
Appeal Decision

Site visit made on 8 March 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2021

Appeal Ref: APP/K0235/C/20/3260895

Plot D, Water Lane, Renhold MK41 0JH

- 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 Mr Brian Winner against an enforcement notice issued by Bedford Borough Council.
 - The enforcement notice, numbered 17/00358/DEVNOT, was issued on 4 September 2020.
 - The breach of planning control as alleged in the notice is the material change of use of the Land from recreational use to residential use, erection of a dwelling, shed, raised terraces (with retaining walls/earths) and mooring on Land edged in red on the attached plan 1.
 - The requirements of the notice are (i) cease the residential use of the Land outlined in blue on the attached plan 1; (ii) remove the cabin building and shed outlined in blue on the attached plan 2; (iii) remove the raised terraces, including the retaining timber walls, steps, block paving and decking outlined in yellow on the attached plan 2; (iv) remove the mooring in the area outlined in green on the attached plan 2; (v) restore the land levels back to the levels shown on the attached plan 3 and (vi) remove the resultant waste materials and debris arising from (i – v) above from the Land edged in red on the attached plan 1.
 - The period for compliance with the corresponding above requirements is (i) 6 calendar months; (ii) 7 calendar months; (iii) 8 calendar months; (iv) 8 calendar months; (v) 8 calendar months and (vi) 8 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
-

Decision

1. It is directed that the enforcement notice be varied by deleting all of the wording in section 6 (i) to (vi) and replacing such words in section 6 (i) to (vi) respectively with "*12 calendar months from the date this notice takes effect*". Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Appeal on ground (b)

2. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred.
3. The appellant's claim under this ground relates to the alleged erection of the dwelling and not the other matters referenced in the breach of planning control. The appellant's case is that the substantive building on the site was

not being lived in permanently when the notice was issued and that it was being lived in from February to October in accordance with a leisure use on the site.

4. Notwithstanding the above claim, the evidence in the form of a Planning Contravention Notice (PCN) response, and accompanying letter, dated 29 May 2020, included comments from the occupier who says that *"during the Covid19 outbreak I have been using the cabin to isolate myself and stay safe"* and *"in light of my situation and the fact that I will be submitting a revised planning application, can I continue to use the property for isolation?"* and *"I have no other permanent accommodation and had made arrangements to live with my daughter until planning permission was granted. Unfortunately this all changed in February when the virus began to appear in the UK"*. In addition, the PCN states that *"the building is intended for part residential and part recreational use by the owner"* and *"the building will not be used for a holiday let"*. It is also stated by the occupier that the building had a kitchen and a bathroom.
5. The onus is on the appellant to make his case in respect of the appeal on ground (b). There is no evidence to refute the Council's evidence, including the PCN and accompanying letter, that indicates that when the notice was issued the site was in use for residential purposes and the main building was permanently being lived in as a dwelling. Furthermore, the evidence indicates that the main building was not originally built for the purpose of being used as a holiday let.
6. I have also considered the Council's photographs in its appeal statement dated from 2016 to 2019. These photographs demonstrate a gradual change to the appearance of the site including the erection of the said dwelling, a shed, raised terraces (with retaining walls/earths) and a mooring. The appellant has not provided me with any compelling evidence to persuade me that this development had not occurred when the enforcement notice was issued. While the Council's photographs do not appear to be date stamped, the appellant has not provided me with any alternative evidence (e.g. photographs or sworn evidence) to refute the dates referred to by the Council. The Council has provided a detailed account of its various site visits and in the absence of any objective evidence to the contrary from the appellant, I am persuaded that the dates referenced by the Council are correct.
7. Therefore, on the balance of probability, and taking into account the evidence that is before me, I conclude that the alleged breach of planning control has occurred. Therefore, the ground (b) appeal fails.

Appeal on ground (c)

8. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
9. The appellant's case under ground (c) is that the mooring structure is not operational development. The Council has submitted photographs from 2016 to 2019 and it is evident that a substantially different mooring has been constructed on the site. This is particularly evident in respect of the August 2019 photographs in Appendix 7 of the Council's appeal statement which appears to show construction work being carried out. The site, including the mooring, can be seen in direct contrast to the appearance and levels of the site

which can be seen in respect of the photograph in 2013 in appendix 2 of the Council's appeal statement.

