



Appeal Decision

Hearing held on 10 February 2021

Site visit made on 12 February 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal A: APP/K0235/C/19/3220016

Appeal B: APP/K0235/C/19/3220017

Land opposite 1-5 Mill Hill, Keysoe, Bedford MK44 2HP

- 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 Carey Lennox-Lamb and Appeal B is made by Celena Lennox-Lamb against an enforcement notice issued by Bedford Borough Council.
- The enforcement notice was issued on 10 December 2018.
- The breach of planning control as alleged in the notice is; Without planning permission, the material change of use of land to use for the storage of building materials, equipment and waste, and the formation of a vehicular access onto a classified road.
- The requirements of the notice are
 - i) Cease the use of land for the storage of building materials, equipment, and waste: and
 - ii) Remove all building materials, equipment, and waste from the land; and
 - iii) Remove the bricks/rubble/hardcore material and road planings from the land.
- The period for compliance with the requirements is
 - i) 3 months
 - ii) 3 months
 - iii) 4 months
- Appeal A is proceeding on the grounds set out in section 174(2) (a) (b) (d) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
- Appeal B is proceeding on the same grounds as Appeal A other than ground (a)

Decision

1. It is directed that the enforcement notice be varied by adding the word "building" before the words "equipment" and "waste" in the breach and in requirements 5.(i) and (ii) of the notice.
2. Subject to these variations, the appeals are 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.

Procedural Matters

3. Since the issue of the notice, the Council adopted the Bedford Borough Local Plan 2030 (BBLP) on 15 January 2020. Details of the relevant policies of the BBLP relied upon in substitution of the superseded policies referred to in the

reasons for the notice were supplied to the appellants in advance of the hearing.

4. Although the appellants originally included grounds (b) (d) and (g) as part of their appeal, as a result of discussions that took place during the course of the hearing, the appellants indicated that they no longer wished to pursue these grounds and I have not considered them further.

The Notice

5. It is the duty of the Inspector to put the notice in order. Case law in particular *Miller – Mead v Minister for Housing and Local Government and Another [CA 1963]* states that the recipient needs to understand the notice from the four corners of the notice. The breach essentially falls into two parts, firstly the change of use of the land for the storage of building materials, equipment, and waste and secondly the formation of a vehicular access onto a classified road.
6. The appellants consider that the word “waste” by itself is ambiguous and would for example include fly tipping. However, the parties agreed that the word “building” could be added before the words “waste” and “equipment” both in the breach and in the requirements so that the requirements flow from the breach. I will amend the notice accordingly. The first two requirements clearly relate to the breach in requiring firstly the cessation of the use of the land for the storage of building materials, and, as amended, building equipment, and building waste and secondly, the removal of those items.
7. The breach also refers to “the formation of a vehicular access onto a classified road.” A gap has been created in the hedge at the front of the site and a wooden gate installed. The gate is currently not functioning but ordinarily would allow access to the site. To the other side of the wooden gate, there is an area which roughly forms a semi-circle and which has a compressed surface made up of road planings. The Council regards the gate and the road planings as part and parcel of the formation of the access referred to in the notice. The Council has, however, chosen to target only the surfacing and not any other aspects of the access in the requirements of the notice. Although the appellant refers to the access being under-enforced, the extent of any under-enforcement does not therefore include the road planings. The Council’s expediency report acknowledges that under-enforcement would have consequences in granting planning permission for the gate. This refers to the provisions of Section 173(11) of the 1990 Act which apply upon compliance with the notice.
8. The appellants have queried whether the third requirement relates only to the semi-circular area immediately around the access. Given that there is nothing in the requirement to limit it to part of the site and it includes the removal of bricks/rubble/hardcore as well as road planings, I consider that it covers the whole appeal site and am satisfied that the notice is clear in that regard. It was also clear from the subsequent site visit that compliance with requirement iii) of the notice would not involve alteration of land levels.

The appeal under ground (a) and the deemed planning application (DPA)

Main Issues

9. The main issues are (i) effect of the development on the character and appearance of the area and (ii) whether the development is in a sustainable location having regard to the development plan policies.
10. The DPA arises from the wording of the breach and therefore includes the road planings within the appeal site as they form part of the formation of the access.

