inappropriate development is by definition harmful to the Green Belt and should not be allowed except in very special circumstances. Para. 145 sets out that new buildings (there are none proposed in the context of this application) will be considered inappropriate, subject to a number of exceptions which includes limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would:

- not have a greater impact on the openness of the Green Belt than the existing development.

3.4 In addition other forms of development, including material changes of use (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds - Para. 146 e) will not be inappropriate development provided they preserve openness and do not conflict with the purposes of including land within it.

3.5 It is considered that Policy GB2(f) and GB22A are broadly consistent with this approach in the 2018 NPPF. Policy GB2 (f) allows for material changes of use, Para 146 NPPF and Policy GB22A allows for development on sites used for business, general industrial or storage and distribution, Para 145 g) NPPF and as such should be afforded significant weight. Thus, in order to determine whether or not the proposal would be inappropriate development in the Green Belt, its impact on openness and Green Belt purposes has to be assessed and whether or not the proposed use has a greater impact than the existing (permitted or lawful) use.

3.6 The other 'tests' relating to impact on Green Belt character and amenities (as opposed to openness and purposes) and the amenities of nearby properties and the locality in general are not related to inappropriateness, but are relevant matters to be considered as part of the overall assessment and will be dealt with below in addition to the impact on the AONB and highway issues.

#### Impact on openness of the Green Belt

3.7 In the 2008 Appeal Decision (para 16) the Inspector noted that when it comes to the question of inappropriateness it is the actual use in question that is the key consideration rather than a comparative assessment of its impact relative to that of the use deemed to be lawful. In this respect he found that the disputed use would inevitably impinge upon openness and would not be constant with the aims of the Green Belt in maintaining openness and safeguarding the countryside from encroachment. The Inspector therefore concluded that the use was "inappropriate development" and whilst accepting that the reversion to a builders merchants use could have a similar impact on the surrounds, particularly if the land in question was used for outdoor storage (para 19) concluded that the submissions that openness would be maintained in the sense that it would not be made worse or that the use would be no worse than the lawful one as amounting to "very special circumstances" to justify the development.

3.8 In the context of this application, in comparison to an open field the use clearly does impact on openness and is contrary to the fundamental aim of the Green Belt to keep land permanently open and prevent encroachment. However, comparing the current use of the land for the open commercial storage of bricks and other building supplies, materials and plant and machinery to the lawful use, having regard particularly to historic photographs of the site, in terms of the visual and physical impact the current use is very similar to the lawful use and in this respect has no more impact on openness than the lawful use.



3.9 Since that appeal decision, the NPPF 2018 now accepts the partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on openness of the Green Belt than the existing development. "Previously development land" is defined as Land which is or was occupied by a permanent structure including the curtilage of the developed land. The wider Jewson site when it incorporated the land the subject of this application would have been considered to fall within the definition of previously developed land. Para 11 of the 2008 Appeal Decision acknowledges the storage of items, both in the open and under cover within building has been a major facet of the matter in which the land has been used over the years. Given that the use the open commercial storage of bricks the subject of this application is no more visually or physically intrusive in the Green Belt than the lawful use, the proposed use is not considered to have a greater impact on openness and as such this is regarded as an exception in the terms of Para 145 g) of the NPPF and therefore not "inappropriate development".

3.10 If this argument is not accepted, then the fall-back position that the lawful use of the site as a builder's yard use could resume weighs in the applications favour. Circumstances are now materially different from the 2008 Appeal Decision in that there is every indication that the current owner would revert to the lawful use notwithstanding the restrictive covenant which from a planning point of view would not preclude the use and is a civil matter for the land owner to resolve. The fall-back position, in this case, is considered to amount to very special circumstances sufficient to justify this development. Further in the context of this application the applicant has indicated a willingness to accept a condition limiting the height of storage on site to no more than 3m. This will minimise the impact of the stored materials to a degree. If the site reverted to a builder's merchants there would be no such restriction.

3.11 In summary clearly the commercial storage of bricks and other building supplies, materials and plant and machinery does impact on openness and the purposes of including land in the Green Belt, however the redevelopment of the site would not have a greater impact on the openness of the Green Belt than the lawful development and as such is not considered "inappropriate development" having regard to Para 145 g) of the NPPF and accepting this argument very special circumstances do not need to be considered. But even if this assessment was not considered to be correct, it is officers' opinion that the fall-back position is material and enough to justify this use given the similarities of the use the subject of the application and the lawful use. Open storage of bricks and building materials is a composite use of a builder's merchants such that this use is not readily visually distinguishable from the lawful use in terms of the resultant appearance of the site in the Green Belt. Residents submissions in terms of the low level of use of this part of the site are noted, but again in reverting to the lawful use, there would be no control on the level of materials stored, by comparison as this is a material change of use the Council is entitled to impose conditions and to this degree limiting the height of storage on the site will mitigate the impact to some degree.

#### **4. Impact on Chilterns Area of Outstanding Natural Beauty (AONB)**

4.1 The site lies within the Chilterns Area of Outstanding Natural Beauty (AONB) where Policy LSQ1 states the primary objective is to conserve and enhance the natural beauty of the landscape. Development should conserve and where considered appropriate and practicable by the Council, enhance the special landscape character and high scenic quality of the AONB. Core Strategy Policy CS22 states that proposals must conserve and enhance and must protect the setting of the AONB and this is consistent with the approach in the NPPF.

4.2 Again the argument that there is little difference between the use in question and the builder's merchants use is advanced. The 2008 Appeal Inspector did find the storage of large bulky items consistent with the conservation of the natural beauty of the area. The storage use as now proposed is materially different from the vehicles and machinery on the site in 2008 and given the similarities between the development as now proposed and the lawful use, it is difficult to argue that subject to conditions relating to the height of storage that this use would impact more on the AONB. The AONB designation washes over a large part of the Chilterns and inevitably there will be uses which do detract from the natural beauty of the

area, but in the case of this site there is a long-standing history and the use has developed around the former sawmill use which would have served the local community and provided jobs. To some degree the current commercial use reflects the history of the site. Controlling the height of the storage does go towards protecting the setting of the AONB. Save for the entrance to the site the frontage is well screened and as such additional landscaping is not considered necessary. Reference has been made to the formation of a separate entrance, however the widening has predominately occurred within the site set back from the main road.

4.3 Whilst it is acknowledged there is harm to the AONB, however when assessing proposed development against the lawful use, that harm is limited. Conditions limiting height of storage, any external lighting can mitigate the impact of the use which would not otherwise be possible if the use reverted to the lawful use.

## **5. Parking/Highway implications**

5.1 In terms of highway implications, the County Highway Officer has not raised any objections to the storage use, he refers to the storage use as ancillary to the main use of the site. The Council considers the main use of this part of the site to be storage and distribution. Given the same level of storage could occur on the land as a builder's yard and given the existing access has adequate visibility there is no highway objection to the use. In assessing the expediency of taking formal action in relation to the former unauthorised use of the land for storage of machinery, highway safety was not an issue raised. Whilst the concerns of local residents are noted given the visibility splays which exist and adequate room for lorries to turn in and manoeuvre on site, no objection is raised.

