



Appeal Decisions

Site visit made on 21 January 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal A Ref: APP/Y0435/C/19/3228214

Appeal B Ref: APP/Y0435/C/19/3228215 &

Appeal C Ref: APP/Y0435/C/19/3228216

Ringcroft Farm, Cranfield Road, North Crawley, Newport Pagnell MK16 9HP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Keith Lovell, Appeal B is made by Mr Stuart Lovell and Appeal C is made by Mrs Barbara-Anne Hamilton Lovell against an enforcement notice issued by Milton Keynes Council.
 - The enforcement notice was issued on 4 April 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the construction of tennis courts and accompanying wire fencing that forms their means of enclosure and installation of associated flood lights and lighting columns.'
 - The requirements of the notice are:
'Remove the outdoor tennis courts from the Land, including the wire fencing that forms their means of enclosure along with the associated lights and lighting columns, fixtures, fittings and waste materials.'
 - The period for compliance with the requirements is four months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeals B and C are proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended
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Decisions for Appeals A, B and C

1. It is directed that the enforcement notice be corrected by:

- the deletion, in paragraph 3, of the words 'and accompanying wire fencing that forms their means of enclosure and installation of associated flood lights and lighting columns' and the substitution thereto of the words 'and bases, means of enclosure around each tennis court base and luminaires attached to the means of enclosure around each tennis court base.'

and varied by:

- the deletion, in paragraph 5, of the words 'outdoor tennis courts from the Land, including the wire fencing that forms their means of enclosure along with the associated lights and lighting columns' and the substitution thereto of the words 'tennis courts and bases, means of enclosure around each tennis court base and luminaires attached to the means of enclosure around each tennis court base' between the words 'Remove the' and ',fixtures'.

Subject to these corrections and variations the appeals are dismissed, and the enforcement notice is upheld.

In relation to Appeal A only 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. An enforcement notice was issued on 12 October 2017 (2017 Notice) alleging '*Without planning permission the material change of use of the land from a mixed use for agriculture and a livery to a mixed use for agriculture, a tennis club and gym.*' The requirements of the 2017 Notice included ceasing the tennis club and gym use, removal of the tennis courts/wire fencing/ associated lights and lighting columns, fixtures, fittings and waste materials, removal of indoor tennis court. An appeal was lodged and the 2017 Notice was quashed on the basis that the mixed use allegation did not include two residential units which the Inspector considered were clearly primary uses within the same planning unit as the other activities and must therefore be considered as part of the composite mix of uses.
3. The current Notice has a plan attached with the land shown edged red. The areas within the red line include the residential units, buildings and land as well as the three bases on which the tennis courts are laid out. On what was a manège, also within the red line, there are vertical timber posts some of which have two light fittings on. There are also external lights attached to buildings. The Council have confirmed that the lights on what was the manège and the lights attached to the buildings are outwith the current Notice allegation. There are also eight luminaires per tennis court base attached to the fencing/means of enclosure around the tennis court bases.
4. While the current Notice alleges operational development and not a use or a mixed use the appellant has referred to the site as having a Class D2 use under Town and Country Planning (Use Classes) Order 1987 (UCO). However, I do not accept that description as the planning history suggests the site has a mixed use. I will therefore refer to the actual use that the operational development is put to i.e. tennis courts are in use as a tennis club. Whether or not there has been a material change of use within the planning unit is not before me in the consideration of this appeal. However, I note that where a mixed use is alleged it should refer to all the actual uses or the component elements of the mixed use. As such, it is inappropriate to refer to use classes in such a situation.

The Notice

5. The tennis courts comprise three bases two of which are laid out with full size tennis courts with run off areas and the third is configured with four permanent mini red/touch tennis courts. Each base is approximately 32.5m by 16.25m. The appellant refers to the lighting on the courts as comprising eight luminaires mounted on the open mesh fence per court/base, which makes a total of 3 x 8 luminaires.
6. Following the site visit I sought clarification from the Council about the external light fittings and the aerial photograph evidence submitted. In its response, dated 6 March 2020, the Council state that the lighting referred to in its

statement is referring to the lighting fixed to columns as part of the tennis court enclosures. The Council further confirmed that this is the only lighting that is the subject of the Notice and the only lighting on the site it is presently pursuing action on.

