
Appeal Decision

Hearing Held on 1 August 2017

Site visit made on 1 August 2017

by Nigel Burrows BA MRTPI

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

Decision date: 11 September 2017

Appeal Ref: APP/X0360/C/16/3161879

Land at Warren Farm, Forest Road, Wokingham, Berkshire, RG40 5QY

- 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 Warren Farm (Wokingham) Limited against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice, ref: 170140, was issued on 28 September 2016.
- The breach of planning control as alleged in the notice is the material change of use of the Land from agriculture to construction training centre including the siting of portable buildings and external storage.
- The requirements of the notice are :-
 - (i) Cease the use of the Land as a construction training centre.
 - (ii) Cease the use of the Land for external storage.
 - (iii) Remove all portable modular buildings, motor vehicles, plant and equipment associated with the unauthorised use.
 - (iv) Remove the steel palisade gates and fencing.
 - (v) Remove the hard standing, spread the area with topsoil to a depth of 20 cm and sow with grass seed.
 - (vi) Remove all services including foul drainage associated with the portable modular buildings.
 - (vii) Remove all external lighting.
 - (viii) Remove from the Land all materials resulting from compliance with steps (ii) to (vii) above.
- The period for compliance with the requirements is 9 months.
- 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation

Procedural Matters

1. The Council's pre-hearing submissions focussed mainly upon the merits of a planning application submitted for 'the retention of construction training facilities and associated buildings' on the appeal site (ref: 161587). The Council failed to address grounds (c), (f) and (g) of the appeal against the enforcement notice. The hearing was therefore adjourned in order to allow the Council's representative to prepare a response to these grounds. I have taken this response into account in my consideration of the appeal.
2. During the hearing discussion, it transpired the appellant was able to provide a written account of the search carried out to find alternative premises for the use subject of the notice. I invited the appellant's representative to submit this information. The Council was given an opportunity to respond in writing to this information after the close of the hearing. I have taken into account the Council's response and the appellant's final reply.

3. At the hearing the appellant's representative confirmed the ground (c) and (f) appeals solely related to the hardstanding on the site - they did not concern any other matters.
4. It is also necessary to record that an appeal against the refusal of planning application ref: 161587 was allowed on 5 June 2017 (APP/X0360/W/16/3159454). Section 180 of the Town and Country Planning Act 1990 is therefore of relevance. In effect, the planning permission granted on appeal overrides the enforcement notice to the extent that its requirements are inconsistent with this permission - albeit the notice does not cease to have effect altogether.¹

Background

5. The appeal site forms part of a complex of commercial uses occupying part of Warren Farm, which is located on the southeast side of the M4 motorway, approximately 3.3 km (2 miles) to the north of Wokingham. The site is occupied by BAM Construction Training.
6. The company provides training facilities for the construction industry, for agricultural and forestry workers and for persons involved in landscape gardening and tree surgery. The training is classroom-based and also involves the use of plant and machinery. The classrooms, canteen, toilet block and other structures associated with the use are sited within the yard covered by the hardstanding. The majority of the plant and equipment appears to be kept in the yard including a crane, forklift and a road roller. The appeal site includes land to the west of the yard, which extends to the bund adjoining the M4 motorway. This land appears to be mainly used for excavator and dumper training.
7. The hearing was told the business has a weekly throughput of about 30 to 40 pupils. About 30% of students are self-employed and 70% are from corporate customers. The students are trained on the basis of the different accreditations which they may require. Three full-time and 2 part-time (specialist) instructors are employed, plus administrative staff.
8. The planning history of the land at Warren Farm is well known to the main parties and does not need to be recited in any great detail here. Suffice to say that planning permission was granted on appeal during 2011 for the change of use of the buildings and land to Class B2 and B8 uses.² The buildings and land to the north of the appeal site are occupied by Andersons Roofing Supplies, whilst AVS Fencing is situated to the northeast.
9. Mastertech (a vehicle repairs business) also occupies Unit 2 further to the northeast of the site. An appeal was dismissed on 5 June 2017 for the continuation of this unit for vehicle repairs and for the retention of a building.³ This appeal was dealt with by the same Inspector who allowed the appeal concerning BAM Construction Training.

