



Appeal Decision

Site visit made on 27 August 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 September 2019

Appeal Ref: APP/K0235/C/18/3213040

**Land adjacent 140 Cotton End Road, Wilstead, Bedford, Bedfordshire
MK45 3DP**

- 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 Howard White against an enforcement notice issued by Bedford Borough Council.
- The enforcement notice was issued on 31 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the agricultural land to a mixed storage (B8) and agricultural use with associated raising of ground levels through the importation of material.
- The requirements of the notice are: -
 1. Cease permanently the storage use of the land shown edged red on the attached plan; and
 2. Remove permanently all non-agricultural vehicles, machinery, equipment and materials from the land shown edged red on the attached plan, including but not limited to the following; motor vehicles, bowser, road roller, trailers, timber panels, metal and timber fence panels, building materials and equipment and concrete posts and boards; and
 3. Remove permanently from the land edged red on the attached plan all imported materials to return the ground to the level prior to the importation of the material; and
 4. Remove the resultant waste materials and debris from the Land.
- The period for compliance with the requirements is: -
 1. Three months
 2. Three months
 3. Four Months
 4. Five months
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary of Decision: The appeal is dismissed and the notice upheld as corrected in the formal decision below.

The Notice

1. A notice is a nullity if a defect is evident on the face of the document and it is missing some vital element, such as requirements. In effect there is no notice at all and therefore nothing that can be corrected or form the basis of an appeal. The enforcement notice in this case contains all the elements required by section 173 of the 1990 Act: the matters that appear to constitute the breach of planning control, with reference back to paragraph (a) of section 171A(1); the steps to be taken to remedy the breach and the compliance

- periods for doing so; the date on which the notice is to take effect. As such, the enforcement notice is not a nullity.
2. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
 3. The appellant's statement of case identifies what he considers are the failings of the notice. The breach of planning control alleged in the enforcement notice refers to a mixed storage (B8) and agricultural use. However, the correct way to describe a mixed use is as a sui generis use. Notwithstanding the reference to Class B8, it is clear what mixed use the notice is directed at. There would therefore be no injustice if I were to correct the notice by deleting reference to '(B8)'.
 4. The appellant also states that the enforcement notice combines allegations of an unauthorised material change of use with those of unauthorised operational development but cites a 10 year period for all the allegations and that the combinations of these makes the enforcement notice unclear and imprecise.
 5. The Council submits that the operational development enforced against is facilitating the unauthorised use and, because of this, the enforcement notice can require removal of these items even if they have been on site for more than the 4 years that would otherwise grant them immunity.
 6. I consider that the description of the breach of planning control at paragraph 3 of the enforcement notice makes it clear that the operational development of raising the ground levels through the importation of material is alleged to be in association with the material change of use. An enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place.
 7. It is also suggested that in relation to point 2 of the requirements that the wording '*including but not limited*' is too broad and lacks precision. The steps required to remedy the breach do not need to include the list of items cited after that wording and it is clear that the first part of point 2 requires the removal of all non-agricultural vehicles, machinery, equipment and materials from the land. Furthermore, there appears to be a dispute as to whether some of the items were previously used in relation to the agricultural use or the storage use. As such, I intend to correct the notice by deleting the wording '*including but not limited to the following: motor vehicles, bowser, road roller, trailers, timber panels, metal and timber fence panels, building materials and equipment and concrete posts and boards*'
 8. The appellant also considers that the use of the word permanently in points 1, 2 and 3 implies that the items referred to cannot ever be brought back onto the site. As the enforcement notice runs with the land this effectively means that the requirements are permanent in so far as the mixed use is concerned. Consequently, the word 'permanently' is not needed and therefore I intend to delete it from points 1, 2 and 3 of paragraph 5.