10. Section 55 of the Act defines development as '*the carrying out of building, engineering, mining or other operations in, on, over or under the land, or the making of any material change in the use of any buildings or other land*'. Section 336 of the Act defines a building as including any '*structure or erection*'. The evidence before me is that a substantially new mooring has been constructed as a structure and therefore it is operational development requiring planning permission.
11. The appellant does not dispute the fact that the other development alleged in the notice constitutes a breach of planning control, but for the avoidance of doubt, and taking into account the survey plan in appendix 1 of the Council's appeal statement, the evidence is that all of the matters alleged in the breach of planning control constitute development for which planning permission is required.
12. For the reasons outlined above, and on the evidence that is before me, I therefore conclude that the matters alleged in the notice do constitute a breach of planning control. Therefore, the ground (c) appeal fails.

Appeal on ground (d)

13. The appeal on ground (d) is that at the date when the notice was issued, no enforcement actions could be taken in respect of the breach of planning control. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
14. I have already found that the evidence before me indicates that when the notice was issued the site was in use for residential purposes and the main building on the site was being lived in on a continuous basis as a dwelling. This represents a material change in the use of the land from a previous leisure use to a residential use. The appellant has not provided any contrary evidence to support any claim that the other matters alleged in the notice, including the shed and raised terraces, were erected/formed at a time that such development is now immune from enforcement action given the passage of time.
15. The appellant's actual claim under ground (d) is that the mooring was in place in 2009 and that it is now immune from enforcement action given the passage of time. In support of such a claim, the appellant has submitted a Google earth image, dated 6 February 2009, which purports to show a '*brown colouration of the mooring*' by the tree on the bank. The evidence of a mooring in respect of this image is not conclusive. Nonetheless, the Council does not dispute that a planning officer commented in 2012/13 that in respect of the site there was '*a timber mooring on the river*'.
16. The evidence is such that there was a mooring on the site historically. However, the mooring shown on the 8 February 2013 topographical survey plan for the appeal site appears to correspond with the mooring seen in respect of the 2016, 2018 and January 2019 photographs appended to the Council's appeal statement (appendices 3, 5 & 6). However, the August 2019 photographs show a substantially different mooring. In this context, the

mooring that is the subject of the enforcement notice is not immune from enforcement action due to the passage of time and hence it was not too late for the Council to take enforcement action in respect of this development.

17. On the evidence that is before me, and on the balance of probability, I conclude that at the date when the notice was issued enforcement action could be taken in respect of the breach of planning control. Therefore, the ground (d) appeal fails.

Appeal on ground (a) and the deemed planning application

18. The appeal under ground (a) is that planning permission ought to be granted in respect of the breach of planning control which may be constituted by the matters stated in the notice. I have considered the reasons for issuing the enforcement notice and the main issues are (i) whether the breach of planning control is acceptable in this countryside location having regard to local and national planning policies and its accessibility to services by sustainable modes of transport and (ii) whether the breach of planning control is acceptable in respect of flood risk.

Location and accessibility

19. Policy 3S of the adopted 2020 Bedford Borough Local Plan 2030 (LP) sets out the spatial strategy for the Borough and stipulates that development should be in sustainable locations and meet identified needs. Reference is also made to safeguarding the intrinsic character and beauty of the countryside.
20. The appeal site is not within, or well related to, a Settlement Policy Area or Small Settlement as identified in the LP. It is located within a remote area of open countryside. The breach of planning control does not accord with any of the exception criteria in policy 7S of the LP and this weighs against approving planning permission.
21. The nearest services and facilities to the site are within Great Barford and Renhold, though for day to day needs it is more likely that occupants of the appeal site would have to travel to Bedford which is further afield. The access to the site is from Water Lane which is a narrow and unmade track. I was also able to see on my site visit that there is no footpath or street lighting from the site to St Neots Road. This is a busy road and so would not be conducive to regular cycling. My views are consistent with those expressed by an Inspector who dealt with an appeal for the nearby Plot B known as 'The Brambles'.¹ Furthermore, there are no bus stops close to the site: according to the appellant, the nearest bus stop is at Silver Street in Great Barford which is approximately 1.9 miles away.
22. The evidence is that the site is significantly remote from settlements with good facilities to meet day to day requirements associated with residential use of the site. I find that occupants of the site would be heavily reliant on use of the private motor vehicle for most journeys. For the above reasons, use of the site for residential purposes would not accord with Policy 31 of the LP which states that planning applications should give particular attention to the '*extent to which the development is served by, and makes provision for access by public transport, cyclists and pedestrians*'.