5.2 The Council's car parking standards for storage and distribution uses including builders' yards and external storage uses are based on floor space. Beyond a small temporary cabin at the far end of the site, there are no buildings and no specific standard for car parking. 9 visitor spaces are shown at the front of the site and 4 staff spaces towards the rear, although it is noted information provided suggests only 2 staff are employed on site and the way in which the site operates currently suggests visitors are very few and far between. Clearly there is capacity within the site to accommodate parking and in this respect again no objections.

## **6. Impact on residential amenities**

6.1 Residents have made reference to the excessive noise with deliveries, large volumes of brick dust in the air, plant noise, constant beeping while vehicles manoeuvre around the site, banging as work is conducted, etc. Again, these activities will occur with the lawful use of the site and indeed do occur on the wider Jewson site. Whilst sympathetic to the concerns raised, it is not considered an objection could be sustained on grounds of the detrimental impact on nearby residents, given the distance from properties.

## **7. Other matters**

7.1 Para 83 of the NPPF refers to supporting a prosperous rural economy and refers to the sustainable growth and expansion of all types of business in rural areas. Para 84 recognises that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements and the use of previously developed land and sites that are physically well-related to existing settlements should be encouraged where suitable opportunities exist. Whilst the origins of the company occupying the site are not on the face of it local, the use of the land does result in economic benefits and potentially provides local employment in a rural area, this is also seen as weighing in favour of the development and further consistent with the aim of Policy GB22A of the Local Plan in keeping sites currently used or last used for business, general industrial and storage and distribution in such uses.

## **8. Conclusions**

8.1 The NPPF confirms that a material change of use of land will not be inappropriate development provided it preserves openness and does not conflict with the purposes of the Green Belt, likewise the redevelopment of previously developed land, whether redundant or in continuing use is not inappropriate if the proposed use does not have a greater impact on the openness of the Green Belt than the existing development. As explained above, it is not considered that the proposal amounts to inappropriate development, if it does then the unique planning history and fall-back position amount to very special circumstances to outweigh the harm by way of inappropriateness. The harm to openness is limited in this context given that the proposed use would visually appear no different to the lawful use and the same applies to the assessment in terms of impact on the AONB, conditions would allow the Council to mitigate the impact. The economic benefits and re-use/continued use of the land add in favour of the development albeit to a limited degree. Accordingly, subject to conditions the application is recommended for approval

### **Working with the applicant**

In accordance with Section 4 of the National Planning Policy Framework, the Council, in dealing with this application, has worked in a positive and proactive way with the Applicant / Agent and has focused on seeking solutions to the issues arising from the development proposal.

Chiltern District Council works with applicants/agents in a positive and proactive manner by;

- offering a pre-application advice service,
- updating applicants/agents of any issues that may arise in the processing of their application as appropriate and, where possible and appropriate, suggesting solutions.

In this case, Chiltern District Council has considered the details as submitted which were considered acceptable.

### **Human Rights**

9. The following recommendation is made having regard to the above and also to the content of the Human Rights Act 1998.

### **RECOMMENDATION: Conditional Permission**

#### **Subject to the following conditions:-**

- 1 There shall be no open storage of any materials, plant or equipment on site above a height of 3m.  
Reason: The site is located within the Green Belt and Chilterns Area of Outstanding Natural Beauty where the Council seeks to preserve the open and rural character of the area and visual amenity. The restriction on height is considered necessary to minimise the impact of the development having regard to the National Planning Policy Framework and Policy CS22 of the Core Strategy.
- 2 Notwithstanding the provisions of section 55 of the Town and Country Planning Act there shall be no external lighting installed or placed on the site, other than in accordance with details which shall have previously been agreed in writing with the Local Planning Authority.  
Reason: The site is located within the Green Belt and Chilterns Area of Outstanding Natural Beauty where the Council seeks to preserve the open and rural character of the area and visual amenity. The restriction on height is considered necessary to minimise the impact of the development having regard to the National Planning Policy Framework and Policy CS22 of the Core Strategy.
- 3 No machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched  
from the site outside the following times: 0730 to 1730 hours Monday to Friday, 0800 to 1300 hours Saturday, nor at any time on Sundays, Bank or Public Holidays.

Reason: The site is located within the Green Belt and Chilterns Area of Outstanding Natural Beauty where the Council seeks to preserve the open and rural character of the area and visual amenity. Further the site is in close proximity to residential properties. The restriction on hours of use and deliveries is considered reasonable and necessary having regard to the residential amenities of those properties and having regard to the character of the area in general.

4 AP01 Approved Plans

## CH/2017/1228/AV

Case Officer: Mrs Tracey Francis  
Date Received: 30.06.2017  
Parish: Great Missenden

Decide by Date: 15.09.2017  
Ward: Ballinger South Heath And Chartridge

App Type: Advert  
Proposal: Two non-illuminated freestanding advertisement signs (retrospective)  
Location: Land adjacent to Jewsons  
Chesham Road  
Hyde End  
Buckinghamshire  
Applicant: London Reclaimed Brick Company Limited

### SITE CONSTRAINTS

Article 4 Direction  
Adjacent to A and B Road  
Adjacent to Unclassified Road  
Area of Special Control of Advertisements  
Within Chilterns Area of Outstanding Natural Beauty  
Within Green Belt other than GB4 GB5  
A and B Roads

### CALL IN

Councillor Jones has requested application CH/2017/0747/FA Use of land for the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials (retrospective) and application CH/2017/1233/FA siting of a portacabin for a temporary period of three years to be used incidental to the permitted/lawful use of the land to planning committee regardless of the officer recommendation.

Officers consider it appropriate to consider this application concurrently.

### SITE LOCATION

The site lies in the Green Belt and Chilterns Area of Outstanding Natural Beauty (AONB) on the north side of Chesham Road (B485) which links Chesham and Great Missenden. The site is directly opposite a row of houses in Hyde End, the houses being identified as a row of houses within the context of Policy GB4 of the Adopted Local Plan.

The application site itself was part of a larger area of land that extends to the west. The land in question was originally used as a sawmill as the planning history of the site details. By the early 1990s the former sawmill became a builders' merchants selling building products both to trade and to the public (albeit still retaining the sawmill and capacity to cut timber). With the passage of time, after 10 years, the use of the entire site as a builder's merchants became lawful by virtue of it being immune from enforcement action.

Jewson's still currently occupy the main part of the site, selling off the site the subject of this application in 2005. The sites are now separated by metal palisade fencing; the access point onto the Chesham Road is shared with Jewson's but the sites then have separate entrances set back from the highway boundary.

