



Appeal Decisions

Site visit made on 22 April 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2021

Appeal A Ref: APP/Y3940/C/20/3262575 Old Nurseries, Burton, Mere BA12 6FH

- 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 Luke Merrydew against an enforcement notice issued by Wiltshire Council.
- The enforcement notice numbered 20/00637/ENF was issued on 29 September 2020.
- The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the land for the siting of a caravan for residential purposes.
- The requirements of the notice are:
 - a) *Permanently cease the occupation of the Land for all residential and ancillary residential purposes.*
 - b) *Permanently remove the Land all residential and associated items ancillary to the residential use of the Land, (for example but not limited to the tent, gazebo/awning attached to the caravan, trampoline, washing lines, BBQ, toys, gas canisters, generator, vehicles) as well as all personal effects stored on any other part of the land.*
 - c) *Permanently remove the caravan from the Land.*
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/Y3940/C/20/3262563 Old Nurseries, Burton, Mere BA12 6FH

- 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 Luke Merrydew against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice, numbered Ref: 20/00637/ENF, was issued on 29 September 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission, operational development consisting of the construction of an earth bund on the Land in the approximate location identified by a green line on the attached plan as well as shown in the photograph attached to the Notice shown as 'Notice Photograph'.
 - The requirements of the notice are:
 - a) *Remove the bund and any related or resultant materials, paraphernalia, debris or detritus from the Land.*
 - b) *Restore the ground level to match the profile of the land that existed prior to the unauthorised development taking place.*
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A – the caravan

1. It is directed that the enforcement notice is corrected by the insertion of the word “from” after the words “Permanently remove” in requirement (b). Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Appeal B – the earth bund

2. The appeal is dismissed and the enforcement notice is upheld.

Appeal A – the caravan

Procedural matters

3. There is an obvious omission of the word “from” after the words “Permanently remove” in requirement (b). It is a minor error which I consider can be rectified without injustice to either party, and I shall therefore correct it.

Ground (a) – that planning permission should be granted

Main Issues

4. The main issues are:
 - i) whether agricultural arguments are sufficient to justify a caravan in a location where residential development is strictly controlled;
 - ii) the effect of the development on character and appearance, and
 - iii) the effect of the use on highway safety.

Reasons

5. The appeal site forms part of a former nursery which has been sub-divided into different ownerships. The site in the appellant’s ownership to which this appeal relates is towards the south of the former nursery site, and consists of two plots, on either side of a central concrete access track, amounting to about 1 acre in total.
6. The appellant proposes to establish an organic fruit and vegetable business, and argues that a caravan is required for a 3 year period to allow the enterprise to become established. At the time of my visit, the caravan which was previously on the site at the time the notice was issued had been removed, but a motorhome was present in its place.
7. The Council contends that the nursery use of the land has been abandoned in planning terms. However, s.55(2) of the Act provides that certain operations and uses shall not be taken to involve development. One of these uses is s.55(2)(e) “the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used”.
8. Section 336 defines “agriculture” as including horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds. Thus, planning permission is

not required for the use of the land for agriculture, the growing of vegetables and fruit, or as a nursery.

9. The site lies outside of the defined settlement limits of Mere, which lies not far away to the west. New residential development in the county is directed to the most sustainable locations through the Wiltshire Core Strategy 2015 (CS). Policy CP1 identifies 4 tiers of settlement and sets out the broad nature of development which may be permitted within each tier. Policy CP2 provides more detail of the scale of development to be permitted and, amongst other things, provides that, other than in circumstances as permitted by other policies within the plan, development will not be permitted outside the limits of development, as defined on the policies map.
10. Core Policy 48 of the CS says that outside the defined limits of development of the Principal Settlements, Market Towns, Local Service Centres and Large Villages, and outside the existing built areas of Small Villages, proposals for residential development will be supported where these meet the accommodation needs required to enable workers to live at or in the immediate vicinity of their place of work in the interests of agriculture or forestry or other employment essential to the countryside. It also says that proposals for accommodation to meet the needs of employment essential to the countryside should be supported by functional and financial evidence.
11. Whilst the requirement to produce financial evidence is not consistent with the National Planning Policy Framework, this inconsistency does not alter the necessity to support residential proposals with evidence of a functional need. Since the issue of the notice, about 6 fruit trees have been planted on the eastern side of the site, some fruit bushes have been planted on the bund on the southern boundary, and a small polytunnel has been erected, inside of which were 14 pots of varying sizes containing young vegetable plants. Thus, at present, the scale of horticultural activity carried out on the site is not much greater than might be found in many a suburban garden.
12. In this case, no functional need has been put forward to explain why someone needs to be on hand at most times. I am also mindful that in the response to the Planning Contravention Notice issued by the Council, the appellant said "I have two small children who live with my partner. The main reason to purchasing this land is so that I can teach them about the outdoors and get them away from technology." These sentiments were repeated in a letter from the appellant submitted with the appeal.
13. The appellant argues that the residential use of the site benefits from the encouragement given in the Framework to the development of suitable brownfield sites. However, by virtue of the site's position outside of the defined limits of development, it is not a suitable site, and in any event, the Framework's definition of brownfield sites (previously developed land) specifically excludes land that is, or was last, occupied by agricultural or forestry buildings, as is the case here.
14. Whilst the establishment of an enterprise of this nature is consistent with local and national policies, the hurdle of establishing a need for someone to live permanently on the site has not been cleared. Accordingly, the development conflicts with CS Policies CP2 and CP48.