¹ Appeal Ref APP/K0235/W/19/3241666 dated 20 April 2020

23. The residential use of the site is not located in an accessible location and fails to accord with the strategic housing aims of the LP. In addition, while there are some other buildings close to the appeal site, these are very limited in number in what it is otherwise a remote and underpopulated countryside location. Overall, I consider that the appeal site is far away from other places, buildings and people. As a matter of fact and degree, I therefore conclude that the appeal dwelling constitutes an isolated home for the purposes of applying paragraph 79 of the National Planning Policy Framework (the Framework). It does not meet any of the exceptions listed in paragraph 79 a) to e) of the Framework.
24. Paragraph 78 of the Framework also states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The Council's LP seeks to achieve that in terms of the location of development and given the remote location of the site from services, including its poor accessibility credentials, I find that use of the site for residential use purposes would not maintain the viability of the rural community or accord with the strategic locational aims for development as outlined in the LP.
25. For the above reasons, I therefore conclude that the breach of planning control is not acceptable in this countryside location having regard to local and national planning policies and taking into account the site's poor accessibility to services by sustainable modes of transport. Consequently, the breach of planning control fails to accord with the locational and accessibility requirements of policies S3, 7S and 31 of the LP and paragraphs 78 and 79 the Framework.
26. I have already established under the ground (b) appeal that when the enforcement notice was issued, and on the balance of probability, the site was in use for residential purposes and that the main building was occupied as a dwelling. The ground (a) appeal relates to the breach of planning control in the enforcement notice, i.e. this includes use of the site for residential purposes and occupying the main building as a single dwelling. It does not relate to use of the site for holiday let purposes.
27. Despite the above, the appellant has indicated that the development which is the subject of the breach of planning control should be retained on the basis that it is used solely for '*recreational*' purposes (I have assumed that this means leisure), but, in the meantime, and for a period of two years, it be retained for his own residential occupation/use taking into account his personal and health circumstances.
28. I deal with the latter matters later on, but even if I were able to restrict by condition the use of the site/buildings to a leisure type residential use (i.e. holiday accommodation), I conclude that such a proposal would fail to accord with the visitor accommodation requirements of Policy 76 of the LP as the site is not well related to a defined Settlement Policy Area, a Small Settlement or the built form of other settlements in accordance with the principles set out in Policy 7S LP. Furthermore, no credible evidence has been provided in terms of any exceptional circumstances to demonstrate why any such use could not be achieved from a location stipulated in (i) and (ii) of such a policy.
29. In reaching the above conclusion, I acknowledge that in 2013 the Council approved planning permission for a '*replacement recreational cabin*' subject to a condition limiting it to use for recreational purposes only. However, the

appellant has not provided me with clear and objective evidence to demonstrate that this permission was implemented and since that time the LP has been adopted. I have determined this appeal against the most up to date development plan for the area, as well as the Framework, and the previous decisions of the local planning authority do not alter or outweigh my findings in respect of this main issue.

Flood risk

30. The appellant has submitted a flood risk assessment (FRA) prepared by KRS Environmental, dated August 2020, to support the ground (a) appeal. The FRA was actually prepared as part of a planning application². It specifically states *'the development proposals are for the erection of a new recreational log cabin with sleeping accommodation. The log cabin will be raised on stilts, creating a void area under the property. The finished floor level of the log cabin will be 22.85 metres Above Ordnance Datum (mAOD) which corresponds to the ground level at the northern section of the site'*. I acknowledge that the Environment Agency (EA) were consulted in respect of the planning application and considered the FRA.
31. I have been provided with the EA consultation response which raises *"no in principle objections to the proposed cabin for use for recreational use"*. Nonetheless, I agree with the Council that the FRA does not take into account the actual effects of the full extent of the breach of planning control on the risk of flooding. It appears to relate to a different form of development.
32. Consequently, I am not persuaded that the EA consultation response does in fact take into account all of the unauthorised development on the appeal site. Indeed, the breach of planning control also includes changes in levels on the site, the erection of a shed, a new mooring and terraced areas. While my site visit observations did seem to show that at least some of the building was placed on breezeblocks (i.e. a small area underneath the building was visible via a door) and hence there was a void area, I could not be sure if this was the case for full extent of the main building. For these collective reasons, I do not consider that the FRA comprehensively addresses the full effects of all of the development which is the subject of the breach of planning control from a flood risk point of view.
33. Even if one were to disagree with my views above, a review of the EA's Flood Zones indicates that the vast majority of the appeal site is in Flood Zone 3, although part of it is also in Flood Zone 2. As the site is within Flood Zones 2 and 3, there is a need to submit a Sequential Test (ST), in accordance with the Framework and Policy 92 of the LP, with the aim of steering new development to areas at the lowest probability of flooding (i.e. Flood Zone 1). The appellant contends that the identified flood zones for the site are *'overestimates'*, but this is not supported by any evidence from EA.
34. The breach of planning control relates to use of the site for residential purposes and more specifically use of the main building on the site as a dwelling. It can be defined as at least a *'more vulnerable use'* having regard to Table 2 (Flood Risk Vulnerability Classification) in the Flood Risk chapter of the Planning Practice Guidance (PPG). The appellant has not undertaken a comprehensive ST. This appears to be justified on the basis that *"it is impractical to suggest*

