



Appeal Decisions

Site visit made on 16 June 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Appeal A: APP/F2415/C/19/3245088

Land at Kilworth Springs Golf Club, South Kilworth Road, North Kilworth, Leicestershire LE17 6HR

- 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 Kilworth Springs Golf Club against an enforcement notice issued by Harborough District Council.
 - The enforcement notice was issued on 20 November 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission the siting and residential use of a mobile home on the Land, in the approximate location shaded black on The Plan.'
 - The requirements of the notice are:
 - a) Cease the use of the Land for the siting of a mobile home.
 - b) Remove the mobile home and all surrounding materials and equipment associated with the unauthorised use from the Land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/F2415/C/19/3244366

Land at Kilworth Springs Golf Club, South Kilworth Road, North Kilworth, Leicestershire LE17 6HR

- 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 Kilworth Springs Golf Club against an enforcement notice issued by Harborough District Council.
 - The enforcement notice was issued on 20 November 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission the change of use of the Land, creating a storage compound for cars and vans on the Land in the approximate location shaded black on The Plan.'
 - The requirements of the notice are:
 - a) Cease the use of the Land for the storage of cars and vans.
 - b) Remove from the Land all fencing, materials and equipment associated with the unauthorised use.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

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

- The deletion of the words ‘, shown outlined in red on the attached plan (The Plan)’ in paragraph 2;
- The deletion of words ‘shaded black on The Plan’ in paragraph 3 and the substitution thereto of the words ‘cross hatched and outlined in pink on Plan A and identified by arrow and labelled ‘MOBILE HOME’ on Plan B’; and
- The deletion of the plan attached to the Notice and the substitution with Plan A and Plan B in this decision.

and varied by

- The deletion of the words ‘siting and residential use of a mobile home’ and its substitution with the words ‘material change of use of land for the siting of a mobile home for residential use’ in paragraph 3; and
- the deletion of the word ‘three’ from paragraphs 6 a) and b) and its substitution with the word ‘six’.

Subject to these corrections and variations 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 as amended.

Appeal B

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

- The deletion of the words ‘, shown outlined in red on the attached plan (The Plan)’ in paragraph 2;
- The deletion of the plan attached to the Notice and the substitution with Plan C in this decision; and
- The deletion of the words ‘shaded black on The Plan’ and substitution thereto of the words ‘outlined in red and labelled STORAGE COMPOUND on Plan C’

Subject to these 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 as amended.

The Notices

Appeal A

3. In relation to Appeal A the appellant has demonstrated that the ‘approximate location shaded black on The Plan’ indicates the location of the mobile home to be on the driving range, about 17m roughly east of its actual position. The Council have provided a revised plan with the location of the mobile home shown cross hatched pink. The appellant has provided a larger scale plan showing the location of the mobile home. I will correct the Notice allegation to refer to both plans and also substitute both plans for the plan attached to the Notice.
4. In the interests of clarity, I will vary the allegation to refer to the material change of use for the siting of a mobile home for residential use.

5. I am satisfied that the appellant was clear that the Notice was seeking to attack the mobile home and that the corrections and variations would not cause injustice or prejudice to either party.

Appeal B

6. The appellant has submitted the same plan in relation to Appeal B, but labelled this time with the storage compound, which clearly shows the extent of the storage compound attacked by the Notice. In the interests of clarity, I will correct the Notice and substitute this plan for the one originally attached to the Notice. I am satisfied that the appellant was clear that the Notice was seeking to attack the storage compound and that the correction would not cause injustice or prejudice to either party.

Appeals under ground (b)

7. This ground of appeal is that what is alleged in the Notice has not occurred as a matter of fact.
8. The appellant does not dispute that there is a mobile home that is in residential use at the Kilworth Springs Golf Club site. However, it is accepted that the mobile home location was not accurate on the plan attached to the Notice and I have dealt with that above. As such, there is no dispute that a mobile home exists, albeit in a slightly different location, and that it is in residential use.
9. In light of the corrections set out above, I am satisfied that the breach, as corrected, has occurred as a matter of fact. The appeal on ground (b) therefore fails.

Appeals A and B under ground (a)

Main Issues

10. The main issues in both Appeal A and B is the effect of the development on the character and appearance of the rural area, having regard to national and local policy in respect of development in the countryside and the needs of the appellant's rural enterprise.

Reasons

11. Kilworth Springs Golf Club lies to the south of North Kilworth and the north east of South Kilworth, in an area of open countryside. The mobile home the subject of Appeal A is located to the left of the access drive, off a track to the rear of a maintenance building, located at a higher level but adjacent to the driving range. The clubhouse and members/visitor's car parking are straight on and to the right. The storage compound the subject of Appeal B is situated beyond the mobile home and is also adjacent to the driving range, at a higher level.