7. In my view, the allegation clearly associates the lighting with the tennis courts and means of enclosure. However, due to external lights being installed within other areas of the appeal site, not connected with the tennis courts themselves, the allegation could, and has been interpreted by the appellants, as attacking other lights, most notably those on the area that was once occupied by a manège.
8. I will therefore correct the Notice to refer to the construction of tennis courts and bases, means of enclosure around each tennis court base and luminaires attached to the means of enclosure around each tennis court base. I will also vary the requirements to refer to the removal of the luminaires. In my view, this would not cause injustice or prejudice to either party.

Appeals A, B and C on ground (d)

9. In appealing on ground (d), the burden of proof is firmly on the appellant to demonstrate on the balance of probabilities that the development was lawful through the passage of time at the date when the enforcement notice was issued.
10. The appeal on ground (d) relates to the lighting columns part of the allegation only. The appellants state that the only lighting columns at the appeal site relate to those that were erected in at least 1993 following the permission for the erection of replacement riding school, stabling, tack rooms, stores and construction of car parking area (reference MK/706/90). The appellant states that the permission granted 34 stables and that 15 stables were constructed.
11. Following clarification from the Council it is clear that the allegation is intended to attack only those luminaires attached to the means of enclosure around the tennis court bases. In the light of the corrections and variations to the Notice set out above, the lighting on what was once the manège area is not something which was intended or is now attacked by the Notice.
12. As the lights on which the appellants are pursuing the ground (d) appeals are not the lights the subject of the now corrected allegation, whether or not the lights the appellants refer to are immune from enforcement action is not a matter that is before me as they are not part of the allegation. Consequently, the ground (d) appeal fails.

Appeal A on ground (a)

Main issue

13. The main issues in this case is the effect of the development on the character and appearance of the area, which is in open countryside, including the effect of floodlighting.

Reasons

14. The appeal site includes a large area of open land laid to grass, various buildings, an area that was once a manège and residential units. Vehicular access runs from the highway adjacent to the northern boundary of the appeal

site (Cranfield Road) and runs up the site to the area that was once a manège. The existing buildings are to the west of the access track

15. The bases on which the tennis courts are located are sited roughly central in terms of the width of the appeal site, to the north west of the buildings and access track, and to the south west of the highway. They are on higher ground than the road. There is boundary vegetation on the flank and frontage boundaries and the appellant states that the existing double row of trees to the western boundary will form part of the mitigation and would grow at a rate of approximately 900mm/year based on the average expected growth rates for the poplar and willow species growing on the local soil type.
16. The tennis court bases are laid out on a stagger, getting closer to the road as the bases move away from the buildings, with the narrow end facing the road boundary. Each of the bases are surrounded by gravel paths approximately 1.2m wide. Each base is surrounded by open mesh galvanised fencing to a height of about 2.7m. LED floodlighting is mounted on the fence supports at a height of under 3m.

Character and Appearance

17. The appeal site is about 1.8km to the east of the village of North Crawley, adjacent to the county boundary between Buckinghamshire and Bedfordshire, with Cranfield village about 1.3km to the east and Cranfield University about 1km to the south. Cranfield Airfield is about to the 850m south east.
18. The appellants have produced a Landscape and Visual Impact Assessment (LVIA) and an External Lighting Impact Assessment (ELIA). The LVIA recognises that the approach is generally provided for schemes that require an EIA but that there is recognition that the approach can be used on smaller scale schemes. It also notes that the development has been carried out and thus it has to consider the effects that have occurred into the baseline situation rather than an assessment anticipating the effects of the development.
19. The LVIA identifies National Level, District Level and Local Context assessments. Within the local context it is noted that the site lies north but close to the soft plateau ridge that follows the main runway of Cranfield Airfield. The land then slopes to the north west towards and across the site. The area is primarily mixed farming with a mix of medium to large arable fields and smaller fields laid to pasture for cattle together with horse paddocks. The fields are typically irregular in shape predominantly with hedges within the Buckinghamshire administrative area. Within the Bedfordshire administrative area, the fields are more geometric and/or relatively larger. Roadside hedges are sometimes clipped and at other times are taller and wider along the local roads. Cranfield Road has several bends and the appeal site is visible intermittently along the road.
20. The LVIA assessed potential viewpoints and concluded there is relatively limited exposure to public views. The appeal site is most clearly viewed from Cranfield Road. However, I noted that there were also views of the development through gaps in hedgerows/vegetation from Shire Lane and the footpath off it. Where views open up through the absence of mature vegetation, gateways or alignment of the road, the development is clearly visible being on higher ground than the road and due to the use of materials and regimented layout of

the bases and means of enclosure, and appears as a prominent visual intrusion in the landscape.