## **THE APPLICATION**

The application seeks advertisement consent for two free standing signs set either side of the entrance gates, which are located within the site set back from the road frontage. The signs are already in situ.

Both signs are 2m in width and 1.5m in depth, mounted on posts 2m above the ground such that they just are above the height of the palisade fence.

The signs advertise the company name London Reclaimed Brick Merchants

## **RELEVANT PLANNING HISTORY**

The full planning history of the site is set out in the report in respect of application CH/2017/0747/FA Use of land for the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials (retrospective) - Pending consideration, see separate report on this agenda.

## **PARISH COUNCIL**

Great Missenden Parish Council comments received 15 August 2017, confirming no objection.

## **REPRESENTATIONS**

9 Letters of objection received from nearby residents (or their representatives), including from a letter from the chairperson of Hyde End Residents Group (HERG) representing 30 local households following grounds replicating the comments made on application CH/2017/0747/FA - Use of land for the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials (retrospective) – please refer to that report for full details.

One letter specifically states in relation to this application:

The signs are obtrusive in the AONB and unacceptable development in the Green Belt by way of their intrusive nature. The application in itself is premature and permission cannot be granted for advertising a business which the Council has not granted planning permission for and which is an unlawful use of the site in this respect, reference is also made to the planning history and Restrictive Covenant.

## **CONSULTATIONS**

**Bucks County Council Highways:** Indicate no objection.

## **POLICIES**

National Planning Policy Framework (Revised July 2018) (NPPF). Para 132.

National Planning Policy Guidance

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4 CS20, CS22.

The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011: Saved Policies GC1, GC3, GB2, LSQ1.

## **EVALUATION**

### **Principle of development**

1. The application site is located within the Green Belt and Chilterns Area of Outstanding Natural Beauty (AONB). Most of Chiltern District, including the greater section of the AONB is designated as an Area of Special Advertisement Control and as such the size of advertisements which may lawfully be displayed without first obtaining consent is more limited enabling the Council to exercise a greater degree of control. However in accordance with the Town and Country Planning (Control of Advertisement) Regulations and Paragraph 132

of the NPPF, advertisements should only be controlled in the interests of amenity and public safety, taking account of cumulative impacts.

### **Amenity**

2. The application proposes two x non-illuminated signs either side of the entrance. The signs are set back from the road frontage and are not considered unduly intrusive in the street scene. Whilst the signs are large, they are no larger than signage at the adjacent Jewson site and are considered proportionate. The signage in terms of size and scale and materials used for the boards is not considered excessive or detrimental to the character or amenity of the area.

3. In terms of the content of the sign, this in itself is not subject to control and whilst comments that the signage relates to an unauthorised use are noted, this is not material to the consideration of the application. It is in any event accepted that the site does have a lawful use as a builders merchants and in the context that this is a commercial site, it is not unreasonable for the site to have some form of identification.

### **Public Safety**

4. With regard to public safety, the Local Planning Authority should consider the impact of the advertisement on highway safety, including the safety of pedestrians. Given the signage is non-illuminative and set back from the highway frontage it is not considered that the sign is detrimental to highway safety and no objections raised by Bucks County Council Highways.

### **Working with the applicant**

In accordance with section 4 of the National Planning Policy Framework, the Council, in dealing with this application, has worked in a positive and proactive way with the Applicant / Agent and has focused on seeking solutions to the issues arising from the development proposal.

Chiltern District Council works with applicants/agents in a positive and proactive manner by;

- offering a pre-application advice service,
- updating applicants/agents of any issues that may arise in the processing of their application as appropriate and, where possible and appropriate, suggesting solutions.

In this case, Chiltern District Council has considered the details as submitted which were considered acceptable.

### **Human Rights**

5. The following recommendation is made having regard to the above and also to the content of the Human Rights Act 1998.

### **RECOMMENDATION: Conditional consent**

#### **Subject to the following conditions:-**

- 1 C118A 5 Year Limited Period Adverts
- 2 C261A Standard Advert Conditions
- 3 The signs shall at no time be finished in or include any retro-reflective materials.  
Reason: To avoid undue distraction to motorists.
- 4 This consent relates to the details shown on the approved plans as listed below:

## CH/2017/1233/FA

Case Officer: Mrs Tracey Francis

Date Received: 30.06.2017

Parish: Great Missenden

Decide by Date: 11.01.2019

Ward: Ballinger South Heath And Chartridge

App Type: Full Application

Proposal: **Siting of a portacabin for a temporary period of three years to be used incidental to the permitted/lawful use of the land.**

Location: **Land adjacent to Jewsons  
Chesham Road  
Hyde End  
Buckinghamshire**

Applicant: **London Reclaimed Brick Merchants Limited**

### SITE CONSTRAINTS

Article 4 Direction

Adjacent to A and B Road

Adjacent to Unclassified Road

Area of Special Control of Advertisements

Within Chilterns Area of Outstanding Natural Beauty

Within Green Belt other than GB4 GB5

A and B Roads

### CALL IN

Councillor Jones has called this application and CH/2017/0747/FA to planning committee regardless of the officer recommendation

### SITE LOCATION

The site lies in the Green Belt and Chilterns Area of Outstanding Natural Beauty (AONB) on the north side of Chesham Road (B485) which links Chesham and Great Missenden. The site is directly opposite a row of houses in Hyde End, the houses being identified as a row of houses within the context of Policy GB4 of the Adopted Local Plan.

The application site itself was part of a larger area of land that extends to the west. The land in question was originally used as a sawmill as the planning history of the site details. By the early 1990s the former sawmill became a builders' merchants selling building products both to trade and to the public (albeit still retaining the sawmill and capacity to cut timber). With the passage of time, after 10 years, the use of the entire site as a builder's merchants became lawful by virtue of it being immune from enforcement action.

Jewson's still currently occupy the main part of the site, selling off the site the subject of this application in 2005. The sites are now separated by metal palisade fencing; the access points onto the Chesham Road is shared with Jewson's but the sites then have separate entrances set back from the highway boundary.

### THE APPLICATION



The application seeks permission for the temporary siting of a portacabin 9.75m x 3.05m and 2.4m in height for a three year period. The portacabin is proposed to the east of the entrance to the site near the front boundary of the site.

The applicant has confirmed that the portacabin is required for use as an office in connection with the use the subject of application CH/2017/0747/FA namely the commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials or should the site revert to the lawful use as a builder's merchants, either way the portacabin would provide a temporary office incidental to the permitted (in the event that permission under application CH/2017/0747/FA is forthcoming) or lawful use of the land use as a builders' merchants.

The applicant's agent has submitted a planning statement in support of the temporary siting of the portacabin:

- The location of the portacabin at the front of the site is screened by tall trees and would not be visible from outside the site. Compliant with Policies GC1 and GC3

- No increase in employment on site and ample car parking is proposed having regard to Policy TR11 and TR16.