Planning Policy

12. The policies relevant to Appeal A are Policies SS1, GD3 and GD4 of the Harborough Local Plan 2011 to 2031 (LP) and Policies NK2, NK4, NK5 and NK15 of the North Kilworth Neighbourhood Plan 2015-2031 (NP). The policies relevant to Appeal B are LP Policies SS1 and GD3 and NP Policies NK5 and NK15.

13. LP Policy SS1 seeks to manage planned growth and direct development to appropriate locations in accordance with a sustainable spatial hierarchy. It also strictly controls development in the countryside. Policy GD3 only supports development for specified purposes within the countryside. Policy GD4 supports housing to meet the needs of a rural worker provided it meets a number of criteria which includes an established existing functional need for a full-time worker which is directly related to the commercial enterprise or operation concerned.
14. The Policy NK2 sets out a housing provision within the North Kilworth Parish as a target of a minimum of 24 dwellings within the plan period which will be met within the housing site identified and through windfall development that meets Policy NK4. Policy NK4 supports small scale development subject to meeting various criterion, one of which is that it is within the existing built up area of the Village of North Kilworth. Policy NK5 sets out a strong presumption against new housing and other forms of development outside the defined Limits of Development and states they will only be allowed in special circumstances in accordance with national and district wide planning policies. Policy NK15 supports the retention, provision and enhancement of a range of community facilities and sets this as a priority.

Appeal A

15. The mobile home for residential use represents development in the open countryside, outside the defined Limits of Development for North Kilworth where strict policies of restraint apply. The National Planning Policy Framework (the Framework) states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. Such special circumstances include the essential need for a rural worker to live permanently at or near their place of work. The Framework therefore requires a convincing case for essential need to be made. LP Policy GD4 also supports rural workers dwellings where there is an established and existing functional need.
16. The appellant submitted planning application 17/00955/FUL for the siting and residential use of a caravan for staff at the Kilworth Spring Golf Club. At the time of the appeal this application had not been determined. The mobile home is occupied by the golf course Head Chef. Meal preparation begins at 6.15am daily in the summer and 7.15am in the winter. The golf course is open to play from 7am in the summer and 8am in the winter. Food is supplied to golfers/visitors and the Attic Restaurant is open for lunches and evening meals Wednesday to Saturday and for Sunday lunch. The Head Chef is expected to be on the premises and to respond to matters that cannot be dealt with by other staff.
17. The golf course is stated to employ 22 full time and up to 6 part time staff. The appellant states that both the clubhouse and the ground maintenance store have been targeted on several occasions and all security features are now linked in. The first responder is the occupier of the mobile home. The appellant considers having a physical presence on site is a deterrent in its own right and that there are benefits of having the first responder on site as the owner lives some 5km away. The golf course is remote from settlements and there is a lack of rental housing. The appellant states that the largest

employer in the area, Kilworth House, has purchased the available lower priced houses to extend the operation of the hotel and theatre.

18. The Head Chef is a keyholder and on the management team, supervising deliveries and cleaning services and transporting vulnerable or young staff at unsocial hours.
19. I appreciate that security is an important issue for many businesses whether in the rural or urban situation. Supporting such uses does not justify a residential presence; rather it supports the economic use. In a rural location a special case has to be established for associated residential development. The mobile home is tucked away behind a maintenance building, with limited views of the wider site. While the occupier could respond to any alarm triggered in a break in more promptly than the appellant or someone off site, this is insufficient to amount to an essential need. In this case the evidence before me does not demonstrate such a need to be essential on security grounds.
20. In addition, while I can understand that the Head Chef has work and responsibilities on site from early in the morning and throughout the day and into the evening, this of itself is not sufficient to demonstrate an essential need to live on site. The way in which the business chooses to arrange shifts and cover throughout the operational day does not demonstrate an essential need for someone to live on site. Moreover, it does not directly retain, provide or enhance the community services or facilities.
21. In conclusion, on the evidence before me, there is not an essential need for someone to live at the appeal site to support the appellant's rural business enterprise such that it would outweigh the harm to the countryside. Thus, the appeal development fails to accord with the Framework and the requirements of LP Policies SS1, GD3 and GD4 and NP NK2, NK4, NK5 and NK15. The appeal on ground (a) for Appeal A fails.