21. The LVIA concludes that subject to the establishment of existing and proposed planting around the site that there would be a minor adverse effect by year 10 at Local Scale, and negligible at National Scale and by year 10 at District Scale. However, this approach seeks to interrupt views of the development as a mitigation. In effect the landscaping is proposed to reduce views from the identified receptors of the tennis courts. The landscaping is used to hide the development and not as an enhancement or setting to it. The development would not, as the landscaping matures, be assimilated into the countryside location it would simply have views restricted for as long as the vegetation remained at a suitable height.
22. However, while the development could be hidden behind tall vegetation that does not assimilate it within the landscape it is in. It merely limits views of it. This in my view does not result in a development appropriate to its context. This is contrary to Policy D1 of the Council's development plan entitled Plan: MK 2016-2031 (adopted March 2019) (DP).
23. The appellant considers that tennis courts and therefore tennis as a sport is appropriate countryside recreation and thus would comply with DP Policy DS5. However, while tennis courts may be developed within a countryside setting it is not necessary for them to be located within the countryside. As such I am not convinced that they are countryside recreation. Notwithstanding this Policy DS5 seeks to safeguard open countryside from inappropriate development and it states that development will only be granted for development which is essential for amongst other things countryside recreation which is wholly appropriate to a rural area and cannot be located within a settlement or where other policies indicate the development would be appropriate. I have found harm to the character and appearance of the area and thus I consider that the development is not appropriate to this rural area and is contrary to Policy DS5 whether or not tennis is considered countryside recreation.
24. To my mind the tennis court development due to its form and location on rising ground results in a significant visual intrusion in the open countryside. Its utilitarian fencing, creating a cube form on top of the rising land, is in stark contrast to the open grazing land around. As such, it represents poor quality design that fails to respect its context and the existing and proposed landscaping would not address this failing. This is contrary to DP Policies D1 and DS5 which requires development as a whole to respond appropriately to the site and surrounding context. It is also contrary to the Framework which seeks development that contributes to and enhances the natural and local environment by recognising the intrinsic character and beauty of the countryside

External illumination of tennis courts

25. During my site visit I saw the site both in daylight and when it was dark. I note that ELIA concludes that the lighting meets the requirements for an E2 Environmental Zone (E2 is defined as rural surroundings with low district brightness lighting environment, such as village or relatively dark outer suburban location). The ELIA acknowledges that there are no specific development plan policies relating to external lighting. The illuminance levels

at the outer boundary of the site are below 1 lux and the appellants consider that the light spill from the floodlighting onto neighbouring land is negligible.