The appeal on ground (c)

10. The onus is firmly on the appellant under ground (c) to make out the case that there has not been a breach of planning control. For example, the appellant needs to demonstrate that development has not occurred for the purposes of section 55 of the Town and Country Planning Act 1990, or that the matters alleged in the notice have been granted planning permission, or that they constitute 'permitted' development.
11. As noted above, the ground (c) appeal solely relates to the hardstanding on the site. According to the appellant, it extends across part of the land formerly used for pig rearing. The appellant indicates the landscaping details approved pursuant to the 2011 appeal decision authorised the retention of this hardstanding; apparently, a planning permission granted to Andersons in 2015 also incorporated the 'retention of the enlarged hardstanding'. The Council has not provided any firm evidence to dispute the appellant's arguments. In any event, at the hearing it appeared to be common ground between the

¹ Section 180 indicates that where after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission

² Appeal decision APP/X0360/A/10/2137105 dated 9 August 2011

³ Appeal decision APP/X0360/W/16/3159457

main parties that the enforcement notice does not bite upon the hardstanding within the main yard (which, in effect, is the site subject of the previous 2017 appeal decision).

12. I therefore conclude, on the balance of probability, that the hardstanding within the main yard is lawful and consequently immune from enforcement action. The ground (c) appeal succeeds in this respect. The notice will be varied by the deletion of requirement (v).

The appeal on ground (a)

Main Issues

13. Taking into account all that I have seen and read, I consider there are two main issues in this appeal. The first is whether the development subject of the Council's enforcement notice would be an appropriate form of development in this location, having regard to the relevant development plan policies for the area and other material considerations. The second is the implications of the development for the character and appearance of the area.

Planning Policy

14. The development plan for the area includes the Council's Core Strategy⁴ and Local Plan.⁵ The following policies are most relevant to my consideration of the appeal.
15. Policy CP1 of the Core Strategy deals with the delivery of sustainable development; it requires, amongst things, that development proposals should maintain or enhance the high quality of the environment. Policy CP3 sets out general principles for development, including a requirement that they are appropriate to the area in terms of their scale of activity and character. Policy CP11 places restraint on development outside development limits, including the countryside; amongst other things, proposals should contribute to diverse and sustainable rural enterprises and should not lead to excessive encroachment or expansion of development away from the original buildings. Local Plan policy CC01 is concerned with the presumption in favour of sustainable development. Local Plan policy TB21 requires proposals to show how they have addressed the requirements of the Council's Landscape Character Assessment,⁶ including landscape quality and sensitivity.

Issue 1: The appropriateness of the development

16. The appeal site is situated outside any defined settlement limits. In planning policy terms, it lies in the countryside. According to the Council, the Landscape Character Assessment cited in policy TB21 shows the site is within an area identified as 'Ashridge Farmed Clay Lowland'.⁷
17. The planning merits of the use operated by BAM were considered by the Inspector who dealt with the previous appeal determined in 2017. Paragraph 3 of his decision letter confirmed the section 78 appeal before him concerned part of the land covered by the enforcement notice. Nevertheless, his decision only related to the red-line site subject of planning application ref: 161587. This part of the appeal site is evidently known as Unit 4.
18. My colleague concluded that BAM's use of Unit 4 would not be harmful to the character and appearance of the area. However, in other respects, he found that the use involved a high dependency on the private car - this gave rise to some environmental harm which counted against the sustainability of the development in transportation terms. However, his overall conclusion was that the development plan and the National Planning Policy Framework (NPPF) provided 'greater support than discouragement' to the development.
19. The conclusions reached by my colleague in the previous appeal are of relevance to the appeal against the enforcement notice. However, crucially, my colleague did not address the planning merits of BAM's use of the land to the west of the red-line site subject of the section 78 appeal. I therefore intend to focus my consideration upon this western area.

⁴ Adopted in January 2010

⁵ Adopted Managing Development Delivery Local Plan (February 2014)

⁶ Adopted in 2004

⁷ Characterised by rolling landform, scattered dwellings and farms, large open fields, blocks of woodland and long views

20. As noted above, the western part of the site appears to be mainly used for excavator and dumper training. The appellant's representative confirmed the use of this part of the site was intended to be permanent. To my mind, this is not a rural enterprise in the sense that it requires a rural location. I also observed that it involves an excessive encroachment and expansion of commercial activity away from the original buildings at Warren Farm. I consider this activity does not fall within any category of development that might be acceptable here under the terms of policy CP11 - not least because it has resulted in an excessive encroachment of commercially-related activity beyond the approved planted belt which was intended to screen the western boundary of Unit 4.
21. Notwithstanding my colleague's decision on the section 78 appeal concerning Unit 4, bearing in mind the relevant planning policies for the area, I conclude that BAM's use of the western part of the site would not be an appropriate form of development in this location.