Character and appearance

11. The appeal site is a roughly triangular parcel of land which fronts onto the B660 and which has agricultural land to the west and the north. There is a public footpath from the north of the appeal site through a field towards Brook End Farm. The appeal site is located in a distinctly rural location between the hamlets of Keysoe and Brookend and falls within the Bedford Borough Landscape Assessment 2014 as part of Riseley Clay Farmland. The surrounding area does retain characteristics of landscape character such as being part of a rural peaceful area with a remote feel with views over surrounding fields. Photographs taken in 2015 show the appeal site as being largely screened along the front to the road by mature trees. However, there is now a low hedge of approximately 1.5 metres in height across the front of the site together with the non-working gate and two horizontal scaffolding poles which enclose a gap created by hedge removal. The appeal site contains individual piles of building materials such as window frames, tiles and building rubble. The surface of the appeal site is made up of road planings, broken bricks and some hardcore but with a largely soil surface to the southern end of the appeal site. Whilst, it was agreed during the hearing that any reduction in land levels is not a requirement of the notice, land levels on the site are higher at certain points particularly to the west.
12. The Council considers that the development does not comply with Policies 3S, 28S (i)- (iv) and (viii), 29(i) and (ii), 30(i) and (ii), 32, 35S, 37, 38, 40 and 47S of the BBLP. However, the appellant is of the view that factors such as the nature, scale and location of the development means that the development does not result in harm to the character and appearance of the surrounding area. As Church Road to the south is on higher ground, there are some views of the appeal site through gaps in the mature hedging and trees along the road particularly near to the Vicarage. There are also views of the northern part of the appeal site along the public footpath approaching from Brook End Farm as there is limited hedging or screening along the northern boundary of the appeal site. The reduction in height of hedgerow particularly to the front of the site has increased visibility into the appeal site from the road and highway verge. The visual appearance of the appeal site with piles of varying heights of builders materials and building waste is incongruous in a rural location with limited development in the surrounding area.
13. Even with the retention of the storage container and access gate, the visual harm arising from the works targeted by the notice is significant in my view. Although the appellant has referred to conditions including additional screening, conditions would not overcome the harm that I have identified. For example, limiting the height of the storage would not by itself fully address the visual harm of the development in a rural location and any screening could

itself create visual harm and any new hedging would take a number of years to mature.

14. The appellant considers that removing the road plantings would have a greater effect on the character of the area than leaving them in situ. However, the presence of a compressed area of road plantings does also harm the character and appearance of the surrounding area, particularly when viewed from the road because of the open nature of the appeal site with limited hedging and the access gap. I also agree with the Council's view that allowing an access gate, a feature common enough in rural areas, to remain is less harmful than and can be distinguished from creating a distinct parking or access area within the appeal site.
15. The development does therefore harm the character and appearance of the surrounding area. The development is therefore contrary to Policies 28S-32 of the BBLP, which collectively refer to development having a positive relationship with the surrounding area. It would also be contrary to Policy 30 in terms of the quality and nature of the development within the context of the surrounding rural area and Policies 35S, 37 and 38 collectively refer to protecting and enhancing landscape character. The development also does not comply with Policy 3S of the BBLP which amongst other things refers to safeguarding the intrinsic character of the countryside by careful management of development to meet local needs whilst supporting the rural economy. I find Policies 47S and 40 of the BBLP to be less relevant to the issue of character and appearance.

Sustainable Location

16. Following the adoption of the BBLP, the Council considers the relevant policies with regard to location to be Policy 7S and 75. The BBLP states that the aim is to direct development to within the defined Settlement Policy Area boundaries and specific site locations. Having a more restrictive policy in the countryside aims to prevent the coalescence of settlements and resists the encroachment of development into the countryside.
17. Policy 7S of the BBLP seeks to restrict development outside of Settlement Policy Areas and the built form of Small Settlements other than within defined criteria. The nature of the development does not fall within any of those criteria as they relate to either the re-use of rural buildings or residential use. Policy 75 of the BBLP sets out the limited circumstances in which new employment development including sui generis uses such as a builders' yard in the countryside would be supported.
18. The appellants have referred to the national policy aim of "supporting thriving rural communities. Nevertheless, there is no evidence before me in terms of any benefits of the storage of building materials either financially or otherwise that could be considered to support the community. In addition to the overarching national policy and local spatial strategy, there is no evidence before me to indicate that the development falls within any of the listed exceptions contained in Policies 7S and 75 of the BBLP.
19. Having regard to the nature of the development and its location in a rural location, I therefore conclude that the development undermines the important aims of the policies identified above and is not in a sustainable location and

does not comply with Policies 7S and 75 of the BBLP for the reasons given above.

Conclusion on ground (a) and the DPA

20. To conclude the development is contrary to the development plan as a whole and there are no material considerations to outweigh the conflict that I have identified with the development plan. The appeal on ground (a) is dismissed and planning permission is refused.

The appeal under ground (f)

21. An appeal under ground (f) asserts that the steps required by the notice or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or as the case may be to remedy any injury to amenity which has been caused by any such breach. The appellants under this ground allege that it is excessive for the Council to require the removal of the road plantings as there is no public benefit to its removal and the effect of removal would have a greater effect on the character and appearance than leaving it in situ. However, I have dealt with the issue of visual appearance of the road plantings under ground (a) and have concluded that it is harmful. Consequently, the removal of the road plantings is not excessive and is necessary to remedy the breach. The appeal under ground (f) therefore fails.

Conclusion

22. For the reasons given, I conclude that the appeals should not succeed. I shall uphold the notice, subject to the variations, and refuse to grant planning permission on the application deemed to have been made under S177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR

APPEARANCES

THE APPELLANTS:

Mr Carey Lennox-Lamb
Mrs Celena Lennox-Lamb

Mr Steve Connell

GC Planning Partnership Limited

THE LOCAL PLANNING AUTHORITY:

Ms Penny Jewitt
Mr Peter White

Bedford Borough Council
Bedford Borough Council