

Appeal Decision

Hearing held on 4 October 2016

Site visit made on 4 October 2016

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 17 November 2016

Appeal Ref: APP/P0240/C/16/3146757

Land at Bottom Wood, Moggerhanger Park, Park Road, Moggerhanger, Bedford MK44 3RN

- 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 The Centre for Contemporary Ministry against an enforcement notice issued by Central Bedfordshire Council.
 - The Council's reference is CB/ENC/16/0025.
 - The notice was issued on 18 February 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of land from agriculture to an outdoor activity centre and siting of a marquee and structures associated with the unauthorised use.
 - The requirements of the notice are: i) Cease the use of the Land as an outdoor activity centre; and ii) Remove the marquee, mobile homes, office/classroom block and all structures associated with the unauthorised use and any resulting materials from the Land.
 - The period for compliance with the requirements is one month from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected:

- i) By the deletion of the words "shown edged and shaded blue on the attached plan" and the substitution of the words "shown edged and hatched in black on the attached plan" in the description of the Land at section 2 of the notice;
 - ii) By the substitution of the plan annexed to this decision for the plan attached to the enforcement notice; and
 - iii) By the deletion of the words "siting of a marquee and structures associated with the unauthorised use" from the description of the alleged breach at section 3 and the substitution of the words "the erection of a marquee, the siting of two static caravans and three pre-fabricated portacabins (including two toilet blocks and the office/class-room block), and the erection of a timber assault course, associated with the unauthorised use".
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Subject to those corrections the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The appellant indicated on the appeal form that a ground (f) appeal was being made. However, it is clear that the submissions under that ground replicated those made under ground (g). Following confirmation at the Hearing I have proceeded on the basis that no appeal has been made on ground (f).
3. The appellant contends that the area of land identified on the plan attached to the enforcement notice covers a much larger area than the area upon which the outdoor activity centre operated. I discussed this matter with the parties at the opening of the Hearing and again at the accompanied site visit. The plan attached to the notice covers all of the land within the control of the appellant. However, it is clear that part of that land has not been used in connection with the use as an outdoor activity centre. In particular, the large field to the south and south-west of Bottom Wood has been sub-let to a local farmer who has used the area for commercial farming purposes, completely independently of any activity of the use as an outdoor activity centre. Similarly, half of the field referred to as 'North Field' (the area to the east/ south-east of the line of willow trees that has recently been planted running from the pond to the edge of the woodland to the north of the field¹) has also been sub-let to a farmer for commercial agricultural purposes.
4. Whilst the appellant undoubtedly had longer term plans to utilise the wider area within their ownership, as illustrated in the document entitled 'The Mogger Hanger Farm Project' (produced by The Centre for Contemporary Ministry, May 2010), the evidence presented, including the physical evidence on site, indicates that the area used in association with the outdoor activity centre was limited to a smaller section of the site. The areas that have been sub-let to farming enterprises do not appear to have been used in connection with the activity centre and, therefore, those areas of land should not be identified on the plan attached to the enforcement notice.
5. In effect, the use of land as an outdoor activity centre has been restricted to the western half of the North Field and activity within Bottom Wood, as described in the appellant's statement. A marquee, two static caravans and a pre-fabricated portacabin were located close to the northern boundary of the North Field and two portacabins, converted to use as toilet blocks, are situated adjacent to Bottom Wood. In view of the above I have substituted the plan attached to the notice with a new plan that accurately reflects the land on which the breach has taken place. Further to discussions at the Hearing, I am satisfied no party will be prejudiced by my decision to do so.

The Appeal on Ground (c)

6. An appeal on ground (c) is made on the basis that there has not been a breach of planning control. In this case, the appellants contend that the activities on the site are either 'incidental to agriculture or are permitted development'. The appellants refer to permitted development rights granted in relation to the Town and Country Planning (General Permitted Development) Order 1995 (the 1995 GPDO) – the Order that would have been in force at the time the breach

¹ As marked on the 'Site Layout Plan' – drawing number 14.1794.01 – submitted to the LPA with the retrospective planning application

initially occurred. However, they do not refer to any particular section of the GPDO.