Appeal B

22. At the time of my site visit I saw no vans or cars or other vehicles within the compound. The appellant states that the land was occupied for outside storage in connection with the maintenance of the golf course for over 20 years. The storage that has more recently taken place has included construction and maintenance vehicles, equipment and ground care supplies together with items awaiting servicing and repair associated with the machinery storage and maintenance building located to the south of the storage compound.
23. The evidence appears to indicate the compound was used for separate commercial storage of vans and cars with reference to construction vehicles and maintenance vehicles. The previous use of the land for storage ancillary to the golf course use does not support the establishment of a separate storage compound for vans and cars. The alleged use is a commercial use located outside settlements in open countryside. While the golf course is an established recreational use providing employment opportunities this does not justify establishment of an additional commercial use for storage of vans and cars. There appears to be no justification for the location of such a use within the open countryside.
24. I therefore find that the storage use would be an unjustified encroachment into open countryside. This is contrary to LP Policies SS1 and GD3 and NP Policies

NK5 and NK15. It is also contrary to the Framework which recognises the importance of the intrinsic character and beauty of the countryside and requires development to contribute to and enhance the natural and local environment.

25. The appeal on ground (a) for Appeal B fails.

Appeals A and B under ground (g)

26. This ground of appeal is that the time given to comply with the notice is too short. The Council have given three months for compliance in both Appeal A and Appeal B. The appellant has sought a compliance period of six months for both appeals.

Appeal A

27. The appellant considers the six months for compliance sought is reasonable given the shortage of alternative, suitable and available property in the immediate area. The member of staff occupying the mobile home is valued and requires security in accommodation while alternative housing is sought.

28. The Notice results in the engagement of Article 8 rights and Article 1 rights (1st Protocol) in that there will be interference with the occupiers' home and family life and with use of private property. Those rights are, however, qualified and it is for the decision maker to ensure interference is proportionate.

29. I accept that a period longer than 3 months would be necessary and reasonable to allow the Head Chef/occupier of the mobile home to look for alternative accommodation and for the appellant to seek to address security issues. In my view, the appropriate balance would be struck between the rights of the individuals and the protection of matters of acknowledged public interest if the compliance period is increased to six months in Appeal A.

30. The appeal in Appeal A on ground (g) succeeds to this extent.

Appeal B

31. The appellant considers that a period of 6 months should be given to comply with the requirements of Appeal B due to the need to locate alternative premises, rearrange delivery contracts and secure employee services.

32. The requirements of the Notice are to cease the use, remove cars and vans and fencing, materials and equipment associated with the unauthorised use. In my view, three months is a reasonable period in which to carry out those requirements. There is insufficient evidence to demonstrate that the business would not be able to relocate within the timescales for compliance or that there is a demonstrable likelihood of harm to the business taking into account the lack of evidence of cars and vans on site at the time of my site visit.

33. The appeal in Appeal B on ground (g) fails.

Conclusions

Appeal A

34. For the reasons given above I conclude that Appeal A should not succeed although I consider a reasonable period for compliance would be six months and will vary the enforcement notice accordingly prior to upholding it. I shall

uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Appeal B

35. For the reasons given above I conclude that Appeal B should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Hilda Higenbottam

Inspector



Plan A

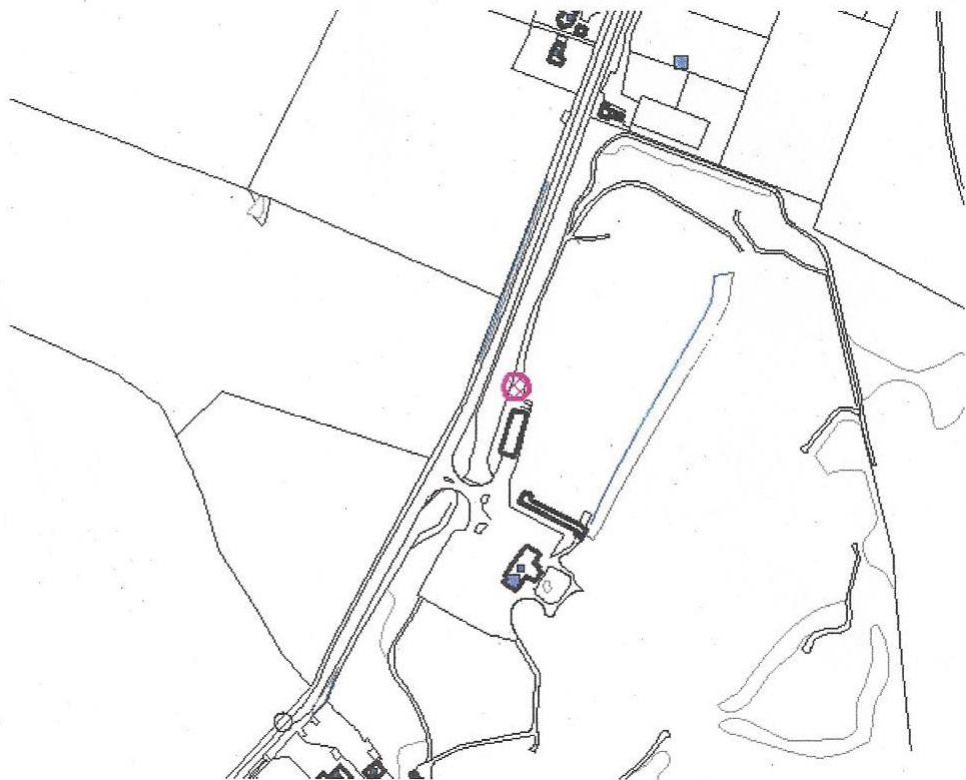
This is the plan referred to in my decision dated: 10 July 2020

