



Appeal Decision

Site visit made on 6 January 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 16 February 2021

Appeal Ref: APP/Q1760/C/20/3256444

The land and premises adjacent to Wheelhouse Park, North Baddesley, Hampshire

- 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 the Executors of the Estates of the late Mr and Mrs U. H. T. Hatley against an enforcement notice issued by Test Valley Borough Council.
 - The enforcement notice was issued on 11 June 2020.
 - The breaches of planning control as alleged in the notice are, without planning permission:
 - a) the carrying out of operational development on the Land by
 - i) the erection of a building consisting of two (2) shipping containers resting on concrete pads and connected by metal girders supporting an apex timber roof covered with corrugated metal sheeting, and with fixed metal gates between the containers - marked as Building A on the attached plan
 - ii) the erection of a large white metal building - marked Building B on the attached plan
 - iii) The erection of Heras fencing along the northern and eastern perimeter of the area marked Area C on the attached plan
 - iv) the formation of an area of hardstanding made of compressed scalplings -marked Area D on the attached plan
 - v) the erection of a building consisting of three (3) shipping containers connected by a welded flat roof extending beyond the sides of the building with guttering - marked Building E on the attached plan; and
 - b) b) the making of a material change in use of the Land by its use for storage purposes within Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, in particular
 - i) outside storage of building materials and a large skip - marked Area C on the attached plan
 - ii) storage of shipping containers, together with their use for storage of goods and materials - marked 1 - 9 on the attached plan
 - The requirements of the notice are:
 - 1) To cease the use of the Land for all storage purposes within Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 and to remove from the Land all containers plant vehicles materials equipment and other items associated with such use
 - 2) To demolish the various buildings and fencing described in paragraph 3(a) above and to remove from the Land all materials and other items resulting from such works of demolition
 - 3) To take up the hardstanding described in paragraph 3(a) above and then to level that area and seed with an appropriate mix of grass seed
 - The period for compliance with the requirements is six months for requirement 1) and nine months for requirements 2) and 3).
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. An application for planning permission is therefore deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed 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.

Preliminary Matters

2. For the banner heading, I have taken the name of the appellants from the appeal documents, rather than the appeal form, which is incomplete.

Main Issues

3. The main issues are:
 - whether the alleged matters would constitute an acceptable form of development with particular regard to the provisions of the development plan in respect of the location of development;
 - the effect on the character and appearance of the area, including the effect on protected trees; and
 - the effect on the living conditions of the occupiers of nearby residential properties with particular regard to general disturbance.

Reasons

Relevant Planning History

4. A certificate of lawful use or development was granted¹ on 2 November 2016 for land in two parcels (the 2016 LDC), the smaller of which includes the northern part of the appeal site. The approved plan² annotates that part of the site for storing and cutting timber and parking of agricultural plant and machinery.
5. Although the approved plan also annotates much of the remainder of the appeal site for two mobile homes, the corresponding key confirms it to be beyond the application site. Consequently, the 2016 LDC does not confirm a lawful use for two mobile homes. However, the Council acknowledge that two park homes were formerly located on part of the site and the appellants have provided evidence that that they formed part of a planning permission granted on appeal in 1962. Further evidence relating to a caravan site licence is also provided.
6. The appeal site falls outside of the land granted outline planning permission³ on 27 September 2018 for the demolition of existing industrial buildings and re-development to form a care village.

Location of the alleged development

7. The preamble to Policy COM2 of the Test Valley Borough Council Adopted Local Plan 2011-2029 (LP) explains that the purpose of the plan's settlement

¹ Application ref: 16/01889/CLES - Mixed use of the land and existing buildings for general industrial (with ancillary offices)(Class B2); light industrial (Class B1 (c)); storage and distribution (Class B8) together with the use for the parking of commercial vehicles and caravans along with the use for the purposes of a water pumping station.

² Drawing number: BRS.2581 06A - Existing Site Uses (2006-2016)

³ Application ref: 17/01615/OUTS

hierarchy is to provide a basis for the distribution of development across the Borough in sustainable locations.