26. The lights serving the tennis courts do not affect directly any windows of nearby properties, impacts on ecology that can be identified or other matters within the remit of the ELIA. However, while the data of the ELIA is not in dispute this of itself does not demonstrate the acceptability of the development and lighting which is required to allow tennis players to see the ball on the courts in the dark. The appellant considers that lighting timing turn off at 21:15 on weekdays (Monday to Friday inclusive) and 17:30 on weekends (Saturday and Sunday) would mitigate the light impact.
27. In my view, the lights serving the tennis courts result in an intrusive light source to those travelling through the area or living nearby with windows facing towards the appeal site, particularly when viewed from Shire Lane and Cranfield Road. In the absence of the appeal development the appeal site would be predominantly dark, with some low-key external lights around the buildings and on the posts within what was the manège area. In an area which would be predominantly dark, were it not for the tennis court development, the lights looked particularly out of character to this part of the countryside. The views from Cranfield Road were particularly uncharacteristic, as the views were intermittent along the road and when a clear view of the site presented itself the level of lighting of the tennis courts was in stark contrast to the dark character of the surrounding countryside. The lights were bright, to allow tennis players to see the ball during play, and as such were particularly intrusive.
28. The appellant refers to lighting at Cranfield University, Cranfield Airport and Cranfield United Football Club. I do not have substantiated evidence of the lighting at these sites, which may be historic. At my site visit, these sites were not seen in the same views from Cranfield Road and Shire Lane as the appeal site. While I noted higher levels of lighting at my site visit around the university and airport these are sufficiently distant from the appeal site not to form its immediate setting. The immediate area of the appeal site is defined in the LVIA as rural surroundings with low district brightness.
29. The non-tennis court external lights on the appeal site, attached to buildings and on what was once the manège, are not a concentrated mass of lights. I consider that the lights serving the tennis courts, due to the number of lights and concentration of the lights on rising land in an area which is predominantly dark with little lighting, detracts from the character of the countryside and is harmful. While that harm could be reduced by the imposition of conditions on the hours of operation of the lights it would still remain an unacceptable harm and inevitably detract from the character of the countryside.

Other matters

30. The appellant has referred to the economic benefit of the tennis court/club development. The tennis club appears to have operated successfully and it is clear the appellant wishes to continue with the business. The tennis club is stated to have 200 members. The Framework supports a prosperous rural economy and in particular seeks to enable sustainable leisure developments which respect the character of the countryside. I have identified harm to the character and appearance of the countryside and as such, while there is some economic benefit of the development it fails to respect the character of the

countryside and is contrary to the Framework. On the evidence available I consider that the economic benefit of the tennis courts does not outweigh the harm I have identified.

31. I appreciate that a tennis club enables people to participate in outdoor sport and recreation. This is encouraged and the appellant states that it accords with the Milton Keynes Sport and Activities Strategy as well as Sport England Guidance. However, while the activity is supported in general this does not, to my mind, outweigh the harm to the character and appearance of the area I have identified.

Conclusions

32. For the reasons given above I conclude that Appeal A on ground (a) should fail.

Appeals A, B and C on ground (f)

33. This ground of appeal is that the steps required by the Notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach. The Council have indicated that the purpose of the Notice is to remedy any breach of planning control in their comments on the ground (f) appeal.
34. In appealing on ground (f) the appellant must give specific lesser steps which, in their view, would overcome the objections to the appeal development. The appellant has put forward under this ground of appeal that the development does not adversely affect the landscape and visual character of the surrounding area and that appropriate landscaping and lighting conditions can mitigate the impacts of the development. These are matters going to the planning merits of the development and whether any harm could be mitigated by the imposition of planning conditions. They are not lesser steps as such. I have therefore dealt with these points within the ground (a) appeal.
35. The purpose of the notice is to remedy the breach of planning control. For the reasons set out above I have found that the development cannot be made acceptable by the imposition of planning conditions and is unacceptable for the reasons stated. In the light of my findings under the ground (a) I consider that the requirements of the Notice are not excessive and the appeal on ground (f) therefore fails.

Appeals A, B and C on ground (g)

36. This ground of appeal is that the time given to comply with the notice is too short. The Council has given four months to comply with the Notice. The appellant has requested a compliance period of 12 months.
37. The appellant considers that the time period is too short given the substantial remedial works required. No details of what timescales for any part of the compliance with the requirements are provided. The requirements as varied are to remove the three bases for tennis courts, means of enclosure around each base and luminaires attached to the means of enclosure around each base.
38. The appellant refers to pre-booked events and contractual obligations resulting from those bookings. No specific details of these matters are provided. Furthermore, this of itself does not demonstrate that the requirements could

not be carried out within the compliance period but that there may be bookings that cannot be honoured. On the evidence available I am not satisfied that the compliance period is too short.

39. There is no substantiated evidence before me to demonstrate why the appellant would require more than four months to remove the bases for the tennis courts/fencing/lights. I have not been advised of any site-specific issues or been provided with information on how the development was constructed that would support an extended period beyond four months would be necessary to comply with the requirements. On the evidence available, I find that the compliance period is adequate to comply with the requirements as varied. The appeal on ground (g) fails.

Hilda Higenbottam

Inspector