7. The use of the land as an outdoor activity centre appeared to have ceased at the time of the Hearing and site visit. The various structures were in a dilapidated condition and the grass was overgrown. The marquee had been removed. Thus, I can only gauge the nature of the use from the information presented in the respective statements and at the Hearing. The purpose of the outdoor activity centre was to enable children and young adults to gain experience in outdoor activities such as woodland crafts, catching, preparing and cooking wild food and general outdoor skills. The appellants have referred to a link to agriculture but no details of precisely what that link has been provided. A number of agricultural buildings are also owned by the appellants, close to the entrance with the Moggerhanger estate. The agent at the Hearing indicated that those camping out on the land at the outdoor activity centre would also undertake tasks within those buildings.
8. Consequently, the evidence before me indicates that the use involved wild camping and experience of outdoor crafts and pursuits, perhaps with some link to agricultural uses nearby. No evidence has been provided to suggest that agricultural produce was grown or reared on the site itself and, as set out above, the agent confirmed that there was no direct connection between the use of the land as an outdoor activity centre and agricultural use on the parcels of land that are sub-let to local farmers.
9. In view of the above, I cannot conclude that the use of the land was incidental to an established agricultural use. Rather, the use of the land as an outdoor activity centre appears to have been a distinct use, carried out independently of surrounding uses. On the balance of probability, I consider that a material change of use took place on the land in question, as identified in the amended plan attached to this decision.
10. With regard to permitted development rights, Class A, Part 6, of Schedule 2 of the 1995 GPDO permits certain buildings and other operations on agricultural units of 5 hectares or more providing that they are 'reasonably necessary for the purposes of agriculture within the unit'. Class B, of Part 4 of Schedule 2 of the GPDO also sets out permitted development rights for temporary buildings. It would be a pre-requisite that any structures are considered as 'buildings' in order for them to fall within the scope of the permitted development regime under those Classes.
11. Taking account of its size and degree of permanence, as well as its method of construction, it appears to me that the marquee amounted to a building operation, having regard to Section 55(1) of the Town and Country Planning Act 1990 (the Act) and the definition of a 'building' at s336 of the Act. Similarly, the assault course is a substantial wooden construction that is permanently affixed to the ground and would amount to a building operation. I have amended the description within the alleged breach to refer to the 'erection' of those structures accordingly.
12. The portacabins are of modular construction and are likely to have been brought to the site in one piece. Nonetheless, having regard to the size of the portacabins, the fact that they have been in situ for a considerable period, and the fact that the toilet blocks have been connected to a drainage system, it appears to me that they constitute operational development for the purpose of the Act. The caravans retain their wheels, are not physically attached to the

ground and I conclude that they do not represent operational development, having regard to established case law.

13. Given that it has not been established that the use was undertaken in connection with an agricultural unit of 5 hectares or more, any buildings or operational development would not have benefitted from permitted development rights under Class A of Part 6 of the GPDO. Moreover, by virtue of their use and design, the structures do not appear to be intended for an agricultural purpose and I find nothing to suggest that they are reasonably necessary for the purposes of agriculture. Rather, they appear to have been used for educational and storage purposes as well as providing toilet facilities for those staying on site. The use of the land for those purposes continued for well in excess of 28 days and the associated buildings and structures were in place for a number of years such that they do not benefit from any permitted development rights granted under Part 4 of Schedule 2 of the GPDO.
14. The appellant did not seek to argue that any of the structures were immune from enforcement action under the time limits imposed by s171B of the Act and acknowledged that all of the buildings/ structures were either erected or brought onto the land in connection with the alleged breach. I have concluded that the use of the land as an outdoor activity centre represented a material change of use, such that it amounted to a breach of planning control. The caravans were sited in association with that unauthorised use and the operational development was carried out without planning permission and did not benefit from any permitted development rights.
15. Consequently, on the balance of probability, having regard to the evidence presented, I conclude that the use of the land and erection and siting of structures in association with that use represents a breach of planning control. For those reasons, the appeal on ground (c) fails.

