



Appeal Decision

Site visit made on 3 December 2020

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

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/P0240/C/20/3258124

Land at Brook Stables, Fox Covert Farm, Fordfield Road, Millbrook, Bedford MK45 2HZ

- 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 Mrs Jean Halls against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice was issued on 3 August 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of land from agriculture to residential use and the siting of a residential log style mobile home.
- The requirements of the notice are: -
 1. To cease the residential use of the log style mobile home on the Land.
 2. To remove the log style mobile home from the land (as shown cross hatched on the Plan attached to this notice) and the associated support materials and service connections and restore the land to its former condition.
- The periods for compliance with the requirements are: -

In respect of requirement 1. six calendar months

In respect of requirement 2. nine calendar 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 (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

The Notice

1. 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.
2. The description of the alleged breach at paragraph 3 relates to the change of use of the land from agriculture to residential and the siting of a residential log style mobile home. It is not clear if the appeal site was used as part of an equestrian use prior to the material change of use rather than an agricultural use. Nevertheless, there is no need for the alleged breach to indicate the previous use of the site. I therefore intend to correct the enforcement notice to delete the wording '*from agriculture*' that is within the description of the alleged breach. I can carry out this correction without injustice to the Council or the appellant.

3. The Council were given the chance to comment on the implications of section 173(11) of the 1990 Act in relation to the material change in use of the land and the requirements of the notice and whether it wished to withdraw the enforcement notice or to suggest any corrections that it considered could be made to the wording of the requirements.
4. The Council stated that it did not wish to withdraw the notice as it considers that the requirements of the notice are clear in relation to the cessation of the residential use of the land. Nevertheless, it suggested that within requirement 1 the word 'on' could be replaced with 'and' and that this could be carried out without injustice to any party. However, to undertake this correction would make the requirements of the enforcement notice more onerous and cause injustice to the appellant. Therefore, I cannot carry out that correction.
5. Notwithstanding all of the above, the notice tells the recipient fairly what she has done wrong and what she must do to remedy it therefore I conclude that the enforcement notice is valid.

The ground (a) appeal and deemed planning application

Main Issues

6. The main parties have agreed that the development represents inappropriate development in the Green Belt as defined in section 13 of the National Planning Policy Framework (the Framework). I concur with that position. On this basis the main issues are: -
 - The effect on the openness and purposes of the Green Belt;
 - The effect on the character and appearance of the area;
 - Whether the site is a suitable location for the development having regard to the policies of the development plan and the Framework in respect to rural housing;
 - Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Background

7. The appeal site comprises part of the overall land owned by the appellant at Brook Stables. In 2013 planning permission was granted for a riding school and livery, erection of barn to house horses, erection of building to store tack and feed and erection of log style mobile home as temporary residential accommodation associated with the business. In 2014 planning permission was granted for the erection of open fronted hay barn, wooden office and storage shed and two containers for tack storage and horse feed, toilet, alterations to the design of the temporary cabin. Conditions were imposed on both of these permissions that restricted the retention of the mobile home/log cabin for a limited period of 3 years from the date of the permissions (the 2013/2014 permissions).
8. In 2017, due to her personal circumstances, the appellant leased the management and running of the riding school and livery to another party. The

evidence before me indicates that this is on the basis of a 15-year lease with an automatic renewal for another 15 years. Planning permission to retain the log cabin/mobile home (MH) on a permanent basis was refused in 2019 (the 2019 application).

9. The MH is clad in timber, is rectangular in shape and is sited within a fenced off area of land that appears to be in use as a garden with raised beds and a number of sheds/greenhouses. There are also a number of solar panels and a rotary washing line adjacent to the MH.

Openness and purposes of the Green Belt

10. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. The evidence before me indicates that the appeal site was generally open in character prior to the MH being sited on it. Even though, the MH is single storey with a shallow mono pitched roof it has a reasonably large footprint and therefore it has a considerable size. Consequently, the introduction of the MH, fencing and other domestic paraphernalia has resulted in an appreciable reduction, in spatial terms, in openness.
11. In visual terms the MH, fencing and domestic paraphernalia are seen in context with the adjacent riding school and livery buildings. In addition, the site is a significant distance from Fordfield Road and is largely screened by nearby wooded areas from the public realm. As such, the visual impact of the development is localised. Nevertheless, the development results in the urbanisation of the appeal site that is apparent from the access track and neighbouring land.
12. Taking account of these factors I consider that the material change of use of the land and the siting of the MH for residential purposes fails to preserve the openness of the Green Belt. Overall, I find that the reduction in openness is appreciable resulting in a similar level of harm. I consider that this reduction in openness also amounts to encroachment into the countryside. This is in conflict with one of the purposes of including land within the Green Belt set out at paragraph 134 of the Framework.