9. The use of the words 'imported materials' in point 3 of paragraph 5 does not lack precision as there is no dispute that materials have been imported onto the site. The appellant has indicated in his responses to the planning contravention notice that hardcore and type 1 scalpings have been used to raise the level of the land with the deposit of material. Moreover, the appellant will know how much material was used to raise the level of the land. Furthermore, the appellant is the person with the best knowledge of what the previous level of the land was. The enforcement notice enables the appellant to understand the matters considered to constitute the breach of planning control and what steps are required to remedy this and its requirements are therefore not vague or imprecise.
10. It is not clear, what waste material and debris would be required to be removed from the site under point 4 of paragraph 5 as points 2 and 3 require all materials associated with the storage use and all imported materials to be removed from the site. Therefore, I consider that this point has been inserted in error and I intend to correct the notice by deleting Point 4 within paragraphs 5 and 6 of the notice.
11. Notwithstanding all of the above, the notice has a logical structure. If read in a straight forward way, and not forensically, the alleged breach is expressed in a manner and form that is understandable. The requirements relate directly back to the mixed use and its associated operational development and there are periods for compliance. My conclusion is that the notice tells the recipient fairly what he has done wrong and what he must do to remedy it. Compliance with this test does not rule out the ability to challenge the notice through the grounds available in an appeal and make corrections where they have shown to be justified.
12. For the reasons given above, I conclude that the enforcement notice is valid and that no injustice would be caused by correcting the errors and misdescriptions in accordance with my powers under section 176(1)(a) of the 1990 Act.

Procedural Matters

13. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the sections relevant to this appeal have not materially altered. As such, in the circumstances of this case I do not consider that it is necessary to seek the further views of the parties. I am required to consider the appeal on the basis of the current Framework.
14. An emerging plan (EP), the Bedford Local Plan 2030 was submitted to the Secretary of State on 14 December 2018. It is not part of the adopted development plan. It is not clear, from the evidence before me, as to the extent to which any objections to its policies are unresolved or when the EP is likely to be adopted. Moreover, I have not been provided with a copy of any relevant EP policies and I, therefore, give it little weight.

Grounds (b) and (c)

15. The issue under ground (b) is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact. 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 1990 Act, or that the matters alleged in the notice have been granted planning permission, or that they constitute 'permitted' development.

16. The appellant is of the opinion that the raising of the ground levels is not associated with the storage use of the land but has been carried out to mitigate against pluvial flooding and provide improved surfacing for horses. Furthermore, he considers that the land is used as a paddock and not agricultural purposes therefore, a material change of use from agricultural land has not occurred. In addition, he considers that the alleged change of use is not a material one.
17. As stated above, there is no dispute that materials have been brought on to the site to raise the level of the land. There is also no doubt that these works have been carried out to alleviate pluvial flooding that has occurred on the site. Nevertheless, it is apparent from the photographic evidence before me that flooding on the site has occurred that would preclude vehicular access from the existing gated access point. The appellant has stated within the planning contravention notice that he is a builder and has used the land since 2013 to store trailers. From the evidence before me it is clear that trailers, vehicles, materials and equipment that could reasonably be associated with the building trade have been stored on part of the land that is to the rear of 140 Cotton End Road (No 140) and the adjacent site.
18. To enable a vehicle to access the site to bring a trailer or other equipment/materials onto or off the site the alleviation of pluvial flooding by the raising of the land levels would be required. Moreover, one part of the site has been appreciably raised in level and appears to constitute compacted hardcore. Whilst this could provide a surface to potentially erect a stable on it also provides a consolidated surface to store trailers and other materials on. As such, on the balance of probabilities I consider that the raising of the ground levels through the importation of materials has been carried out in association with and to facilitate the use of the land for mixed use of storage and agriculture.
19. A paddock is not a use of land even though, the definition of a paddock normally means a piece of land where animals including horses are kept. I note that the appellant considers that part of the site, shaded as green on the plan attached to his response to the planning contravention notice, had been used as part of the garden associated with No 140. Nonetheless, the Council considers that the whole site has a lawful use as agricultural land based on the planning history of the site and aerial photographs taken between 2003 and 2019. The appellant has not provided any additional evidence to indicate on what basis the lawful use of the land is not agriculture.
20. As noted above, it is clear that the site has been used to store trailers since at least 2013. At the time of my site visit there were only a few items on the land including a bowser and fencing panels and no horses or other animals were grazing within the appeal site. Nevertheless, based on the evidence before me including the photographs submitted by the Council and a third party and the balance of probabilities it is reasonable to conclude that parts of the site have been used to store vehicles, equipment and materials that cannot reasonably be considered to be ancillary to an agricultural use of the site. I have found above, that the enforcement notice can be corrected by removing the word 'B8'

as the alleged breach of control refers to a mixed use. For the collective reasons outlined above, I conclude that the matters alleged in the breach of planning control did take place and therefore the appeal on ground (b) fails.