8. For the purposes of LP Policy COM2, the appeal site falls outside the boundary of settlements, where development will only be permitted if it is appropriate in the countryside as set out in LP Policies COM8-COM14, LE10, LE16-LE18; or it is essential for the proposal to be located in the countryside. The appellants have not sought to argue that alleged development falls within these policy exceptions and, whilst I accept that its location is convenient in respect of the park, it has not been shown to be essential. I therefore find that the alleged development does not accord with LP Policy COM2.
9. The appeal site also falls within an area designated as a local gap by LP Policy E3. Although part of the site could be lawfully used for the storing and cutting of timber and parking of agricultural plant and machinery, such uses are rural in character and likely to have a minimal impact on the purpose of the gap. In contrast, by reason of their physical presence and appearance, the containers diminish the physical and visual separation of the gap.
10. For the remainder of the site, based on the overlaid plan provided by the appellants, the containers would extend, albeit to a limited extent, beyond the area identified for two mobile homes, thereby further diminishing the gap. If it is accepted that two mobile homes could be reintroduced, then it may be that the physical presence on that part of the site would not be significantly different. Nevertheless, for the reasons explained, conflict with LP Policy E3 would remain for the rest of the site.

Character and appearance

11. The appeal site comprises a triangular parcel of land situated at the end of an internal access road serving the mobile home park, known as Wheelhouse Park, which lies adjacent to part of its north eastern boundary. A large wooden clad storage and office building for Wheelhouse Park is also positioned close to the remainder of that boundary. Mobile homes of an adjacent park are situated to the south of the site, the extent of which is marked by a band of protected trees. The site's north western boundary adjoins open agricultural fields, beyond which lies woodland designated as a Site of Special Scientific Interest (SSSI).
12. The nine containers (numbered as such in the plan attached to the notice) are sited in a row and effectively combine to create a single form. Building A, marked on the plan comprises two containers positioned either side of a central gated section, with pitched roof over those three elements. Building B is a large white metal building. Building E appears to be three containers joined together with a flat roof. The external storage is mainly located either side of Building B.
13. The above elements are arranged along the southern and north western boundaries of the site, with the north eastern boundary largely open to the central area of hardstanding. Heras fencing has also been erected in the area marked C on the enforcement notice plan.
14. The containers and fencing are, by their very nature, functional in their design and appearance, whilst the open storage creates a cluttered and somewhat untidy appearance. Combined, the alleged matters create a utilitarian and

- urbanising presence more akin to a business park setting rather than one which is largely rural.
15. Despite the planting along the north western boundary, the containers remain visible from the adjacent open fields, thereby detracting from the rural landscape character.
 16. Parts of the alleged development can also be seen from a number of the mobile homes in Wheelhouse Park and in approaching views along the access road from the south. Here the utilitarian characteristics of the alleged development detracts from the wooded and landscape setting of the park and appears unacceptably discordant. The trees along the southern boundary do provide some screening to the mobile homes in the neighbouring park but views of parts of the alleged development remain through the gaps and underneath the tree canopies.
 17. A combination of the SSSI woodland, topography and existing buildings act to screen views of the site in the wider landscape and from the majority of the land with outline planning permission for a care village. The visual harm is therefore largely restricted to views from the adjoining fields, in approaching views along the internal access road and from neighbouring mobile homes.
 18. As noted, the southern boundary of the site lies adjacent to a band of trees subject to a Tree Preservation Order⁴ (TPO). Whilst none of the trees are positioned within the site, their proximity is such that some of the containers and parts of the open storage will likely fall within their root protection areas.
 19. I note the Council accept that the placement of shipping containers, resting above ground on surface laid pads at their corners, can normally be expected to have no or minimal impact on tree root health. However, the appellants explain that the storage containers have been placed on the land with no need for foundations or footings. It is not explained whether doing so has involved any changes to ground levels.
 20. In the absence of any evidence from the appellants to demonstrate otherwise, I share the Council's concerns over the potential impact of the alleged development on the long-term health of the protected trees. The weight from the storage could cause soil compaction, which in turn could adversely affect drainage, gas exchange, nutrient uptake and organic content, thereby serving to impede or restrict root growth. There is also potential for contamination arising from the external storage in particular. Consequently, the above stated harm could be compounded by adverse effects to, or even the loss of, trees which make an important contribution to the landscape and visual amenity.
 21. I therefore conclude that the alleged development results in unacceptable harm to the character and appearance of the site and the localised area, contrary to LP Policies E1 and E2. These policies state, amongst other things, that development should integrate, respect and complement the character of the area and will only be permitted if it is a high quality in terms of design and local distinctiveness and does not have a detrimental impact on the appearance of the immediate area and landscape character.