² Planning application ref 20/02170/S73A

that there are more suitable locations for this development elsewhere. This is the only site in the ownership of the client and therefore the only site available to them to develop. The cost of buying a similar site and the cost to construct a similar development would make it uneconomical”.

35. In this case, I do not consider that land ownership reasonably justifies a failure to undertake a detailed ST or that it reasonably represents a barrier to the consideration of other sites in areas which are less at risk of flooding. I consider that as part of the FRA, it was necessary for the appellant to have undertaken an assessment of suitable and available sites within Flood Zone 1 areas. There is no detailed evidence that such a necessary assessment has taken place in respect of any residential use on the site.
36. The appellant contends that occupation of the building would be restricted to March to October and hence that this would be outside the likely worst case scenario for flooding. The ground (a) appeal is not lodged solely on the basis of it being used between March to October. For two years, it is proposed that it be used by the appellant on a full basis and as a main residence. Furthermore, and, in any event, the potential to impose restrictions on use of the building/site does not prohibit the need to undertake a robust ST.
37. I have no objective evidence before me to refute the Council’s evidence that it can demonstrate a five year supply of deliverable housing sites, taking into account both its recently adopted LP and a recent appeal decision³, and, in this context, there remains at least a prospect that there may be sites that are suitable and available for residential use (whether permanent or seasonal and whether associated with a leisure use or not) in areas which are less at risk of flooding.
38. Taking into account the above, I find that the submitted FRA does not fully take into account the full extent of all of the unauthorised development that is the subject of the breach of planning control and the overall use of the appeal site for residential purposes. Hence, I cannot reasonably rely on the findings of the FRA in terms of the effects of all of the breach of planning control from a flood risk point of view. Indeed, I cannot be certain of the effects of the changes in levels, the provision of terraces, walls, the mooring and the erection of the shed on flooding and in particular whether some of the structures on the appeal site may become waterborne, and therefore hazards downstream, in the event of a flood. Furthermore, and, in any event, the ST has not been passed.
39. I would add that as the ST has not been passed, it has not been necessary for me to consider applying the Exception Test (ET). However, even it had been necessary for me to apply the ET, I would have found that the appeal development did not provide wider sustainability benefits to the community. Indeed, the site is occupied by an individual on a private basis and even if it were used on a holiday let type residential basis, such a use would not accord with policy 76 of the LP and the evidence is that accessibility by sustainable modes of transport is very poor.
40. For the above reasons, I therefore conclude that use of the site for residential purposes fails to meet the flood risk requirements of Policy 92 of the LP and the Framework. This weighs against allowing the ground (a) appeal.

³ Appeal reference APP/K0235/W/20/3256134 dated 2 December 2020

Other considerations

41. The appellant has referred to planning permissions elsewhere in the countryside including the conversion of a barn to a dwelling.⁴ This decision was made in the context of different development plan policies and unlike the unauthorised residential development on the site related to the reuse of a rural building. Therefore, the breach of planning control and the aforementioned development are not directly analogous.
42. I accept that there are a limited number of other buildings close to the appeal site, but the vast majority of these developments were not approved as part of a planning application. Most of the sites have lawful development certificates as the development has been confirmed as lawful due to the passage of time. The existence of the other development in the area does not justify allowing development that is in conflict with up to date local and national planning policies.
43. I have taken into account the personal and health circumstances of the appellant. Furthermore, in the event that the enforcement notice was upheld it would result in the loss of the appellant's home which would interfere with his rights under Article 1 of the First Protocol and Article 8 of the Human Rights Act 1998. However, it is necessary that these matters are balanced against the harm caused as a result of the location of the development, flood risk matters, and the site's limited accessibility to services and facilities by sustainable modes of transport (whether used as site with a dwelling or as a site with a holiday-let).