21. There is little evidence provided by the appellant as to why he considers that the alleged change of use is not material. In terms of fact and degree, taking into account all of the above, the mixed use of the land for storage and agricultural purposes has involved a change in the character of its use and it is likely to have had significant planning consequences. It constitutes a material change of use of the land for the purposes of section 55 of the 1990 Act. I therefore conclude that the appeal lodged on ground (c) should not succeed.

Ground (a) and the deemed planning application

Main Issue

22. The main issue is whether the site is a suitable location for a mixed storage and agricultural use with regard to; the character and appearance of the surrounding area; development plan policies and the Framework relating to rural areas and flood risk.

Reasons

Character and appearance

23. Wilstead is a rather dispersed settlement with ribbon development which is interspersed by areas of open land that emphasise the rural character of the area and allow views into the surrounding countryside. The appeal site is accessed off Cotton End Road and is one of those areas of open land.
24. The site is an irregular shape with one part extending behind the rear garden of No 140, a detached dwelling, and the adjacent site. As such, that part of the appeal site is largely screened from Cotton End Road. The majority of the site is grassed with a section of the part that extends to the rear of the adjacent properties being surfaced in consolidated hardcore. There is an Equestrian Centre to the south and east of the site and a Public Right of Way (PROW), annotated as FP8 on the submitted evidence, to the south of the site. I observed that there is a limited amount of boundary planting around the appeal site and that the boundaries of the appeal site and adjacent fields/paddocks are predominantly formed of post and rail fencing.
25. Although the part of the appeal site to the rear of the adjacent properties cannot readily be seen from Cotton End Road, it can be seen, albeit in medium distance views, from the PROW. It can also be seen by the occupiers of No 140 and the occupiers of and visitors to the Equestrian Centre. Based on the evidence before me, I consider that the storage of vehicles, equipment and materials of the type that has previously occurred would have an urbanising impact on the character and appearance of the appeal site. I conclude that even though the impact of the development is localised in nature this urbanising impact would appear incongruous and discordant in this rural location in particular it would detract appreciably from the experience of users of the PROW.
26. Although the size of the area to be used for storage could be controlled by condition, it would not overcome the inherently urbanising appearance of the items being stored within a rural location. It follows that the development

conflicts with saved Policy BE30 of the Bedford Local Plan 2002 (LP) and Policies CP2, CP21 and CP24 of the Core Strategy and Rural Issues Plan 2008 (CS) which seek, amongst other things, that the visual impact of the development and its relationship with the context within which it is placed or within which it will sit is taken into account and that the character and quality of local landscapes are preserved, conserved and where appropriate enhanced.

27. With regard to paragraph 213 of the Framework I consider that these policies are broadly consistent with paragraphs 127 c) and 170 b) of the Framework and as such the conflict with those policies has significant weight.

Rural areas

28. The supporting text relating to Settlement Policy Areas states, amongst other things, that the LP established Settlement Policy Areas (SPA) as a policy tool and that they promote the sustainability of the countryside and rural communities by protecting the countryside for its own sake. CS Policy CP13 states that all land outside the SPA is defined as countryside and that development in the countryside will only be permitted if it would be consistent with national policy, particularly that in PPS7: Planning and the Countryside. There is no dispute that the site is not within the SPA for Wilstead, which is identified as a rural key service centre within CS Policy CP15.
29. CS Policy CP14 explains that, where there is a proven need for development to be located in the Rural Policy Area most new development will be focussed in or around the edge of key service centres or in rural settlements defined by a SPA boundary.
30. I acknowledge that PPS7: Planning in the Countryside has been replaced by the Framework and that paragraph 170 b) of the Framework states, amongst other things that, planning decisions contribute and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. Nevertheless, given my findings above, the proposal would conflict with that part of the Framework. As such, the development conflicts with CS Policy CP13 but as this policy is based on previous national policy that conflict has limited weight.
31. Even though the appeal site could be treated as being around the edge of Wilstead given its proximity to the SPA boundary there is little evidence before me to indicate whether there is a proven need for the development to be located in the Rural Policy Area. As such, the development would also conflict with CS Policy CP14. However, this policy is more restrictive than the Framework's section on supporting a prosperous rural economy. Consequently, with regard to paragraph 213 this conflict has limited weight.