Issue 2: Character and Appearance

22. One of the key considerations in the earlier planning decisions relating to Warren Farm has been the extent to which the appearance of the area has changed as a result of alterations to the buildings, external storage and the vehicular activity generated by the activities.
23. Similar considerations arose in the two 2017 appeal decisions. In the case of the use operated by BAM, the Inspector found this to be unobtrusive and considered the scale of the 'plant training activity' to be modest in comparison to the activities undertaken by AVS Fencing. My colleague concluded the activity undertaken *within the confines of Unit 4* (my emphasis) was of a scale appropriate to this rural location. He considered the implementation of the agreed landscaping scheme along the western boundary of Unit 4 would provide some screening of the training facility. He also considered that additional planting over and above that previously approved⁸ would not be necessary.
24. However, there is nothing to suggest that my colleague would have reached a similar conclusion upon the merits of BAM's use of the western part of the site now before me.
25. Indeed, my colleague took a different view concerning the implications of the nearby use operated by Mastertech at Unit 2. He found the extent of vehicle storage associated with that use to be 'incompatible with the sensitivity surrounding the undertaking of open storage identified in the 2011 appeal decision'. He acknowledged that Unit 2 was not visible from any public vantage point. However, he was not persuaded that the use could be justified simply because it was 'out of sight and out of mind'. He concluded that the development 'resulted in excessive encroachment within the countryside and the scale and form of the activity was inappropriately located.'⁹
26. I have similar concerns about the use of the western part of the appeal site in connection with BAM's training activities. The hearing was told this area was a 'weedy field' when acquired by BAM; it was also suggested that a circular landform shown upon the aerial photographs may have been used to test vehicles. Be that as it may, I observed the routine excavation and dumping of material has despoiled this part of the site, thereby harming the character and appearance of the rural area. Any contribution this part of the site may have made to the traditional rural land uses and landscape character of the Ashridge Farmed Clay Lowland has been very significantly diminished.
27. The hearing was told that the training activities are carried out in rotation upon the western part of site in order to 'rest' (i.e. stabilise) the land between periods of excavation. However, as these activities would continue permanently, the opportunities for the overall restoration of the land to its former condition appear to be limited.
28. I therefore conclude the continuation of this use would harm the character and appearance of the rural area. In this respect, it conflicts with policies CP1 and CP3 of the Core Strategy, insofar as they seek to ensure that proposals to maintain or enhance the high quality of the

⁸ i.e. in connection with the 2011 appeal

⁹ Paragraph 13 of appeal decision APP/X0360/W/16/3159457

environment and are appropriate to the area in terms of their scale of activity and character. It also conflicts with Local Plan policy TB21, insofar as it seeks to ensure that proposals retain or enhance the condition, character and features of land that contribute to the landscape.

Other Considerations

29. The appellant has advanced various arguments in favour of the activities carried out on the site, including the pressing need for training facilities. However, any pressing need for such facilities does not imply that they should take place within the open countryside.
30. Reference is also made to the lack of suitable alternative sites for the business. The submissions for the appellant indicate that BAM has been searching for sites since April 2013. The attempts to secure various sites are listed. However, in some instances no clear explanation is given about why these attempts were unsuccessful. In other cases, it seems the sites were not pursued due to the cost of rental agreements or the proximity of competitors. The Council is also critical of the search methodology employed, and suggests the estate agents involved are mainly concerned with residential sales and lettings. In any event, I am not satisfied the appellant has adequately demonstrated there is no prospect of finding a suitable alternative site for the business. The hearing was also told that BAM might be considering an expansion of their activities elsewhere.
31. The appellant's stance appears to be that the development should be considered against the NPPF, including paragraph 14 which sets out the presumption in favour of sustainable development. It is therefore necessary for me to assess the sustainability credentials of the development, with particular reference to the economic, social and environmental dimensions of sustainable development as set out within paragraph 7 of the NPPF.
32. With respect to economic considerations, there is no dispute that the development contributes to the training needs of the construction industry, agriculture and forestry. According to the appellant, BAM has trained almost 3,000 candidates at the site, of which around 1690 have been for CPCS ¹⁰ accreditation (which is said to be in 'desperate' demand across the UK). BAM also has links with Job Centres and Housing Trusts. The appellant cites an HSE ¹¹ report on health and safety in the construction industry, which indicates that 1.7 million days are lost through illness and injury, equating to an economic cost of about £0.9 billion. Whilst these figures are significant, the economic benefits of the use actually operated by BAM have not been quantified – albeit they may not be insignificant.
33. In the context of social considerations, the appellant cites the benefits of enterprise, jobs and training. It seems to me that providing operatives with better training (thereby reducing the risk of accidents or injuries) fulfils a social as well as economic function. Arguably, the use might even contribute to the support of a stronger, vibrant, and healthy community.
34. Turning to environmental considerations, paragraph 7 of the NPPF makes it clear that sustainable development should contribute to the protection and enhancement of the environment. Paragraph 9 of the NPPF also confirms that pursuing sustainable development involves seeking positive improvements in the quality of the environment. However, I am not persuaded that the development meets these particular objectives.