Character and appearance

13. The appeal site lies in an area of relatively open, rolling countryside. There are areas of woodland to the east and west of the appeal site and there are trees adjacent to a number of the buildings associated with Brook Stables and Fox Covert Farm.
14. As stated above the visual impact of the development is localised and the use of timber cladding assists in assimilating the visual impact of the MH itself. However, the development overall results in an inherent and harmful urbanisation of the appeal site that is apparent from the access track and neighbouring land.
15. Consequently, the development results in modest harm to the character and appearance of the area. This is in conflict with saved Policies DM3 and DM14 of the Core Strategy and Development Management Policies (DMP) which, amongst other things, state that development should contribute positively to creating a sense of place and that development will be assessed against the

impact it will have on the landscape. It would also conflict with paragraph 127 of the Framework which, amongst other things, states that planning decisions should ensure that developments are sympathetic to local character.

Rural housing

16. Saved DMP Policy CS1 sets out the development strategy for the Central Bedfordshire and saved DMP Policy DM4 relates to development within and beyond settlement envelopes. These policies seek, amongst other things to indicate which settlements development would be focused on. They indicate that development in large and small villages in rural areas will be limited in scale and that the Council would support schemes for residential development within settlement envelopes subject to certain criteria. There is no dispute that the appeal site is not within a settlement or a settlement envelope as defined within the DMP.
17. Paragraph 79 of the Framework sets out that planning decisions should avoid the development of isolated homes in the countryside other than in certain circumstances. Paragraph 79(a) provides for one such exception where there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.
18. The MH is adjacent to the buildings associated with Brook Stables, but it is not within a settlement and it's some distance from the nearest settlements. The evidence before me also indicates that the site is not served by any form of public transport and that the nearest settlements are not accessible by public footpath. As such, I consider that the development would result in an isolated home in the countryside.
19. I acknowledge that the Council's Planning Officer Delegated Report for the 2019 application states that the Council accepted with the 2013/2014 permissions that there was a need for the appellant to live on site in order to provide overnight care for the horses associated with Brook Stables. Nevertheless, the retention of the MH was limited to a period of 3 years.
20. Furthermore, the leaseholder who now runs the riding school and livery has stated that the appellant no longer has any dealings with the daily running of Brook Stables. Whilst, the appellant may be taking legal advice in relation to the lease of Brook Stables it appears that there is currently a long-term lease in place. I acknowledge that there is little evidence before me as to what security and welfare measures are presently in place at Brook Stables and that a vet has stated that on site supervision is essential to the welfare and security of the horses. However, even though she may be able to assist with the security of the whole site, report incidents of horses being ill and provide overnight care for her own horses the appellant is not currently in control of the riding school and livery business and neither is she employed by it. This is a material change to the circumstances that were considered as part of the 2013/2014 permissions.
21. For these reasons, whilst I appreciate that it would be more convenient and highly desirable for the appellant to have a permanent dwelling on the appeal site, an essential need for it, as stated within paragraph 79 of the Framework, has not been demonstrated. There is no evidence before me to indicate that

the development meets any of the other circumstances outlined in paragraph 79.

22. In conclusion, it has not been demonstrated that the site is a suitable location for the development, and it conflicts with DMP Policies CS1 and DM4 and paragraph 79 of the Framework in relation to rural housing.

Other considerations

23. If I were to dismiss the ground (a) appeal and uphold the enforcement notice the appellant would have to comply with the requirements of the notice. As such, the residential use of the MH would cease and the MH would be removed from the appeal site. The appellant would lose her home on this site and she would have to find alternative accommodation. Therefore, rights under the Human Rights Act 1998 (HR Act) are engaged.
24. The appellant has lived on the site for six years and she states that she owns no other property. She goes on to state that moving from the site would be emotionally and financially challenging considering her personal circumstances and health status. A number of medical documents and a letter from the appellant's therapist outlining her medical issues have been submitted as part of the evidence before me. I do not need to detail the issues highlighted in those documents.
25. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Whilst it's not clear whether the appellant's personal circumstances would be categorised as a protected characteristic referred to under the PSED I have nevertheless had regard to it. Such a duty does not necessarily override other considerations, but it is a factor to be weighed in the planning balance.
26. I recognise that dismissal of the appeal would interfere with the appellant's rights under Article 8 and Article 1 of the First Protocol of the HR Act. Article 1 concerns enjoyment of possessions and Article 8 concerns respect for private and family life. These are qualified rights, whereby interference may be justified if it is in the public interest; the concept of proportionality is crucial.
27. The appellant knew that the 2013/2014 permissions were subject to conditions that restricted the time the MH could be retained on the site. Moreover, even though she states she always intended to remain connected to the riding stables and livery business she signed a long-term lease with another party to take over that business. I sympathise with the appellant's personal circumstances that led to that decision but there is little evidence before me to indicate that the lease will be terminated in the near future.
28. In addition, I understand that she considers the MH to be her safe haven and that she has a number of health issues that require attendance at local hospitals. However, there is little evidence to indicate that the appellant would not be able to source and/or finance alternative accommodation within the local area. The security and welfare of the horses now appears to be the responsibility of the leaseholder of the business and he has stated that alternative arrangements are in place. Nevertheless, the appellant considers

that she helps towards the welfare and security of the horses, including her own, at the stables.