The Appeal on Ground (a)

16. From the information before me, I consider that the main issues in relation to the appeal are:
 - i) The effect of the development on the setting of the Grade I listed building at Moggerhanger House and the effect upon the character and appearance of the historic landscape of the Moggerhanger Park estate which is registered as Grade II in the register of Historic Parks and Gardens.
 - ii) The effect of the development on the natural environment, with particular reference to Bottom Wood which is a county wildlife site and ancient woodland.
 - iii) If any harm does arise in relation to the above, whether any material considerations exist that would outweigh that harm, including an assessment of any community benefits that may arise from the use.

The effect on the setting of Moggerhanger House and upon the character and appearance of the landscape at Moggerhanger Park

17. The appeal site is located within the historic landscape of the Moggerhanger Park estate. The house, which has been converted into a residential conference centre, is Grade I listed and was remodelled by Sir John Soane in a number of phases between 1791 and 1811. The landscape surrounding the house is a Grade II registered park and garden and was laid out on the advice

of Humphrey Repton, the renowned garden designer. One of Repton's recommendations was for the use of a north drive leading to the house from Bedford Road. That entrance drive is no longer in use but a broken avenue of trees running northwards from the house towards the north field betrays its former position. Other recommendations of Repton included the creation of a ride through Bottom Wood.

18. As noted by Historic England, the registered park forms the immediate setting for the house. The entirety of the land within the enforcement notice is within the registered park and, thus, is undoubtedly within the setting of the house. I note the appellant's comments regarding the contours of the land, which are such that the north field is not readily visible from the house, and the fact that the land was in a dilapidated state when acquired by the appellants. The land also has a history of arable use and does not display the typical 'parkland' qualities of the more manicured land immediately surrounding the dwelling. Nonetheless, the land is undoubtedly within the setting of the house. A number of features, including Bottom Wood and the avenue of trees leading towards Bedford Road display a clear association with the house and form part of the registered park.
19. In line with the views of Historic England I consider that the ad hoc collection of structures and buildings associated with the outdoor activity centre are unsightly and at odds with the historic character of the estate. The marquee was no longer in situ at the time of my visit but the photographs demonstrate that it was a large structure and the white canopy stood out against the backdrop of mature vegetation.
20. The portacabins with toilet facilities are located adjacent to Bottom Wood and the caravans and other portacabin are located at the opposite end of the north field, adjacent to the site of the former marquee. The assault course is located in the middle of the field. The structures themselves are utilitarian and shabby in their outward appearance and their position, set across different parts of the site, creates an impression of clutter within the landscape. The unattractive appearance and visual clutter distracts the eye and takes away from the ability to appreciate the historic landscape. Thus, I have no doubt that the associated structures have caused harm to the significance of the historic landscape. Given the nature of the structures that have been erected/ placed on the site I do not consider that the visual harm could be mitigated by the use of conditions. As the landscape within the registered park forms part of the immediate setting of the house, it follows that the development has caused harm to the setting of the Grade I listed property.
21. I note that the objections from the Council and Historic England relate to the buildings and structures associated with the use, as opposed to the use of the land for outdoor camping or other pursuits, as described by the appellant. Setting aside the impact of those buildings and structures it seems to me that the use of the land for those outdoor activities was relatively discreet and did not cause harm to the setting of the house or the character of the park. In fact, it appears that some of the tasks involved an element of woodland management in Bottom Wood that, potentially, could have been beneficial.
22. In that regard, I sought the views of the appellant's agent at the Hearing as to whether the structures and buildings were essential to the use of the land as an outdoor activity centre. In other words, whether there would be any benefit in consideration of granting planning permission for the use of the land subject to a requirement for the buildings and structures to be removed. The agent

confirmed that there would be no benefit in that scenario to the appellant and that the use of the buildings and structures was integral to the planning permission sought under ground (a). Consequently, I have considered the proposal in that context.