- Notwithstanding the fact that this area is in the Green Belt an argument can be made that this complies with Policy GB2(b) which allows for new buildings to provide essential facilities for (i) outdoor sport and (ii) outdoor recreation; for cemeteries and for (iv) other uses of land which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it.

- If this argument is not accepted and the Council is minded to state this is inappropriate development harmful to the Green Belt then the applicant submits that very special circumstances do exist in the form of the extensive planning history and the lawful fall-back position as a builders merchants.

The NPPF states "circumstances where a temporary permission may be appropriate include where a trail run is needed in order to assess the effect of the development on the area or where it is expected that planning circumstances will change in a particular way at the end of that period. A temporary planning permission may also be appropriate on vacant land/buildings to enable use of a temporary period prior to any longer term regeneration plans coming forward or more generally to encourage empty property to be brought back into use. This can benefit an area by increasing activity"

- As the company are looking to continue to use the site as a builders merchants the applicant requests a trail run to assess the effect of the development on the area: so the applicant can use the property until the planning situation is resolved, the proposed development will also encourage use of the site that has a lawful use for a builders merchants.

## **RELEVANT PLANNING HISTORY**

The full planning history of the site is set out in the report in respect of application CH/2017/0747/FA relating to the use of land for the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials (retrospective) - Pending consideration, see separate report on this agenda.

Pertinent to the consideration of this application is a previous application CH/2014/1783/FA - for the erection of single storey office building. This was refused for the following reasons:

1. Within the Green Belt, most new development is considered to be inappropriate and there is a general presumption against such development. Development which is not inappropriate is set out in Local Plan Policy GB2 and the National Planning Policy Framework. The construction of a new office building within the open

Green Belt is inappropriate in accordance with the above guidance and policy. The proposal therefore represents inappropriate development which by definition is harmful to the Green Belt. Furthermore, the proposed building would be large in size and the proposal would also include a large area of hardsurfacing to provide car parking to serve the site. The introduction of such a building and associated hardstanding onto an otherwise undeveloped site would result in a loss of openness which is an essential characteristic of the Green Belt. It would also fail to safeguard the countryside from encroachment which is one of the main purposes of including land in the Green Belt. No very special circumstances exist that are sufficient to outweigh the harm caused to the Green Belt by the reason of inappropriateness and other harm identified. As such, the proposal is contrary to Policy GB2 of the Adopted Chiltern District Local Plan 1997 (including the Adopted Alterations May 2001 and July 2004) and Government guidance set out in the National Planning Policy Framework.

2. The application site is located within a countryside location within the Chilterns Area of Outstanding Natural Beauty and has a particularly rural character. The proposed building would be large in size and would be located on a site that is currently free of built form. It would be sited towards the front of the site occupying a significant proportion of the site frontage and would be visible from Chesham Road, through the entrance to the site and also through the boundary trees, especially during winter months. The proposal would therefore intrude into this rural and open countryside location and appear prominent in the street scene. This impact would be further exacerbated by the laying of a large area of hardstanding to serve the building. Given this the proposal would not conserve or enhance the special landscape character and distinctiveness of the Chilterns Area of Outstanding Natural Beauty and is contrary to Policies CS20 and CS22 of the Adopted Core Strategy for Chiltern District (November 2011) and Policies GC1 and LSQ1 of the Adopted Chiltern District Local Plan 1997 (including the Adopted Alterations May 2001 and July 2004).

3. Policy CS4 of the Adopted Core Strategy District seeks to ensure that development is sustainable and sets out sustainable development principles for new development within Chiltern District. These principles refer to locations which are easily accessible by local transport, walking and cycling. The application site is in a remote location away from the most accessible settlements within the District. The proposal would therefore result in a reliance on car journeys for users of the development. In addition, the proposal only incorporates limited measures that meet the sustainable principles for Chiltern District. The proposed location would also be contrary to the Spatial Strategy for Chiltern District which seeks to protect the Chilterns Area of Outstanding Natural Beauty and Green Belt by focusing new development on land within existing settlements not covered by those designations. As such the proposal would constitute an unsustainable form of development and is contrary to Policies CS1, CS3 and CS4 of the Adopted Core Strategy for Chiltern District (November 2011) and Government Guidance set out in the National Planning Policy Framework.

## **PARISH COUNCIL**

Great Missenden Parish Council comments received 15 August 2017, confirming no objection.

## **REPRESENTATIONS**

10 Letters of objection received from nearby residents (or their representatives), including from a letter from the chairperson of Hyde End Residents Group (HERG) representing 30 local households replicating the comments made on application CH/2017/0747/FA - Use of land for the open commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials (retrospective) - Please refer to that report for full details.

In relation to this specific application, submissions are made that the temporary accommodation will further facilitate an increase in trading and will allow the sales to be more easily managed by the team that are permanently on the site. The site is within the Green Belt and the Company have not demonstrated a track record of showing sensitivity to local residents in the area and for the importance of complying with any planning permission.

## **CONSULTATIONS**

## **Bucks County Council Highways**

Chesham Road is classified as the B485 and in this location is subject to a speed restriction of 50mph. Proposals include the erection of a portacabin for a temporary period of three years which would be ancillary to the main use of the site.

Given the speed limit along this section of road and visibility splay of 2.4m x 113m are applicable. I am confident that these are achievable either within the land in control of the applicant or the Highway Authority. The existing access is constructed to a commercial specification, which will allow opposing vehicles to pass. Mindful of the above as the existing access benefit from adequate visibility splays and an adequate width, no objection in this instance and no conditions.

**Building Control Disabled Access and Fire:** No comments.

## **POLICIES**

National Planning Policy Framework (Revised July 2018) (NPPF). In particular Section 4 - decision making; Section 6, para 83, 84 - Supporting a prosperous rural economy; Section 13 - Protecting Green Belt land; Section 15 - Conserving and enhancing the natural environment.

National Planning Policy Guidance

Core Strategy for Chiltern District - Adopted November 2011: Policies Policy CS1, CS3, CS4, CS16, CS19, CS20, CS22, CS25 and CS26.

The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011: Saved Policies GC3, GB2, LSQ1, TR11 and TR16.

## **EVALUATION**

### **1 Background and use of the site**

1.1 The background and use of the site is well rehearsed in the assessment of application CH/2017/0747/FA namely for the commercial storage of bricks and other building supplies, vehicles, plant, machinery and other equipment and materials. It is not intended to replicate that in this report, other than to note that the former (lawful) use of the site as a builder's merchants remains a material consideration and it is accepted that the use of the site could revert back to that use.

1.2 In the context of this application the applicant is to all intents and purposes submitting that some form of temporary office is required either to support the use proposed under application CH/2017/0747/FA, in the event that permission is forthcoming or to revert to the lawful use.

### **2. Main issues**

2.1 The main issues are

- Whether the development is inappropriate development in the Green Belt for the purposes of the NPPF (revised 2018) and the development plan
- Whether any harm by way of inappropriateness, and any other harm, is clearly outweighed by other circumstances that justify the development
- Impact on the AONB
- Impact on Highway Safety
- Impact on Amenity of Local Residents

### **3. Principle of development**

Whether inappropriate development in the Green Belt

3.1 The site lies in the Green Belt where development is strictly controlled. Policy GB2 sets out the types of development that may be permitted in the Green Belt and these includes (b):

"...new buildings to provide essential facilities for ....(iv) other uses of land which preserve the openness of the Green Belt and purposes of including land in it."

Policy GB22A specifically relates to development within the Green Belt for business, general industrial, or storage and distribution purposes. Criterion c) is relevant referencing sites which are in accordance with Policy GB2(f) and are currently used or were last used for business, general industrial, or storage and distribution purposes where the use is authorised of otherwise lawful

3.2 The NPPF contains the most up to date national policy. Para. 133 states that the Government attaches great importance to the Green Belt and that the fundamental aim it to prevent urban sprawl by keeping land permanently open. The essential characteristics are its openness and permanence. Para. 134 of the NPPF lists the purposes of the Green Belt, pertinent to this application is "to assist in safeguarding the countryside from encroachment".

3.3 Para. 143 states that inappropriate development is by definition harmful to the Green Belt and should not be allowed except in very special circumstances. Para. 145 sets out that new buildings will be considered inappropriate, subject to a number of exceptions which includes limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would:

"- not have a greater impact on the openness of the Green Belt than the existing development."

3.4 In addition other forms of development, including material changes of use (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds - Para. 146 e) will not be inappropriate development provided they preserve openness and do not conflict with the purposes of including land within it.

3.5 It is considered that Policy GB2 (b) and (f) and GB22A are broadly consistent with this approach in the 2018 NPPF. Policy GB2 (f) allows for material changes of use, Para 146 NPPF and Policy GB22A allows for development on sites used for business, general industrial or storage and distribution, Para 145g) NPPF, and as such should be afforded significant weight. Thus, in order to determine whether or not the proposal would be inappropriate development in the Green Belt, its impact on openness and Green Belt purposes has to be assessed and whether or not the development has a greater impact than the existing (permitted or lawful) use.

3.6 The other 'tests' relating to impact on Green Belt character and amenities (as opposed to openness and purposes) and the amenities of nearby properties and the locality in general are not related to inappropriateness, but are relevant matters to be considered as part of the overall assessment and will be dealt with below in addition to the impact on the AONB and highway issues.

#### Impact on openness of the Green Belt

3.7 In terms of the use of the site, as concluded in application CH/2017/0747/FA the commercial storage of bricks and other building supplies, materials and plant and machinery does impact on openness and the purposes of including land in the Green Belt, however the redevelopment of the site for this purpose would not have a greater impact on the openness of the Green Belt than the lawful development and as such is not considered "inappropriate development" having regard to Para 145 g) of the NPPF and accepting this argument very special circumstances do not need to be considered.

3.8 If this assessment was not considered to be correct, it is officers' opinion that the fall-back position is material and enough to justify this use given the similarities of the use the subject of the application and the

lawful use. Open storage of bricks and building materials is a composite use of a builder's merchants such that this use is not readily visually distinguishable from the lawful use in terms of the resultant appearance of the site in the Green Belt. Residents submissions in terms of the low level of use of this part of the site are noted, but again in reverting to the lawful use, there would be no control on the level of materials stored, by comparison as this is a material change of use the Council is entitled to impose conditions and to this degree limiting the height of storage on the site will mitigate the impact to some degree.

3.9 This application now proposes a temporary structure in the form of a portacabin to act as an office to support the use of the site. Although technically the portacabin is not a building but a structure it will take on all the characteristics of a new building and in terms of built development on the site this new structure will impact on openness, resulting in the introduction of an additional structure or "building" albeit temporary where none currently exists. The applicant submits that the location of the structure adjacent to the front of the site, will ensure that it is well screened by existing trees. However it will none the less be apparent at the entrance to the site and will certainly contribute to the intrusiveness of the site. It is therefore considered that this is inappropriate development and it will be necessary to consider any "very special circumstances".

3.10 In terms of very special circumstance the applicant has advanced that an office is necessary to facilitate the lawful use as builder's merchant or in terms of the continuing use for storage of bricks and building supplies. The current use has clearly been on-going for some three years now without the need for office facilities. There is a small cabin already on the site which serves as facilities for the two workmen. The applicant, other than asserting that an office is required, has not demonstrated that such a facility is essential to the functioning of the use. There is no evidence that the current use cannot continue without such a facility. The proposed redevelopment to include an office albeit on a temporary basis will have a greater impact on openness and it is not considered that very special circumstances have been demonstrated to overcome the harm by reason of inappropriateness and further harm to the openness.

#### **4. Impact on Chilterns Area of Outstanding Natural Beauty (AONB)**

4.1 The site lies within the Chilterns Area of Outstanding Natural Beauty (AONB) where Policy LSQ1 states the primary objective is to conserve and enhance the natural beauty of the landscape. Development should conserve and where considered appropriate and practicable by the Council, enhance the special landscape character and high scenic quality of the AONB. Core Strategy Policy CS22 states that proposals must conserve and enhance and must protect the setting of the AONB and this is consistent with the approach in the NPPF.

4.2 Whilst accepting there is little difference between the use proposed under application CH/2017/0747/FA and a builder's merchants this is on the basis that the land is used for storage and does not result in further built form. The design and siting of the portacabin does not conserve or enhance the setting of the AONB and indeed will further detract from the character of the area, adding to the proliferation of development on site.

#### **5. Parking/Highway implications**

5.1 In terms of highway implications, the County Highway Officer has not raised any objections and again in terms of facilities of car parking, adequate exist on site having regard to the floorspace which the proposed office would create, as such no objection is raised in this respect.

5.2 It is noted that in 2014 in assessing the application for a permanent office on site, objections were raised to the extent of hardstanding. In this respect engineering and other operations which maintain openness and do not conflict with the purposes of including land within the Green Belt are not inappropriate. As the fall-back position in respect of the use of the land as builders merchants has now been accepted, it is not now considered and objection to the provision of surfaced parking and turning facilities could be sustained.

## **6. Impact on residential amenities**

6.1 Residents have made reference to the excessive noise with deliveries, large volumes of brick dust in the air, plant noise, constant beeping while vehicles manoeuvre around the site, banging as work is conducted, etc. However it is not considered that the provision of office facilities on site would not impact on amenities of residential properties.

## **7. Other matters**

7.1 Para 83 of the NPPF refers to supporting a prosperous rural economy and refers to the sustainable growth and expansion of all types of business in rural areas. Para 84 recognises that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements and the use of previously developed land and sites that are physically well-related to existing settlements should be encouraged where suitable opportunities exist. Whilst the origins of the company occupying the site are not on the face of it local, the use of the land does result in economic benefits and potentially provides local employment in a rural area. This is also seen as weighing in favour of the development and further consistent with the aim of Policy GB22A of the Local Plan in keeping sites currently used or last used for business, general industrial and storage and distribution in such uses.

7.2 Objections were raised to the proposed office building in 2014 on grounds that this was not a sustainable location. The acceptance that the site has a lawful use as a builder's merchant and that to revert to that use would not need planning permission is considered to change the Council's assessment and an objection on such a basis could not be sustained.

## **8. Conclusions**

8.1 The NPPF confirms that a material change of use of land will not be inappropriate development provided it preserves openness and does not conflict with the purposes of the Green Belt. Likewise the redevelopment of previously developed land, whether redundant or in a continuing use is not inappropriate if the proposed use does not have a greater impact on the openness of the Green Belt than the existing development.

8.2 The introduction of additional built form on the site in the form of a temporary structure to be used as an office would have a detrimental impact on the openness of the Green Belt and purpose of including land within it and would fail to conserve or enhance the special landscape change and distinctiveness of the Chilterns AONB. Very special circumstance will not exist unless the harm to the Green Belt by reason in inappropriateness and any other Green Belt harm is clearly outweighed by other considerations. The lawful use of the site is a material consideration, however the applicant has failed to demonstrate that a further structure in the form of an office is either essential to the functioning of the lawful use or of the use as existing on the site which has already continued for some years without such a need. Whilst the office might have economic benefits in terms re-use/continued use of the land which would add in favour of the development, given the sensitive location of the site within the Chilterns AONB and in proximity to residential properties, the Council is not seeking to encourage the expansion and prominence of the use of the site.

## **Working with the applicant**

In accordance with Section 4 of the National Planning Policy Framework, the Council, in dealing with this application, has worked in a positive and proactive way with the Applicant/Agent and was focused on seeking solutions to the issues arising from the development proposal. In this case, the Applicant/Agent was informed/advised that the proposal did not accord with the Development Plan, that no material considerations are apparent to outweigh these matters of principle.

### **Human Rights**

9. The following recommendation is made having regard to the above and also to the content of the Human Rights Act 1998.

### **RECOMMENDATION: Refuse permission**

For the following reasons:-

1 Within the Green Belt, most new development is considered to be inappropriate and there is a general presumption against such development. Development which is not inappropriate is set out in Local Plan Policy GB2 and the National Planning Policy Framework. The construction of a new office building within the open Green Belt is inappropriate unless providing essential facilities and preserve openness and not conflict with the purposes of including land within the Green Belt. The proposal will introduce a built form, albeit on a temporary basis where none previously exists. It is a sizeable structure, unattractive in appearance located in a prominent location on the site frontage. The applicant has not demonstrated that the proposed portacabin provides essential facilities or that there are any very special circumstance which outweigh the harm by reason of inappropriateness and further harm in terms of the impact on openness. Further the site lies within the Chilterns Area of Outstanding Natural Beauty and the proposal would not conserve or enhance the special landscape character and distinctiveness of the Chilterns Area of Outstanding Natural Beauty. The development is considered contrary to Policies GC1, GB2, GB22A and LSQ1 of the Adopted Chiltern District Local Plan 1997 (including the Adopted Alterations May 2001 and July 2004 and Policies CS20 and CS22 of the Adopted Core Strategy for Chiltern District (November 2011) and National Planning Policy Framework.

**The End**



## Appeal Decisions

Inquiry held on 29 July 2008

Site visit made on 30 July 2008

by **D H Brier BA MA MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
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Decision date:  
27 August 2008

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### Appeal Ref: APP/X0415/C/07/2059918 & 2059919

#### Land adjacent to Jewsons Yard, Chesham Road, Hyde End, Bucks HP16 ORD

- 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 M C Finch & Mrs S M Finch against an enforcement notice issued by Chiltern District Council.
- The Council's reference is 2007/00019/ENF.
- The notice was issued on 21 September 2007.
- The breach of planning control as alleged in the notice is change of use of the land from use as part of a builders' merchants to use for the commercial storage of vehicles, plant, machinery and other equipment, together with ancillary repairs and maintenance thereof.
- The requirements of the notice are cease the use of the land for the commercial storage of vehicles, plant, machinery and other equipment, together with ancillary repairs and maintenance thereof and remove all such vehicles, plant machinery and equipment from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees in respect of the appeal by Mrs S M Finch (ref APP/X0415/C/07/2059919) have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered in her case.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.**

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### Appeal Ref: APP/X0415/X/07/2062615

#### Land adjacent to Highfield and Jewsons Yard, Chesham Road, Hyde End, Bucks HP16 ORD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by M F Equipment (UK) LLP against the decision of Chiltern District Council.
- The application Ref CH/2007/1808/EU dated 3 October 2007 was refused by notice dated 29 November 2007.
- The application was made under section 191(1) (a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is B8 open storage of building materials, plant, machinery and associated vehicles and equipment.

**Summary of Decision: The appeal is dismissed.**

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### **Preliminary Matters**

1. The evidence at the inquiry was taken on oath.
2. At the inquiry the section 174 appeal on ground (e) was withdrawn.

### **The Appeals Site and Background**

3. The appeals site lies in the Metropolitan Green Belt and the Chilterns Area of Outstanding Natural Beauty (AONB). It was previously part of a larger area of land that extends to the south. The Statement of Common Ground (SOCG) chronicles the history of this larger area, noting that it was used as brickworks prior to the Second World War. The SOCG refers to the subsequent use of buildings for the storage of timber, but both parties also indicate that the land was used as a sawmill. According to the appellants, in 1989 the land was acquired by Harcros who stored a variety of building materials, both in the open and in the buildings, and in 1997 the land was acquired by Jewsons who continue to operate from it. The appeals site was acquired from Jewsons by the appellants in 2005. It is separated from Jewsons' current premises by a metal palisade fence. It has its own separate access and is now used for the storage of plant and equipment used in the construction industry.

### **Section 174 Appeal on Grounds (c) and (d) and the Section 195 Appeal**

4. As all these matters are closely inter-linked in this case, I deal with them jointly.
5. The history of the land, of which the appeals site forms part, is not in dispute. In particular, the Council accept that around 1991 the former sawmill had become a builders' merchants, selling building products both to the trade and to the public. It is further accepted that after 10 years, that is around 2001, the builders' merchants use had become lawful by virtue of it being immune from enforcement action. In essence, the matter at issue is whether the builders' merchants use in this instance constitutes a B8 storage and distribution use. The appellants contend that Jewsons' yard, being primarily used for the storage and distribution of building materials and equipment used in the construction trade, is a B8 use. On the other hand, the Council, citing *Young v Secretary of State for Transport, Environment and the Regions [2001] EWHC 141*, argue that a builders' merchants use will typically be sui generis because it contains a mixture of uses, in particular retailing.
6. Both parties agree that the severance of the appeals site from Jewsons' premises resulted in the formation of a new planning unit, but this in itself does not necessarily mean that there has been a material change of use. It seems to me therefore that the question hinges on the nature of the particular builders' merchants use. In so saying, I am mindful that the term "builders' merchants" does not appear in the Town and Country Planning (Use Classes) Order 1987. And, in *Monomart (Warehouses) Ltd & Others v Secretary of State for the Environment & Others [1977] 34 P.& C.R.* it was held that such words did no more than identify the nature of the goods involved. That said, the appellants refer to the judgement in *Meadows & Others v Secretary of State for the Environment [1983] JPL 538* wherein it was held that "store" could apply to premises where goods were disposed of by wholesale transactions as well as being stored. I also acknowledge that, in the light of *Monomart*, a warehouse

could have a degree of retail sales without it ceasing to be a warehouse, but the retail sales must be no more than incidental to this.

7. First-hand evidence regarding the nature of the builders' merchants use was provided by Mr Holman, the manager of the Jewsons premises at Hyde End. I heard that he first started work at the premises in 1988 when they were operated by Sabah Timber Limited who stored and supplied timber and building materials, an activity that continued when Harcros acquired the site in 1989 and when Jewsons subsequently acquired Harcros in 1997. According to Mr Holman, the yard and buildings were used for the storage of materials and equipment used in the construction industry, and the bulk of the trade involved supplying other Jewsons' branches and local builders. Some 90% of the business was conducted with the building trade, and about 10% directly with members of the public.
8. Further information regarding the manner in which the builders' merchants use operated is contained in the Council's note of a site meeting that took place in February 2002. This comprehensive note, which also refers to the 90% - 10% split between trade customers and the general public, goes on to mention the milling of timber, the presence of a saw to make specialist pieces, and timber being machined down to smaller sizes. Among the staff listed are "2 machinists for saw mill." The author of the note did not appear at the inquiry and so could not be cross-examined about its contents, but as the accuracy of the document was not called into question, I attach some weight to it as an indicator of how the premises were operating in early 2002.
9. As regards the proportion of trade business relative to that generated by the general public, Mr Holman told me that the 90% - 10% split was based on his experience. However, although I heard that the company's accounting system differentiated between public and trade sales (cash sales as opposed to account or trade sales), no documents or any other records regarding sales transactions were produced. Likewise, although Mr Holman referred to 100 to 108 collections per day, no indication regarding the relative numbers of trade and retail customers who visit the site was forthcoming. While Mr Holman came over as an honest and candid witness, the absence of such information makes it very hard to make an objective assessment of the actual degree of retail activity at the premises. This is in sharp contrast with the Birmingham appeal decision, relied upon by the appellants, where trading statistics were put before the Inspector. I therefore find this matter somewhat inconclusive; I am not satisfied that the evidence is sufficiently clear or robust to demonstrate that retail sales to the general public are incidental to the builders' merchants use, as the appellants claim.
10. Another factor which has a bearing on the question, and which distinguishes this case from the Birmingham appeal decision, is the sawmill component. Although the Council's evidence refers to the main function of the site as a sawmill having ceased by 1991, in cross-examination Mr Holman accepted that the sawmill was functioning between 1997 and 2005 and the facility still remains now. This is consistent with the Council's observations in 2002. Having seen that the woodworking machinery only occupies a small proportion of the larger of the 2 buildings on the Jewsons' site, it may be that this activity is a relatively minor part of the builders' merchants business as a whole. Moreover, a facility that enables timber to be cut to size for customers could be regarded

as being incidental to this. However, the acceptance that the sawmill remains points to a rather more substantial activity. So does the 2002 note. Indeed, as 2 out of the 9 staff members at the premises recorded were sawmill machinists, it is difficult to conclude that this activity was ancillary or incidental to the builders' merchants use. It strongly suggests to me that it was more likely to have been a component part of a composite use.

11. It is clear from the evidence that the storage of items, both in the open and under cover within buildings has been a major facet of the manner in which the land has been used over the years, and I saw that this remains the case at the Jewsons' premises. The degree of storage, together with the general absence of information and price tags (other than in a fairly limited area in the vicinity of the counter where smaller items were displayed) is such that the overall character of the premises is far removed from that of say a typical DIY retail store. My impression was that the main thrust of the operation is directed towards supplying trade customers and the evidence indicates that it is likely to have done so prior to and since the relevant dates<sup>1</sup>.
12. Even allowing for the Council's concern about the degree of distribution, and the period of time when 'portaloos' were stored on the site as part of a separate hire operation, on the face of it, the conclusion reached in the preceding paragraph lends strong support to the appellants' case. However, mindful that the onus on making the case rests with the appellants, I am not satisfied that the evidence regarding the retail and sawmill element of the builders' merchants use in question is sufficiently clear and unambiguous for me to be able to conclude that as a matter of fact and degree they are incidental to a B8 use, as opposed to being component parts of a composite, sui generis use. As I see it, the appellants have not discharged the burden of proof that rests with them.
13. In the light of the foregoing, my view is that the use in question is functionally and physically distinct from the previous use of the land as a builder's merchants and the character of the use has changed to the extent that there has been a material change of use. In the apparent absence of any relevant planning permission, I find the matters alleged in the notice do constitute a breach of planning control. Accordingly, therefore, the section 174 appeal on ground (c) fails. As both the ground (d) and LDC appeals effectively rely on the ground (c) appeal proving successful, they fail also.

### **Section 174 Appeal on Ground (a) the Deemed Application**

#### ***Planning Policies***

14. Relevant planning policies are contained in the Council's Local Plan (CDLP), adopted in 1997. Reflecting the guidance in PPG2, which advises that there is a general presumption against inappropriate development in the Green Belt, and such development should not be approved unless there are very special circumstances, strict controls upon development in the Green Belt apply by virtue of Policy GB2. The policy lists categories of development for which planning permission may be given, amongst which, under clause (f), are material changes of use which maintain openness and do not conflict with the

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<sup>1</sup> As the enforcement notice and LDC applications are dated 21 September 2007 and 3 October 2007 respectively, there is a slight difference in the relevant 10 year periods.

purposes of including land in the Green Belt. Policy GB22A addresses, amongst other things, storage and distribution development in the Green Belt. One of the circumstances where such development will be permitted is contained in clause 1.(c), namely where sites accord with the criteria in Policy GB2(f) and are currently used or were last used for business, general industrial or storage and distribution purposes where the use is authorised or otherwise lawful. Policy LSQ1 is directed at the Chilterns AONB and states that development should conserve and where appropriate and practicable enhance the area's special landscape quality and high scenic character.

### **Main Issues**

15. I consider the main issues are, firstly, whether the proposal constitutes inappropriate development in the Green Belt. And, secondly, if so, whether there are any very special circumstances which would outweigh the general presumption against inappropriate development that applies in the Green Belt.

#### *Issue 1*

16. Addressing CDLP Policy GB2(f), which echoes the guidance in paragraph 3.12 of PPG2, the appellants contend that the open storage use is an employment use which maintains the openness of the site and would not conflict with the main purpose of including land in the Green Belt. I acknowledge that the deemed application concerns the use of land as opposed to operational development. I am also mindful of the site's history and the Council's acceptance that the builders' merchants use, a feature of which was outside storage, is lawful. However, when it comes to the question of appropriateness my view is that it is the actual use in question that is the key consideration rather than a comparative assessment of its impact relative to that of the use deemed to be lawful, including the implications of section 57 in that respect. In so saying I am mindful that, contrary to what was claimed in the closing submissions for the appellants, in cross-examination their planning witness accepted that the use in contention is inappropriate development.
17. It may be that the effect of the use on openness may be similar or no worse than the builders' merchants use, as is claimed, but that argument is more akin to saying that the status quo would be maintained. It does not go to the heart of the matter, namely the effect of the disputed use upon openness. To my mind, the use of the land for the outdoor storage of vehicles, plant, machinery and other equipment inevitably impinges upon openness, albeit no buildings are involved and the appeals site is very different in nature from an open field. The use is neither consistent with maintaining the quality of openness, nor with the fundamental aim of Green Belt policy to keep land permanently open. And, although the use does not extend beyond the well defined and vegetated outer limits of the commercial enclave here, it is also inconsistent with the third of the purposes of including land in Green Belts set out in paragraph 1.5 of PPG2, namely assisting in safeguarding the countryside from encroachment.
18. In the light of the foregoing, my conclusion is that the use in question constitutes inappropriate development in the Green Belt, in which case it does not accord with CDLP Policy GB2(f).

*Issue 2*

19. No very special circumstances have been advanced as such. Particular reference was made to section 57 of the 1990 Act and the 'fallback' provisions contained therein. I accept that reversion to a builders' merchants use could have a similar impact on the surrounds, particularly if the land in question was used for outdoor storage as part of that use, as appears to have been the case in the past. However, no evidence that shows or suggests that such a scenario is likely, or is even a possibility, has been put forward. Mindful that the land appears to have been deemed surplus to Jewsons' requirements some 3 years ago also, I am not inclined to attach much weight to this factor. Nor do I regard the submissions that openness would be maintained in the sense that it would not be made worse, or that the use would be no worse than the lawful one, as good reasons for permitting inappropriate development in the Green Belt.
20. As regards CDLP Policy GB22A 1.(c), notwithstanding my findings regarding the nature of the particular builders' merchants use, for the purposes of the policy, it is sufficiently similar to a business use to fall within the ambit of paragraph 4. However, even though the explanatory text indicates that the policy seeks to protect employment sites in the Green Belt, in the light of my conclusion concerning Policy GB2(f), I find that the disputed use is contrary to Policy GB22A 1.(c).
21. Despite the manner in which the appeals site has been used over the years, I consider the introduction of the use in question marked a new chapter in the planning history of the land. PPG2 advises that inappropriate development is by definition harmful to the Green Belt. I am not satisfied that there are any very special circumstances sufficient to outweigh this harm. And, while the argument that there is little difference between the use in question and the builders' merchants use has also been advanced insofar as the AONB is concerned, I do not find the storage of large bulky items of equipment consistent with the conservation of the natural beauty of the sensitive landscape within which the site lies and which CDLP Policy LSQ1 seeks to protect. I see this as a further disadvantage which adds to my concern – a concern which could not be overcome by conditions, including those aired at the inquiry.
22. In the light of the foregoing the appeal on ground (a) fails and planning permission will not be granted on the deemed application.

**Appeal on Ground (g)**

23. Having heard that the appeals site had only been found after a lengthy search and there is nothing to indicate that there is a suitable alternative at present, I fully appreciate why the compliance period is seen as being too short and a longer period is sought. I acknowledge that the area's Green Belt and AONB status is likely to limit opportunities somewhat. However, other than the length of time it took to find the appeal site and references to there being a dearth of sites, competition being strong, and there being a lot of correspondence on the matter, the precise nature of the claimed problem was not elaborated upon.
24. Mindful that a business enterprise is involved and the enforcement action could have implications for its well-being, the difficulties I have been acquainted with are not matters I set aside lightly. That said, my view is that 6 months offers

a reasonable opportunity for a search for alternatives to be made together with any related arrangements that might ensue. In the absence of clear evidence regarding availability or otherwise of land, I am not satisfied that the compliance period is unreasonably short. In so saying, I have had regard to the provisions of section 173A (1) (b) of the 1990 Act which give the Council the discretion to extend the compliance period if need be.

25. In the light of the foregoing, the appeal on ground (g) fails.

### **Conclusions**

26. For the reasons given above and having regard to all the other matters raised, I conclude that the section 174 appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. I also conclude that the Council's refusal to grant a certificate of lawful use or development in respect of B8 open storage of building materials, plant, machinery and associated vehicles and equipment was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

### **Formal Decision**

#### **Section 174 Appeal Ref: APP/X0415/C/07/2059918 & 2059919**

27. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

#### **Section 195 Appeal Ref: APP/X0415/X/07/2062615**

28. I dismiss the appeal.

*D H Brier*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Mr Christopher Boyle Of Counsel instructed by Buttery & Watson.

He called

Mr C Holman 11 Brays Meadow, Hyde Heath.  
Mr R Buttery BA DipTP Partner, Buttery & Watson, Aylesbury.  
MRTPI

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Wayne Beglan Of Counsel instructed by Chiltern District Council.

He called

Mrs S E Shah BA BTP Senior Planning Officer, Chiltern District Council.  
MRTPI

### INTERESTED PERSONS:

Ms K Kay 4 Rowan Cottages, Hyde End.  
Mr C Jones 54 St Leonards Road, Amersham. Representing  
The Chilterns Society.  
Mr S Smith W heatsheaf Cottage, Hyde End.  
Mr R Moreton Little Hundridge Farm, Little Hundridge Lane,  
Hyde End. Representing The Little Hundridge  
Lane Residents Association.

### DOCUMENTS

- 1 List of persons present at the inquiry.
- 2 Inquiry notification letter and distribution list.
- 3 Statement of Common Ground.
- 4 Extract from Encyclopedia of Planning Law - section 57 of the 1990 Act.
- 5 Extract from Encyclopedia of Planning Law - Commentary at 3B-972.1.
- 6 Meadows & Others v Secretary of State for the Environment [1983] JPL 538.
- 7 Monomart (Warehouses) Ltd & Others v Secretary of State for the Environment & Others (1977) 34 P.& C.R.
- 8 Appeal Decision ref APP/P4605/C/04/1144321 & 1144322 dated 21 September 2004.
- 9 List of suggested conditions.
- 10 Closing Submissions by Mr Beglan.
- 11 The Queen on the application of C W Young Ltd v Secretary of State for the Environment, Transport and the Regions [2001] EWHC Admin 141.