29. I am satisfied that the legitimate aim of conforming with planning policy and safeguarding the Green Belt from inappropriate development cannot be achieved by any means which are less interfering with the appellant's rights under Articles 1 and 8 of the HR Act. The interference with enjoyment of possessions, home and private life is proportionate and necessary in the circumstances and would not result in a violation of her rights.
30. Whether the time periods for compliance with the requirements of the notice are reasonable is dealt with under the ground (g) appeal. Overall, I consider that these other considerations attract appreciable weight in support of the development.

Planning balance

31. The development is inappropriate development in the Green Belt. At paragraph 143, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
32. The development is inappropriate development and I attach substantial weight to that harm. I have found that there would be an appreciable reduction in the openness of the Green Belt and that it conflicts with one of the purposes of including land within the Green Belt. I have also found that the development results in modest harm the character and appearance of the area and that it has not been demonstrated that the site is a suitable location for the development. I attach considerable weight to the harm arising from these additional matters.
33. Against the totality of this harm there are other considerations which I have set out above and carry appreciable weight in support of the development. The appellant's personal circumstances are material considerations that must inform my decision. I have given all of the appellant's submissions very careful consideration and had due regard to the PSED. In addition, in terms of the appellant's rights under the HR Act I have found that the interference with enjoyment of possessions, home and private life is proportionate and necessary in the circumstances and would not result in a violation of her rights.
34. For the reasons given above, the other considerations, individually or in combination, are not sufficient to clearly outweigh the totality of the harm to the Green Belt and the other harm identified above. Accordingly, the very special circumstances necessary to justify permitting the development do not exist.
35. Conditions restricting the planning permission and the residential use of the MH to the appellant would not overcome the harm identified above.
36. Paragraph 11 of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless the application of policies in the Framework that protect areas

or assets of particular importance provides a clear reason for refusing the development proposed. Such assets include land designated as Green Belt (Footnote 6). Footnote 7 of paragraph 11 states that for applications involving the provision of housing, out-of-date policies include situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

37. There is little evidence before me to indicate that saved DMP Policies CS1, DM3, DM4 and DM14 are out-of-date. Nevertheless, even if they are out-of-date having regard to my findings that the development would be inappropriate development in the Green Belt and in light of Footnote 6, for the reasons set out above, I consider that the application of the Framework's Green Belt policies provide a clear reason for refusing the scheme. It is contrary to the development plan as a whole and material considerations do not indicate that it should be determined other than in accordance with the development plan.

Conclusion – ground (a) appeal and deemed planning application

38. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed. I shall refuse to grant planning permission on the deemed application.

Appeal on ground (g)

39. The issue is whether the compliance periods of 6 and 9 months are reasonable. This involves consideration of what the recipient of the enforcement notice will have to do in practice to carry out the remedial steps and consequently how much time should be allowed for that purpose. There is also a need to ensure the period is proportionate taking full account of the human rights and any equality considerations. A balance needs to be struck between the public interest in ensuring the notice is complied with expeditiously and the private interests of the appellant.
40. Since the appeal has also been made on ground (a) it is reasonable for the appellant to assume success on that and await the outcome of the appeal. Hence, the time that has elapsed prior to this appeal decision should not be taken into account.
41. Notwithstanding that there is little evidence to indicate that the appellant would not be able to source and/or finance alternative accommodation within the local area, it could take a considerable time to locate and secure such accommodation, whether on payment or by rental. I am also mindful that there can often be a lead in/waiting time before being able to physically relocate to a new property.
42. Given the need to remedy the breach of planning control without undue delay, a period of 12 months for compliance with requirement 1 is unjustified and excessive. In my view, under normal circumstances, a period of 6 calendar months would be reasonable for the residential use of the MH to cease. However, the current "lockdown" in response to the Covid-19 pandemic could make finding suitable accommodation more difficult for the appellant. However, once that accommodation is obtained there is little to indicate that compliance with requirement 2 would not be straightforward.
43. Balancing the competing considerations and taking into account the current situation with the pandemic, I conclude that the compliance periods should be

extended. Periods of 9 calendar months in relation to requirement 1 and 11 calendar months in relation to requirement 2 are reasonable and proportionate in order to allow the appellant to secure new accommodation in the current circumstances and comply with requirement 2, whilst ensuring the harms do not continue for longer than necessary. The appeal on ground (g) succeeds to this limited extent and I will vary the notice accordingly.

Formal Decision

44. The appeal is allowed in part, on ground g, and it is directed that the enforcement notice be corrected by: -

- Deleting the wording '*from agriculture*' within the description of the alleged breach;

And varied by:-

- Deleting, in paragraph 6, in respect of requirement 1 '*six calendar months*' and substitution of '*nine calendar months*' as the time for compliance;
- Deleting, in paragraph 6, in respect of requirement 2 '*nine calendar months*' and substitution of '*eleven calendar months*' as the time for compliance.

45. Subject to these corrections and variations 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