Overall Conclusions on Ground (a)

35. Whilst the economic benefits of the use operated by BAM have not been quantified, I recognise they may not be insignificant. In my view this consideration carries some weight. There are also likely to be social benefits associated with the training activities undertaken on the land, which adds further weight to the appellant's case. Having said that, I find the outcome would not be a positive improvement in the quality of the environment as advocated by the NPPF. This finding carries very substantial weight.

¹⁰ Construction Plant Competence Scheme Plant Operators

¹¹ Health and Safety Executive

36. Weighing all the relevant considerations in the planning balance, I conclude that the adverse environmental impact of the use significantly and demonstrably outweighs the considerations advanced in favour of the development. Overall, I find it constitutes an unsustainable form of development. It is pertinent to note the Courts have held the presumption within paragraph 14 of the NPPF applies only to sustainable development.
37. It is not obvious to me that the objections to the development attacked by the notice, insofar as it relates to the western part of the site, could be overcome by planning conditions. For the reasons given above, I therefore conclude the ground (a) appeal should not succeed.

The appeal on ground (f)

38. The issue under the ground (f) appeal is whether the steps required by the enforcement notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the development.
39. The submissions for the appellant under ground (f) are solely concerned with requirement (v) of the notice, namely the removal of the hardstanding. However, I have already concluded in the context of the ground (c) appeal that the notice should be varied by the deletion of this particular requirement. It is therefore unnecessary for me to determine the appeal on ground (f), bearing in mind that the appellant does not seek to argue that the other requirements of the enforcement notice are excessive.
40. It is also worth reiterating that the planning permission granted on appeal on 5 June 2017 overrides the enforcement notice to the extent that its requirements are inconsistent with this permission – but the notice does not cease to have effect in relation to the land that lies beyond the site subject of the previous appeal decision.

The appeal on ground (g)

41. The appellant claims the 9-month period given to comply with the requirements of the enforcement notice is too short. The basis for this claim appears to be that BAM would be forced to relocate to another site. It is suggested that 18 months would be required to secure the cessation of the use and comply with the requirements of the notice.
42. However, events have moved on. As matters currently stand, the enforcement notice only bites upon the current use of the land to the west of the main yard. There is no longer a requirement for BAM's use of this yard to cease. Consequently, it is by no means obvious to me that BAM would need to leave Warren Farm. With this in mind, I consider the 9-month period given by the Council constitutes a reasonable and proportionate response to the breach of planning control. The ground (g) fails.

Overall Conclusions

43. For the reasons given above, I conclude the notice should be upheld, albeit with a variation to its requirements. I have taken into account all the other matters raised, but I find they do not alter or outweigh the main considerations that have led to my decision.

Formal Decision

44. The enforcement notice is varied by the deletion of requirement (v) from paragraph 5 (WHAT YOU ARE REQUIRED TO DO).
45. Subject to the above variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nigel Burrows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Mark Leedale

Mark Leedale Planning

Mr Matt Durant

BAM Construction Training

FOR THE LOCAL PLANNING AUTHORITY:

Miss Pooja Kumar

Wokingham Borough Council

DOCUMENTS SUBMITTED AT THE HEARING:

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| Document | 1 | Copy of Appendix 4 attached to Mr Leedale's hearing statement |
| Document | 2 | Copy of email dated 20 December 2016, providing additional information, including the search for alternatives sites, supplied by Mr Leedale |