Planning balance and Ground (a) appeal conclusion

44. Use of the site for residential purposes either as a permanent or temporary residence or on a seasonal holiday let basis would not accord with the locational and accessibility requirements of policies in the LP or the Framework. In addition, the breach of planning control fails to accord with the flood risk requirements of the LP and the Framework.
45. I have considered the appellant's request for a two year temporary planning permission for continued use of the main building/site as a dwelling, but this is not justified given the clear conflict with LP policies. While the personal and health circumstances of the appellant are material to the determination of this appeal, they do not in themselves justify either granting temporary or full planning permission. Indeed, the harm that I have identified in respect of the location of the development, flood risk matters, and the site's limited accessibility to services and facilities by sustainable modes of transport, is such that a refusal of planning permission is a legitimate and proportionate response in the public interest.
46. I would add, however, that I have taken into account the personal and health circumstances of the appellant, and his Human Rights, as part of the consideration of the ground (g) appeal.
47. On balance, and for the reasons outlined above, I conclude that the ground (a) appeal fails.

⁴ Planning permission 11/01436

Appeal on ground (f)

48. The appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any amenity which has been caused by any such a breach.
49. The appellant considers that a lesser step would be to delay the determination of this appeal until an undetermined planning application for retention of the building and associated development on the land has been determined. It is not appropriate to delay determining this appeal and, in any event, I have considered the appeal made under ground (a) based on the evidence that is before me.
50. I would add that in the event that the Council subsequently granted planning permission for retention of part or all of the development on the site, then Section 181 (1) of the Act states that '*where, after the service of— (a) a copy of an enforcement notice; or (b) a breach of condition notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission*'.
51. The appellant has commented that it would not be necessary to remove all soil from the land so that the land was re-contoured. I do not doubt this claim, but the enforcement notice does not require all soil to be removed from the land. Instead, it requires the removal of the '*resultant waste and debris*' arising out of compliance with the required steps in the notice. If on site soil is needed to comply with the steps, then it would not be resultant waste or debris. In this respect, I agree with the Council that there is no need to vary the requirements of the notice.
52. The appellant claims that the changed levels, deck and raised terraces do not cause harm to the character of the area or to the floodplain. However, this is a matter that I have considered as part of the ground (a) appeal, and in particular in respect of the flood risk main issue. In this regard, I have found that the breach of planning control does not accord with local and national policy flood risk requirements. The purpose of the enforcement notice is to remedy the breach of planning control and there are no lesser steps than the requirements of the notice to remedy such a breach.
53. I therefore conclude that the ground (f) appeal fails.

Appeal on ground (g)

54. The appeal made under ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
55. The compliance period in the notice is detailed in the banner heading of this decision. The compliance periods range from 6 calendar months to 8 calendar months. The appellant has requested a compliance period of 12 months for all requirements to take into account the fact that he has not yet had a Covid 19 vaccine and to take into account details of a pre-existing medical condition.
56. I acknowledge that the appellant does not have his own alternative accommodation and that in upholding the enforcement notice he would lose a safe environment where he can shield from the effects of Covid 19. I have

considered the Human Rights of the appellant, who would lose a home if the enforcement notice was upheld.

57. In this case, I consider that the appellant has made a reasonable case to extend the compliance period for all of the requirements to 12 months. This would give the appellant reasonable time to find alternative residential accommodation, for the positive effects of vaccinations to have fully taken effect (particularly as the first wave of vaccination is now underway nationally) and to take into account any possible period where he needed to visit the hospital for medical reasons.
58. On the evidence that is before me, I consider that 12 months is an adequate period to ensure compliance with all of the requirements of the notice. To this extent, the appeal on ground (g) succeeds and I shall vary the enforcement notice accordingly.

Overall Conclusion

59. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, as varied, and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR