

**Site Address: Bagnalls Ltd, Station Road, Enslow, Kidlington, OX5 3AX**

**Ref No 13/01688/F**

**District Councillor: Simon Holland**

**Ward: Kirtlington**

**Case Officer: Michelle Jarvis**

**Recommendation: Refusal**

**Applicant: Mr Jonathan Bagnall, Bagnalls Ltd**

**Application Description: Retrospective – Additional hopper unit and covered saw shed**

**Committee Date: 24<sup>th</sup> April 2014**

**1. Site Description and Proposed Development**

- 1.1 The application site forms a parcel of land adjacent to the Oxford Canal to the north, a railway line to the east, the B4095 to the south and the Rock of Gibraltar PH to the west. Residential dwellings are also in the vicinity beyond the existing railway track.
- 1.2 Predominant use of the site is as a coal merchants with two large warehouse type buildings that are currently being used to process and store coal and charcoal.
- 1.3 There is a significant amount of planning history associated with this site and a large proportion of the history is enforcement related. This application is the outcome of the processing of an enforcement investigation. The table below gives an indication of the applications which have been applied for:

Application	Description	Decision	Date
NE.660/71	Use for manufacture of portable buildings, garden furniture etc	REFUSED	01.02.1971
NE.223/72	Use for manufacture of portable buildings, garden furniture etc	APPROVED	15.06.1972
CHS.529/79x	New workshop building for light industrial use	APPROVED	22.11.1979
CHS.143/80x	Erection of five small units for light industrial use together with demolition of	APPROVED	04.08.1980

	redundant railway buildings. Installation of roads and services		
CHS.473/82	Change of use of station yard to coal and wood yard	APPROVED	09.02.1983
CHS.7/86	Temporary building for office use in connection with Diamond Farm fuel supplies	APPROVED	25.02.1986
CHS.451/85	The erection of a building for the storage of prepacked solid fuel	APPROVED	28.10.1985
CHS.984/88	Erection of new vehicle maintenance building, workshop and stores	APPROVED	10.02.1989
CHS.590/94	Proposed warehouse	WITHDRAWN	07.01.1995
95/00523/F	Retrospective – change of use of land for existing storage of fuel and office until. Proposed warehouse and extension to existing warehouse	APPROVED	11.08.1995
99/01522/F	Re-siting of siting and erection of new offices and construction of cesspool	REFUSED – Appeal Dismissed	25.10.1999
99/02052/F	Additional offices and cloakroom facilities (temporary) and cesspool and re-siting of existing offices	REFUSED	24.01.2000
09/00304/F	Retrospective - Cover all hoppers to reduce noise and dust emissions.	REFUSED	21.05.2009
09/00305/F	The addition of one hopper and conveyor for charcoal with dust and sound proofing and small rear shed (Retrospective)	REFUSED	10.06.2009

09/00307/CLUE	Certificate of Lawful Use Existing - Bagnalls yard; office, southern most building for coal/charcoal packing, 3no. hoppers, open storage for paraffin, use of land to north for open storage.	REFUSED	07.05.2009
13/01687/F	Retrospective - Change of use to include sales direct from yard	APPROVED	03.01.2014
13/01688/F	Retrospective - Additional hopper unit and covered saw shed	PENDING	

- 1.4 This application seeks retrospective consent for the retention of an additional hopper located on the western side of the existing coal packing building, and which was erected without planning permission. In addition retrospective consent is sought for the erection of a store shed again constructed without the benefit of first obtaining planning permission. Both structures have been in place for some time and the applicant is now attempting to regularise the situation.
- 1.5 Another retrospective application has been submitted and approved in the recent past (ref 13/01687/F). This was to regularise the sales of paving slabs and granite slabs from the site. This was not altering the coal yard and is not affected by this application.
- 1.6 The site itself is located within an Area of High Landscape Value, within the Conservation Area for the Oxford Canal and abuts a Grade II Listed Building (Rock of Gibraltar PH)
- 1.7 For clarity, this application relates to a small building sitting taller than the existing hoppers on the west elevation of the building. The Certificate of Lawful Use Application (CLUE) referred to above 09/00307/CLUE sought consent for the office, southern most building for packing charcoal and coal, 3x hoppers, open storage and use of the northern part of the site for open storage.
- 1.8 In determination of the previous CLUE, it would appear that on the basis of probability all items listed previously could have been granted a CLUE as there was enough evidence to suggest that they were lawful. Unfortunately the third hopper and the saw shed (to which this application refers) did not have enough evidence to prove they were lawful and as such the entire application failed.
- 1.9 Through the passage of time all other items are now deemed to be lawful or it is not considered expedient to pursue except for this third hopper and the saw shed.

## **2. Application Publicity**

- 2.1 The application has been advertised by way of neighbour letter and press advert. The final date for comment was the 20 February 2014. One third party comment has been received via their agent. The main points of this letter are as follows:

### Hopper

1. During the winter when packing was in its peak the complainant's home and property was smothered with coal dust and affected by early morning noise disturbance before 7am.
2. No information has been given on the application to show how either of these two problems would be addressed or alleviated.
3. Condition 4 of the original consent for the coal use are being breached as the additional hopper increases the intrinsic use of the site and inherently causes more dust, vibration and noise contrary to the planning condition
4. The Council have previously refused planning permission for a different hopper for similar reasons

### Saw shed

1. An application has been made for a saw shed for the cutting of stone something which has nothing whatsoever to do with the operation of a coal yard.
2. The saw shed already and will continue to lead to noise and disturbance.
3. There has been and will continue to be a harmful intensification of use from what was occurring in 2003.

## **3. Consultations**

- 3.1 **Kirtlington Parish Council** – Have objected to the application and state:  
“The hopper unit is the equipment which causes so much nuisances to neighbours regarding dust and noise. The site is not a safe site for the traffic movements to the highway. Heavy lorries delivering to the site cause traffic congestion of the A4095”

### **Cherwell District Council Consultees**

- 3.2 **Anti-social Behaviour Manager** – Report and conclusions to follow

## **4. Relevant National and Local Policy and Guidance**

### **4.1 Development Plan Policy**

Adopted Cherwell Local Plan 1996 (Saved Policies)

ENV1: Environmental Pollution considerations

C13: Areas of High Landscape Values

#### 4.2 Other Material Policy and Guidance

National Planning Policy Framework (NPPF) - March 2012

Planning Policy Guidance

Submission Cherwell Local Plan (SCLP) - January 2014

The Submission Local Plan has been through public consultation and was submitted to PINs in January 2014 for Examination to take place in June 2014. The Submission Local Plan does not have Development Plan status but is a material planning consideration. The Plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case:

ESD 10: Protection and Enhancement of Biodiversity and the Natural Environment

### 5. Appraisal

5.1 The key issues for consideration in this application are:

- History of the site
- Policy context
- Impact on residential amenities
- Impact on highway safety
- High Landscape Value and the impact on other heritage assets

#### History of the site

- 5.2 As has been outlined earlier there is significant history attached to this site both in terms of planning applications and also enforcement history that is not reported in detail in this report.
- 5.3 Planning permission was granted in 1982 for the change of use of the site to form a coal yard and this has been the predominate operation on site ever since. The coal business by its definition is periodic and the intensive use of the site occurs in the winter months when coal is being packed and distributed out of the site. In the summer whilst the use is less intensive charcoal has been packed in the past.
- 5.4 Over time there have been a number of allegations made into the intensification of the site without the benefit of planning permission including the addition of buildings and also site operation outside of the approved hours. In addition a noise abatement notice has in the past been drawn up but was not correctly served.

- 5.5 The most pertinent planning history is the submission of a Certificate of Lawful Use Existing (CLUE) ref 09/00307/CLUE. In this submission the applicants claimed that the use of the site for the open storage and the office building and hoppers have continuously been at the site for a period of 10 years therefore giving them lawful status. This application was accompanied with a substantial amount of information from the applicants.
- 5.6 The tests as to whether an application for a certificate of lawfulness succeeds is the balance of probability. If the local planning authority has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application. In this instance whilst much of the evidence submitted supported some of the items listed within the CLUE there was not considered to be enough evidence to support the installation of one hopper and one office building. As such the whole CLUE failed and the items remained unauthorised.
- 5.7 A further application of significant relevance to the determination of this application is 09/00305/F which was submitted to seek retrospective consent for the addition of a steel hopper with a conveyor belt attached and a small rear shed to cover part of the packing process. In this application, the agent makes reference to there being a total of 4 hoppers on site (if this were to be approved).
- 5.8 This application was refused due to the harm that the additional hopper would have caused to the amenities of adjoining residential properties resulting from the excessive charcoal dust emanating from the site. It is noted in the file that at this time it was not considered expedient to take formal enforcement action given that the removal of one single hopper would be unlikely to reduce the activities of the site and the consequent impact on neighbouring properties. Furthermore with the move of some of the business to a site outside of the District at this time it was considered that this in itself may help to reduce the impact. The site has been continually monitored since this application was refused.
- 5.9 The site has remained in operation and further complaints have been received periodically. This investigation has now culminated in a review of all the history and the resultant attempt of the applicants to regularise the current situation. Following a full site assessment the outstanding issues were sales of stone and paving materials (subject to an earlier application which has now been approved), the retention of one hopper without consent and the erection of a saw shed. This application now seeks to regularise the hopper and the saw shed.

### **Policy context**

- 5.10 The development plan for Cherwell comprises the saved policies in the adopted Cherwell Local Plan 1996. Section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with applications for planning permission the local planning authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the

determination must be made in accordance with the development plan unless material planning considerations indicate otherwise.

5.11 The NPPF sets out the economic, social and environmental roles of planning in seeking to achieve sustainable development: contributing to building a strong, responsive and competitive economy; supporting strong, vibrant and healthy communities; and contributing to protecting and enhancing our natural, built and historic environment (para' 7). It also provides (para' 17) a set of core planning principles which, amongst other things, require planning to:

- Be genuinely plan led, empowering local people to shape their surroundings and to provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency
- proactively drive and support sustainable economic development
- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings
- support the transition to a low carbon future in a changing climate
- encourage the effective use of land by reusing land that has been previously developed
- promote mixed use developments
- conserve heritage assets in a manner appropriate to their significance
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are of can be made sustainable; and
- deliver sufficient community and cultural facilities and services to meet local needs

5.12 The Framework at paragraph 14 states 'At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking...for decision taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted

5.13 Policy ENV1 of the adopted Cherwell Local Plan is of most relevance to this application. It seeks to ensure that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke, fumes or other type of environmental pollution will not normally be permitted.

5.14 Whilst there is no specific policy within the Emerging Local Plan which addresses in detail the issue of pollution causing detriment to the amenities of others, it is considered that Policy ESD 10 is of relevance. It provides an overarching requirement for developments to be environmentally conscious and makes two specific points relevant to this application:

- If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for, then development will not be permitted
- Air quality assessment will also be required for development proposals that would be likely to have a significantly adverse impact on biodiversity by generating an increase in air pollution

### **Impact on residential amenities**

- 5.15 It has been acknowledged that since the original change of use application permitting the coal yard, operations at the coal yard have both intensified and diversified. They have diversified in the sense that there is now a separate permission controlling the sales of the paving goods from part of the site and intensified through the need for more buildings and hoppers over what was originally on site.
- 5.16 It is noted that through the previous application (ref 99/00304/F) when the applicants attempted to retrospectively achieve approval for(?) all hoppers to reduce noise and dust emissions that complaints were already being received alleging that the dust and noise from the coal hoppers was in excess of what could be considered reasonable as part of the use.
- 5.17 Furthermore, as part of the determination of this application, the Anti Social Behaviour Officer met with the applicants following the service of an abatement notice against the dust and was informed that the applicant intended to organise the coal and charcoal packing within the site in such a way as to reduce the impact on the neighbour and in addition was to upgrade the existing coal hoppers with the fitting of high pressure water sprays and the charcoal hopper was to be enclosed at the tip area conveyor and hopper tip.
- 5.18 Whilst it has been noted following numerous site visits by the Council's Enforcement Officers that this work has been done, it is virtually impossible to enforce the use of these measures as they are not automatic and rely on the staff to use them. Furthermore given the continued complaints that are being received relating to the noise and dust emissions from the hoppers, it is apparent that the measures may not be working all the time.
- 5.19 As this application seeks to regularise the additional hopper which was previously removed but not enforced against, it is not considered to be an acceptable addition to the site despite the measures that have been put in place to mitigate the emissions. It is the opinion of Officers that the time has now come to seek the removal of this hopper and the reduction from four in total to three. Whilst this may not stop the problem it will certainly go some way to reducing the overall impact that this use has on neighbouring properties.
- 5.20 The retention of the additional hopper is not considered to comply with policy today as it did not comply in 2009 when originally submitted.
- 5.21 With regard to the saw shed this is located at the southern parcel of side adjacent to the A4095 and next to the office building which forms part of the sales unit. It is constructed from profiled metal cladding with a flat roof appearance with a light to the front.



- 5.22 The application is silent on the matter of whether the saw is used for the coal business or for the paving business. It has been considered by Officers that it is unlikely such machinery would be needed for a coal business as clearly there is little needing cutting when coal is delivered, sorted and packed. However it is of concern that the saw may be used for cutting large paving material or even granite which would cause an excessive amount of noise.
- 5.23 It must be considered that there are other industrial uses in this vicinity which could be argued to emanate some noise and furthermore there is a train line separating the nearest residential property from the business however on balance these matters are not considered to outweigh the concern over the use of the saw.
- 5.24 It is not considered by Officers that the use of the saw can be successfully mitigated by condition to allow its retention on site.
- 5.25 It is acknowledged that the occupiers of the nearest residential property has made comments against this application. With relation to the hopper the objector points out that the application is silent on the matter of mitigation of noise or dust emission. This comment is material to the consideration of this application.
- 5.26 Furthermore, with regard to the saw shed the objector also believes that this is to be used for the cutting of stone not related to the coal business. Furthermore it is intimated that this deviation from the approved use emphasises previous allegations made that the use of the site has changed without planning permission.

### **Impact on Highway Safety**

- 5.27 This proposal is not considered in itself to have any adverse impact on the highway given that it is to regularise what is already happening on site. Furthermore, as part of this application it was not considered necessary to consult the local Highway Authority as they cannot control through this application what occurs on the highway.
- 5.28 The comments of the Parish Council have been noted but this is a matter separate to this application. If there are allegations that the use of the site has intensified to such point that the frequency and amount of coal being delivered results in bigger lorries arriving more frequently at the yard and therefore causing congestion, it is suggested that the local Highway Authority be approached and a further study be carried out.
- 5.29 Consequently when determining the previous application for the change of use of part of the yard to sales, the local Highway Authority raised no objections to the application given how small the area was.
- 5.30 It is considered that despite there being no need to consult the local Highway Authority, in any event the proposal is acceptable in highway safety terms and complies with the guidance contained within the NPPF.

### **High Landscape Value and the impact on other heritage assets**

- 5.31 The site is located within the Area of High Landscape Value and as such Policy C13 of the adopted Cherwell Local Plan is relevant. Whilst the site itself has been in situ for a considerable period of time and it can be argued that the impact on the AHLV has already been made, it is important to consider that the additional hopper represents a potential increase in use of the site which then leads cumulatively to an increase in the impact that the overall site has on the AHLV.
- 5.32 In addition to the AHLV the site is adjacent to the Conservation Area and to a Listed Building therefore similarly to above, the cumulative impact of approving yet more development on this site would by virtue of its proximity have an impact on both contrary to the development plan.

### **Engagement**

- 5.33 A 2012 amendment to the Town and Country Planning (Development Management Procedure) Order and the NPPF requires that Local Planning Authority's demonstrate that they have worked with the applicant/agent in a positive and proactive way. It is considered that the duty to be positive and proactive has been discharged through the efficient and timely determination of the application.

### **Conclusion**

- 5.42 There is considered to be a fundamental and principle objection to the regularisation of both uses proposed in this application. It has been demonstrated through the report the amount of harm that is being caused through the retention of this hopper and also the potential harm that is to be caused from the use of the saw shed on neighbouring properties as well as the locality within which the use is sited.

## **6. Recommendation**

### **Refusal ,**

The regularisation of one hopper unit and a covered saw shed would cause the continuation of harm to the amenities of adjoining residential properties by virtue of additional coal and charcoal dust emanating from the hopper unit and noise and disturbance from both the hopper and the machinery contained within the saw shed. Furthermore, the additional hopper and saw shed have the potential to increase the use of the site which is considered to cumulatively impact upon the adjacent heritage assets and the Area of High Landscape Value within which the site sits. The proposal is therefore contrary saved Policies ENV1 and C13 of the Adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework (NPPF).