Flood risk

32. I have found above that the raising of the land through the importation of materials was carried out in association with and to facilitate the mixed use of the site for storage and agriculture. The change of use has therefore resulted in raised levels on the site. The Council have stated that the appeal site is not identified as being within Flood Zones 2 or 3. However, they have also stated that land on the southern side of Cotton End Road has been reported to be liable to pluvial (surface water) flooding due to the topography of the land and

water flowing from the Greensand Ridge. Furthermore, an appeal decision¹ has been brought to my attention that related to a site south and west of Whitworth Way in Wilstead. In that decision the Inspector states that '*the area suffers from poor surface water drainage due to the heavy clay subsoil*'. In addition, the photographic evidence indicates that surface water flooding has occurred on and around the site.

33. Whilst, the Framework does not specifically require a flood risk assessment for a site below 1 hectare in size if it is in Flood Zone 1 paragraph 163 states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Saved LP Policies U2 and NE16 and CS Policy CP26 reflect and are consistent with the Framework in this respect.
34. It would appear from the evidence before me that the development may have increased the risk of flooding on adjacent sites including the garden area of No 140. I observed that there is a drain cover within the highway close to the existing site access and that this could be associated with the new gully cited in the evidence before me. The appellant considers that conditions could be imposed to provide drainage solutions such as sustainable urban drainage. However, there is no technical evidence before me to indicate whether any risk of flooding elsewhere arising from the development is capable of being resolved by a drainage solution within the appeal site. Therefore, a planning condition requiring the submission of details of a drainage solution would not be reasonable as it may not be possible to achieve, and it could nullify a planning consent.
35. Taking into account all of the above I do not consider that it has been demonstrated that the development does not increase the risk of flooding elsewhere. It follows that it conflicts with saved LP Policies U2 and NE16, CS Policy CP26 and paragraph 163 of the Framework.

Conclusion on ground (a) and the deemed planning application

36. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Ground (f)

37. The ground of appeal is that the steps required by the notice to be taken are excessive.
38. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
39. The Council has not identified which of these purposes it seeks to achieve. Nonetheless, in requiring cessation of the storage use and removal of all non-agricultural vehicles, machinery, equipment and materials and the removal of all imported materials, it is evident that the Council seeks to remedy the breach.

¹ APP/K0235/W/16/3147287

40. The appellant suggests that the removal of the imported material is excessive as this part of the development has minimal effect on the character and appearance of the area and that the raising of the land has not exacerbated flooding. I accept that the imported material and raising of the levels in itself has little effect on the character and appearance of the area. However, I have found that it has not been demonstrated that the development does not increase the risk of flooding elsewhere. In any event, the suggested alternative would not remedy the breach of planning control alleged.
41. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeal on ground (f) fails.

Ground (g)

42. The appellant has requested that he is given 6 months to comply with the requirements in relation to the removal of the imported material. This is due to the fact that removing the amount of required material in such a short space of time would have demonstrable harm to the horses in terms of noise and disturbance.
43. However, there were no horses on the site at the time of my site visit and there is little evidence before me to indicate that horses are currently grazed on the site. Moreover, to extend the time limit by 2 months would mean that the additional period for compliance would be within the winter. At that time of the year it is unlikely that the works required to be carried out would be achievable.
44. The time limit for the removal of the imported material is reasonable and provides an adequate period for the necessary remedial works to be carried out. The ground (g) appeal thus fails.

Formal Decision

45. It is directed that the notice be corrected by:
- i) Deleting "(B8)" in paragraph 3.
 - ii) Deleting "'including but not limited to the following: motor vehicles, bowser, road roller, trailers, timber panels, metal and timber fence panels, building materials and equipment and concrete posts and boards" in point 2 of paragraph 5.
 - iii) Deleting "permanently" from points 1, 2 and 3 of paragraph 5.
 - iv) Delete point 4 from paragraphs 5 and 6.
46. Subject to those corrections, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

D. Boffin

INSPECTOR