by Mrs H M Higenbottam BA(Hons) MRTPI

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Appeal A Reference: APP/F2415/C/19/3245088

Scale:nts





Plan B

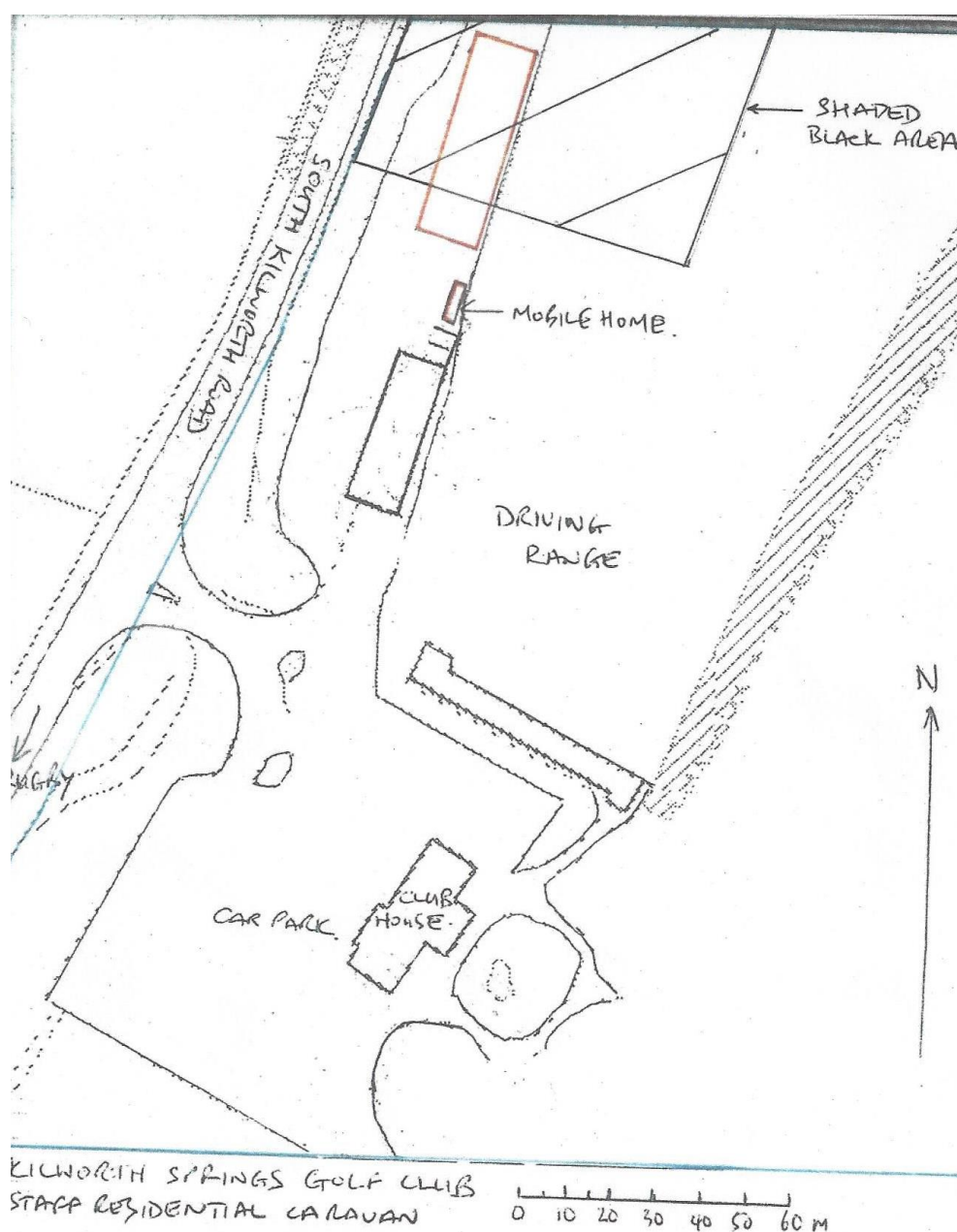
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Plan C

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Scale: nts

