



Appeal Decisions

Site visit made on 2 September 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2019

Appeal A Ref: APP/X0360/W/19/3228766

Building A, Lakeside Retreat, New Mill Road, Finchampstead RG40 4QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr M Card against the decision of Wokingham Borough Council.
 - The application Ref 190292, dated 31 January 2019, was refused by notice dated 28 March 2019.
 - The development proposed is described as 'a change of use of B8 storage building to C3 residential development, including the installation of doors and windows.'
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Appeal B Ref: APP/X0360/W/19/3228767

Lakeside Retreat, New Mill Road, Finchampstead RG40 4QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Card against the decision of Wokingham Borough Council.
 - The application Ref 190299, dated 31 January 2019, was refused by notice dated 27 March 2019.
 - The development proposed is a change of use of land to a caravan site.
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Appeal A: Decision

1. The appeal is dismissed.

Appeal B: Decision

2. The appeal is dismissed.

Preliminary Matters

3. There are two appeals on adjacent sites with shared access from New Mill Road and some shared curtilage areas. Appeal A concerns the refusal of a prior approval for the change of use of an existing building from Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) to Class C3 of the UCO with some associated building works; Appeal B concerns the refusal of a planning application for a change of use of land to a caravan site. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Main Issues

4. The main issues for both appeals are as follows:

Appeal A

- whether the current lawful use of the appeal building falls within Class B8 of the UCO

Appeal B

- whether the proposal is in a sustainable location, with particular regard to the use of private vehicles to meet day-to-day needs
- whether there is a need for the appeal development linked to an existing rural business
- the effect of the proposal on the living conditions of nearby future occupiers, with particular regard to overlooking and loss of privacy
- the effect of the proposal on the living conditions of future occupiers, with particular regard to private amenity space
- the effect of the proposal on designated natural habitat sites.

Reasons

Appeal A

5. The main parties are in dispute regarding whether the existing use of the appeal building falls within class B8 (storage and distribution) of the UCO, and consequently whether Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) applies in this case.
6. Paragraph P.2.(a) of the Order states that development is permitted by Class P subject to a condition that evidence is provided by the developer to demonstrate that the building was used solely for a storage or distribution centre use on specified dates.
7. Paragraph W.(3) of the Order states that the local planning authority may refuse an application for prior approval under Part 3 where, in its opinion *the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.*
8. Planning permission¹ was granted on 5 July 2018 for *the retention of replacement commercial buildings*, of which building A on approved site plan MLP/02B, is the subject of Appeal A. This planning permission does not specify a use class for any of the buildings, but instead uses the term 'commercial', which could include a use falling within Class B8 of the UCO.
9. A certificate of lawful existing use² (CLEU) was granted on 14 December 2018 for *the open storage of vehicles with incidental trade vehicle and vehicle part*

¹ LPA Ref 180271

² LPA Ref 180285

sales; incidental removal of vehicle parts with manual tools and hand held power tools; incidental repair of vehicles; and incidental use of lifting equipment.

10. The site plan for the CLEU includes the building that is the subject of Appeal A, as well as other buildings and a larger area of open ground. However, the site plan for the CLEU is significantly different to the site plan for the Appeal A proposal. Furthermore, the CLEU does not specify a B8 use, although from the description storage is the primary use, with other uses listed as incidental to it.
11. From my observations on site, the appeal building contained various pieces of equipment and furniture, including a large workshop-type table, a computer and printer at a desk, together with various machines, such as for photocopying, plotting or printing, that could be found in an office or light industrial use. The open land to the north and west of the appeal building was being used for the storage of vehicles at the time of my visit.
12. From the evidence, whilst the appeal building has consent for commercial purposes, its lawful use is not clear. The CLEU specifies that a storage use is permitted for that site. However, the description of the 'open storage' of vehicles indicates that this would not be within the buildings in the site covered by the CLEU, and together with my observations on site, specifically not the appeal building.
13. Furthermore, even if I were to accept that the storage use did include the appeal building, from the description of the various *incidental* uses listed on the CLEU decision notice, and the lack of information about them including their relative scale and location, I am not satisfied that the storage use would fall solely within Class B8 of the UCO.
14. No substantive evidence has been provided by the appellant to demonstrate that the appeal building is or has been used solely for B8 storage purposes, as required by the Order.
15. Accordingly, it has not been demonstrated to my satisfaction that the appeal building's lawful use falls solely within Class B8 of the UCO. As such the proposal falls outside Schedule 2, Part 3, Class P of the Order and consequently prior approval cannot be granted.

Appeal B

Background

16. The appeal site is subject to an in-force Enforcement Notice³ dating from 2005, the requirements of which are said to be *i) Cease using the Land for the stationing of a mobile home for the purposes of human habitation; and ii) Remove from the Land the mobile home stationed for the purposes of human habitation.* A period of six months for compliance was given. The existing mobile home is the subject of this Enforcement Notice⁴. Prior to the mobile home being sited on this land, it was agricultural land⁵.