⁴ Tree Preservation Order TVBC 242

Living conditions

22. The appellants explain that the storage serves Wheelhouse Park and some of the storage needs that were previously met by the site to the east, which has been cleared for the development of a care village.
23. Access to the storage is achieved via the relatively narrow internal road serving the park. As a result, associated vehicular movements will take place in close proximity to mobile homes located on that route, in addition to those vehicular movements associated with the storage/office use of the timber clad building.
24. Neighbouring occupiers will also be subject to additional noise disturbance from the movement of stored items into, out of, and inside of the containers, as well as that associated with the external storage, and from general comings and goings within the site.
25. The appellants argue that visits are limited and infrequent and equivalent to the intensity of visits associated with lawful use of the site for siting two mobile homes and for the storage and cutting of timber. However, no evidence is provided to this effect. For the alleged development, not all vehicular movements are associated with the park and there is no suggestion that the use be restricted to preclude a wider use.
26. Moreover, notwithstanding the lawfulness of two mobile homes being sited on part of the land, and the likelihood of that fallback position being utilised, such a conforming use cannot be reasonably compared to that of a storage use in terms of general disturbance.
27. I note the appellants state that there have been no complaints from the residents of the park. However, paragraph 127 of the National Planning Policy Framework (the Framework) states that planning decisions should ensure developments create places with a high standard of amenity for existing and future users.
28. I therefore conclude that the alleged development results in unacceptable harm to the living conditions of the occupiers of nearby residential properties, contrary to LP Policy LHW4. This policy states, amongst other things, that development will be permitted provided that it provides for the privacy and amenity of its occupants and those of neighbouring properties.

Planning Balance and Conclusion

29. The appellants explain that the two mobile homes ceased to exist on site in 2003/2004, that replacements have not come forward and that the site is surplus to requirements. On that basis, there would appear to be a limited likelihood of a fallback position being utilised, even if the mobile homes could be lawfully reintroduced. In any case, the use of the site for two mobile homes would amount to an improvement over the alleged development both in terms of their appearance and effect on living conditions.
30. On the basis of the 2016 LDC, the northern part of the site could be used for storing and cutting timber and parking of agricultural plant and machinery. In my view, without evidence to show otherwise, these uses amount to a mixed forestry and agriculture use. As a fallback position, such uses would also amount to an improvement over the alleged development in appearance terms and land use conformity - either taken on its own or in combination with two

mobile homes. The 2016 LDC does not therefore justify the use of that part of the site for storage uses as suggested.

31. Nevertheless, I accept that the part of the site formerly occupied by two mobile homes, amounts to previously developed land. However, the part of the site which is covered by the 2016 LDC would not, having regard to the definition of previously developed land in the Framework, which excludes land that is or was last occupied by agriculture or forestry buildings. The overlaid plans show that a significant number of the containers fall within that area.
32. I appreciate that paragraph 80 of the Framework states that planning policies and decisions should help create the conditions in which business can adapt, whilst paragraph 118 states that planning policies and decisions should promote and support the development of under-utilised land. However, having regard to paragraph 117 of the Framework, I do not find that the alleged development makes effective use of land because it does not safeguard and improve the environment or ensure healthy living conditions.
33. Moreover, the Framework makes clear that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁵. In this case I have found that the alleged development conflicts with the settlement strategy, as set out in LP Policy COM2 and the local gap designation of Policy E3. I have considered the conditions suggested but they would not satisfactorily overcome my concerns in relation to character and appearance and living conditions, which result in further conflict with LP Policies E1, E2, and LHW4.
34. The appellants suggest that the appeal site lends itself to a temporary planning permission. To that end, five years is sought, although it is explained that a lesser period of two or three years would be sufficient and enable the existing storage uses to be relocated and an alternative home found for them.
35. However, even two years is a significant period of time and it would not be in the public interest to allow the ongoing harm I have found for such a duration. Moreover, the appellants have provided no evidence that such a significant period of time is necessary to relocate the alleged development.
36. The material considerations raised by the appellants, do not therefore indicate that planning permission should be granted contrary to the development plan. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Richard S Jones

INSPECTOR

⁵ Paragraph 2