23. In view of the above, the development is contrary to the aims of policy DM13 of the Central Bedfordshire Core Strategy and Development Management Policies Local Plan (2009) (the CS&DMP) which notes the importance of parkland landscapes within the district and states that proposals for development relating to listed buildings and registered parks should pay particular attention to locally distinctive features and uses. It is also contrary to policy CS15 of the CS&DMP which notes that the Council will seek to protect the district's heritage, including listed buildings and registered parks. Those policies are consistent with the aims of the National Planning Policy Framework (the Framework), particularly paragraph 131 which notes that local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses, consistent with their conservation.

The effect on the ancient woodland and the County Wildlife Site (CWS) at Bottom Wood

24. No direct evidence of any harm to the ancient woodland or ecological harm to the CWS has been provided. The evidence indicates that the numbers of people who visited/ used the activity centre was modest and it does not seem, to my mind, that any harm would be caused by weight of numbers impacting on the ecosystem of the woodland. As stated above, it would appear that some woodland management took place and it is possible that this may have had a beneficial effect on the health of the woodland, as opposed to a harmful effect. Little evidence has been presented to support either case. In the absence of any evidence to the contrary I conclude that the use did not cause harm to the ancient woodland or the CWS.

If any harm does arise in relation to the above, whether any material considerations exist that would outweigh that harm, including an assessment of any community benefits that may arise from the use.

25. Paragraph 134 of the Framework states that, where a development proposal will lead to less than substantial harm to the significance of a heritage asset, that harm should be weighed against the public benefits of the proposal, including securing its optimal viable use. Given that the harm in this case relates to a small area on the northern edge of the registered park, some distance from Moggerhanger House, I conclude that the harm is less than substantial, in the context of the heritage assets taken as a whole.
26. I have no doubt that the project would have had beneficial effects on the health and well-being of the individuals who stayed at the site. The health benefits of being connected to nature are well documented and the ability to learn outdoor skills and take part in team building exercises would bring positive benefits in terms of confidence, education and life skills. Thus, it is clear to me that the intentions of the project were extremely worthy and that it would have had benefits whilst the use continued.
27. As noted above, it appears that the use has now ceased. Limited information is available as to how many people had the benefit of visiting and/or staying at the site and, consequently, it is difficult to quantify the extent of any public benefit. Similarly, the appellant has referred to positive impacts on the rural

economy but little information is before me as to whether any employment was created as a result of the development, or whether it was run on a voluntary basis.

28. Accordingly, I give some weight to the positive benefits associated with the use, albeit that the weight is tempered as a result of the lack of information about the number of people who benefited from the activity. Due to the lack of any financial information, I can give little weight to any economic benefits.
29. Whilst I have concluded that the harm to heritage assets is less than substantial I have a statutory duty to give special regard to the desirability of preserving the setting of the Listed Building. Having regard to that duty, and to the significance of the assets, including a Grade I listed building, and a Grade II registered park and garden, the weight I give to the identified harm is substantial. That harm is not outweighed by any public benefits and, having regard to the policies of the Framework, and policies DM13 and CS15 of the CS&DMP I conclude that planning permission should not be granted for the development and the appeal on ground (a) therefore fails.

The Appeal on Ground (g)

30. At the time when the appeal was submitted, the appellant requested that 6 months be given to clear the site of associated structures on account of the fact that activities may have been planned over the summer months. However, at the Hearing, the agent acknowledged that the use has ceased and accepted that a month would be sufficient to remove the structures from the land, as set out in the notice. Thus, the appeal on ground (g) fails.

Overall Conclusion

31. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Sam Franklin Landscape Land and Property Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mike Duffett (BA (Hons) Principal Planning Officer

ANNEX:



Plan

This is the plan referred to in my decision dated: 17 November 2016

by Chris Preston BA(Hons) BPI MRTPI

Land at: Bottom Wood, Moggerhanger Park, Park Road, Moggerhanger MK44 3RN

Reference: APP/P0240/C/16/3146757

Scale: Not to scale