³ The Enforcement Notice was issued by the Council on 26th May 2005 (LPA Ref: 00233/e) and was upheld at appeal in a decision letter dated 8 August 2006 (Ref: APP/X0360/C/05/2003196)

⁴ Paragraph 3.1 of the Planning Design and Access Statement (PDAS)

⁵ Paragraph 4.2 and 4.4 of the PDAS

17. The Enforcement Notice is separate from Appeal B and does not explicitly refer to the hardstanding. However, from the evidence I am not satisfied that the appeal site is previously developed land (PDL). No substantive evidence has been provided to demonstrate that the current hardstanding within the appeal site was part of the former agricultural use. It is likely that it was and is associated with the mobile home that is the subject of the Enforcement Notice, including for the parking of vehicles.
18. The appeal site is accessed from New Mill Road through an area of mature woodland. The site for Appeal B would share this access with the proposal for Appeal A, and is located next to the Appeal A building, to the south. An existing mobile home is located on the Appeal B site, with a gravel area to the north and east and along part of the shared access. The site is separated from the land that is subject to the aforementioned CLEU, which also uses the shared access, by solid timber panelled fencing with concrete support pillars. A similar fence separates the appeal site from a separate commercial business to its east.
19. To the west of the existing mobile home is fencing and a hedge which separates it from a 2-storey timber clad building and shed. To the south of the appeal site is open tended grassland and a small lake. Within this area, to the southwest of the existing mobile home is a concrete floor slab for an approved replacement dwelling⁶, with another dwelling and other buildings near to the lake, served by a separate vehicular access from New Mill Road. The land to the south and west of the appeal site is largely outside the site of the CLEU.

Sustainability of location

20. The National Planning Policy Framework 2019 (the Framework) states that patterns of growth should be actively managed to support sustainable transport objectives⁷, such as promoting walking and public transport use.
21. The Council's evidence indicates that the appeal site is not within convenient walking distance of many day-to-day facilities such as schools, shops, a GP surgery or a railway station. A public house is within walking distance to the south along the A327, which does contain footpaths to the south of the junction with New Mill Road. However, there is no footpath or streetlighting along New Mill Road leading to the A327 from the appeal site.
22. There is a bus stop on the A327 within convenient walking distance of the appeal site. However, as mentioned above, there is no footpath or streetlighting along New Mill Road leading to the bus stop, and the 145 bus service is said to be a once-weekly service operating on a Tuesday. With reference to the supporting text to Policy CP6 (Managing Travel Demand) of the Wokingham Borough Core Strategy 2010 (WBCS), this is very significantly below what would be considered a good public transport service.
23. There are a variety of buildings nearby, including dwellings and commercial buildings. However, the appeal site is in the countryside, outside a defined settlement boundary, and the presence of such buildings would not affect the occupiers of the appeal development in meeting most of their day-to-day needs.

⁶ LPA ref. F/2004/1401

⁷ Paragraph 103

24. The appeal development would be occupied by the owner/operator of the nearby Spitbitz business⁸ and this significantly reduces their need to travel to work. The size of the appeal site also means that the scale of development is limited and would not significantly conflict with Policy CP9 (scale and location of development proposals) of the WBCS.
25. However, it is not disputed that the site's location means that it is less sustainable and less accessible by public transport than land within a settlement. The appeal site is in a location where occupiers would need to drive by private vehicle in order to access most day-to-day facilities and services, for the reasons given above. Consequently, it is not in a sustainable location and conflicts with policies CP1 (sustainable development) and CP6 of the WBCS, and with the Framework, in this regard.

Need for the appeal development linked to an existing rural business

26. The parties are in dispute regarding whether the appeal development would be an isolated dwelling in the countryside and consequently whether paragraph 79 of the Framework applies. However, there is no dispute that it would be outside development limits and, in the countryside, and that Policy CP11 (proposals outside development limits) of the WBCS applies. Policy CP11 states that development is not normally permitted outside development limits unless certain criteria are met.
27. From the evidence, the appeal development would allow for a single caravan / mobile home, which would be occupied by the owner of the nearby Spitbitz business. However, no substantive evidence has been provided to demonstrate how the appeal development would contribute to this rural enterprise. Being located next to the existing business does not demonstrate that it contributes to it.
28. For example, it is not clear what benefits the Spitbitz business, rather than the owner / operator, would derive from the appeal development. No need for the owner / operator to live next to the business to support its operation has been demonstrated and no adverse effects to the business of the owner / operator living away from it have been provided.
29. Consequently, I am not satisfied that the appeal development would contribute to the Spitbitz business and it would therefore conflict with Policy CP11 of the WBCS.

Character and appearance

30. Notwithstanding its location on formerly agricultural land in the countryside, the proposed caravan site with a single 3-bedroom unit and three parking spaces would have only a limited visual impact. It would be located some distance from New Mill Road and not readily visible from it other than the shared access road. Furthermore, it would be located close to the buildings / uses of the Spitbitz business and other nearby residential and commercial buildings and associated structures, which contribute to the character and appearance of this area.
31. In my view, its scale and position mean that it would not have a significantly urbanising effect upon the countryside and would not cause unacceptable harm

⁸ Paragraph 4.4 of the PDAS

to the character and appearance of this area. It would not therefore conflict with Policies CP1 and CP3 (general principles for development) contained in the WBCS, and with the Framework, in this regard.

Living conditions of nearby future occupiers, with particular regard to overlooking and loss of privacy

32. From the evidence, the appeal development would be similar to the existing development that is subject to the aforementioned Enforcement Notice in terms of scale, massing, position and orientation.
33. However, the appeal development is for a caravan site rather than for the siting of an individual mobile home, and consequently the submitted drawings have only limited weight in terms of the design of the unit and layout of the site. Nevertheless, the application form refers to a single, 3-bedroom residential unit with parking spaces for three vehicles. Given this description and the information shown on the submitted drawings, together with the size and shape of the appeal site, the scope for a significantly different layout to that shown on the block plan / location plan is limited.
34. There is a partly constructed replacement bungalow⁹ to the south west of the appeal site. However, from the limited information before me regarding this dwelling, including the location of habitable rooms, the extent of its rear amenity space, and any rear boundary treatments, it is not evident that the appeal development would cause unacceptable harm to the living conditions of future occupiers of the replacement dwelling in terms of overlooking. Furthermore, it is also not evident that the appeal development would conflict with the separation distances listed at R15 of Wokingham's Borough Design Guide (2012) (BDG), which are intended to protect privacy and prevent harmful overlooking.
35. For these reasons the appeal development would not cause unacceptable harm to the living conditions of nearby future occupiers with particular regard to overlooking and would not, therefore, conflict with Policy CP3 of the WBCS, the BDG and the Framework, in this regard.

Living conditions of future occupiers, with particular regard to private amenity space

36. It is not disputed that the appeal development does not contain any specific amenity space for future occupiers. I note the appellant's comments in their statement that the appeal site is large enough to provide such space given the proposed house-type and that a landscaping scheme condition could have controlled this. The appeal development would include parking provision for three vehicles within the appeal site, in addition to safe access to New Mill Road, some of which is shared with other nearby uses.
37. Government guidance is clear that the appeal process should not be used to evolve a scheme, and that *if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application*¹⁰. Furthermore, in this case, and with regard to the Wheatcroft judgement¹¹, I am not satisfied that some of

⁹ LPA ref. F/2004/1401

¹⁰ Procedural Guide Planning appeals – England, August 2019 – Paragraph M1.1

¹¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

those who commented on the planning application, particularly the Council's Highways service, would not be disadvantaged by this approach.

38. Even if I were to accept that this matter could be addressed by way of a condition, I am not satisfied that the size and shape of the appeal site and the size and position of the proposed 3-bedroom caravan within it, could provide sufficient private and usable amenity space to meet the needs of future occupiers, particularly given the car parking and access requirements.
39. Consequently, the appeal development would adversely affect the living conditions of future occupiers with particular regard to private amenity space and would conflict with guidance contained in the BDG and with the Framework, in this regard.

Designated natural habitat sites

40. The Thames Basin Heaths Special Protection Area (TBHSPA) spans a number of local authorities including Wokingham. The appeal site is some 0.5km from part of the TBHSPA and the Bramshill Site of Special Scientific Interest (SSSI), which occupy the same ground.
41. The Council has not directly considered the effect of the proposed development on the SSSI but has indicated that the appeal development could have a likely significant effect (either alone or in combination) on the TBHSPA. In accordance with Policy CP8 (TBHSPA) of the WBCS, proposals such as the appeal development would need to demonstrate that adequate measures to mitigate such harm can be delivered. To this end, contributions to Strategic Access Management and Monitoring (SAMM) measures, together with the provision of Suitable Alternative Natural Greenspace (SANG) are referenced. The Council states that this is normally secured through the signing of a legal agreement to provide a contribution to its mitigation strategy.
42. The appellant has offered to provide a signed Unilateral Undertaking during the appeal process. However, such a document is not in the evidence before me. Consequently, the appeal development would fail to secure mitigation for its likely adverse effect upon the integrity of the TBHSPA. It would therefore conflict with Policy CP8 of the WBCS.

Conclusion

43. With regard to Appeal A I have concluded that the proposal falls outside Schedule 2, Part 3, Class P of the Order and consequently prior approval cannot be granted.
44. For Appeal B, the appeal development would result in an acceptable impact upon the character and appearance of the area and would not result in unacceptable harm to the living conditions of future nearby occupiers with regard to overlooking. However, the significant harm caused by its unsustainable location in the countryside, outside development limits and where no evidence has been provided that it would contribute to an existing rural business, together with the harm that would be caused to the living conditions of future occupiers with particular regard to private amenity space, would outweigh this.
45. If I was minded to allow Appeal B, I would need to seek further information and potentially undertake an appropriate assessment of the appeal

development in relation to the TBHSPA and assess the likely impact of the proposed development on the notified special interest features of the SSSI. However, as I am dismissing the appeal for other reasons, I do not need to consider these matters further.

46. Therefore, for the reasons given above, and taking into account all matters raised, I conclude that Appeal A and Appeal B are dismissed.

Andrew Parkin

INSPECTOR