Character and appearance

15. The site has a clearly rural character, being undeveloped and largely open, other than for unauthorised development. The photographs provided by the Council show that the caravan, along with the canopy and other residential paraphernalia, damages that rural and undeveloped appearance, introducing residential features that are out of place in an agricultural setting.
16. The site can be clearly seen from the public footpath which runs close to the southern boundary of the site, and to a lesser extent from the public footpath which runs along the western boundary of the site, from where views are partly obscured by trees. The caravan (or motorhome) in particular, being a large, white coloured structure, stands out, as would usual residential paraphernalia such as washing lines, play equipment, outdoor seating, etc.
17. Tree planting may have the potential to help screen these features, but it would take some years to become established, and these may hamper the appellant's horticultural ambitions for the site. In any event, their long-term retention cannot be assured, as trees die or become diseased.
18. The landscape character in the vicinity of the site is one of tree and hedge-lined agricultural fields, with sporadic buildings including dwellings. Whilst it is not of a highly distinctive character, it is nevertheless has a strong rural appearance. CS Policy CP51 deals with landscape and includes as one of its aims, the need to conserve the separate identity of settlements and the transition between man-made and natural landscapes at the urban fringe. Lying close to Mere, the residential use of the site would conflict with this aim. The development also conflicts with CS Policy CP57 which deals with ensuring high quality design and place-shaping, and amongst other things, requires development to relate positively to its landscape setting
19. I therefore find that the development results in harm to the character and appearance of the area, and conflicts with CS Policies CP51 and CP57.

Highway safety

20. The access to the site is from the busy A303 road, which is subject to the national speed limit. Whilst it is a single carriageway road, it is close to a dualled section. Highways England has expressed concern about visibility from the access, the need for traffic to cross the westbound carriageway, and the restricted width of the access and its inability to allow two vehicles to pass, which may result in traffic having to stop on the A303. From what I saw on my visit, I consider that these concerns have substance.
21. Department of Transport Circular 02/2013 *The Strategic Road Network and the Delivery of Sustainable Development* makes it clear that it is the responsibility of a developer to provide an assessment to show the impact of proposals on the strategic road network. No highways assessment has been carried out in this case.
22. At the time of my visit, there were roadworks being carried out on the A303 which may have affected traffic conditions, and I have also taken into account that the current pandemic may have affected traffic volumes. This makes it more important that a properly informed assessment should be provided.

23. Highways England's views are based on the understanding that the nursery use has been abandoned in planning terms, and thus there is no fallback position. However, as I have pointed out above, planning permission is not required for such a use. Thus, the traffic associated with the agricultural/horticultural use of the site is a fallback position, which I have taken into account as a material consideration.
24. However, the residential use of the site is likely to generate additional traffic over and above that associated with the lawful use of the site, including trips for shopping, leisure and social purposes, as well as deliveries to the site, and thus has the potential to materially increase highway safety risks, or to interfere with the free flow of traffic on the road.
25. In view of the importance of the A303 as part of the national strategic road network, I consider that it is essential that additional traffic generation is assessed as being both safe and unlikely to interfere materially with the operation of the road. In the absence of an assessment, I conclude that the residential use of the site may harm highway safety and interfere with the function of the A303 as a strategic route.

Other matters

26. The appellant's ambitions to develop the site as a horticultural nursery are supported by the Framework which supports sustainable rural businesses, and it is evident that the clearance of the overgrown site, and the carrying out of some planting are consistent with that objective. However, this on its own, or in combination with the benefits that the site may have in the education and personal development of the appellant's children, is not sufficient to outweigh the strong objections to the development that I have referred to above.
27. The site offers direct footpath links from the site to the nearby school and to the village centre of Mere, although this mainly involves unlit and unpaved footpaths, which may limit their attractiveness as an alternative to the car in very wet or dark conditions. However, this locational benefit does not outweigh the conflict with the development plan or other harm that I have found.
28. The appellant argues that compliance with the requirements of the notice would render him and his family homeless. The evidence about occupation of the caravan is unclear. The appellant's response to the Council's Planning Contravention Notice explains that he is the only occupier of the caravan, and that his two children, who live with their mother, visit him. Accordingly, compliance with the notice would not result in the appellant's children being made homeless.
29. The grounds of appeal and the appellant's final comments suggest that the caravan/motorhome is the sole residence of the appellant. However, the most recent letter written by the appellant says "*We purchased a movable caravan and parked it on the land to stay during weekends and holidays to undertake and nurture the land and wildlife. We have since changed from a caravan to an rv/motorhome as we have a young family and two children.*"
30. This does not indicate to me that the caravan/motorhome is the appellant's sole residence, and the absence of domestic paraphernalia in the motorhome that I saw on my visit reinforced that impression. The Council says that the appellant is registered for Council Tax at an address in Trowbridge.

Notwithstanding this, the appellant contends that the appeal site is his sole residence, but no details have been provided to explain his circumstances or the continued payment of Council Tax on another residential property. On the balance of probabilities, I consider that the motorhome is not the appellant's sole residence.

31. The requirement of the enforcement notice engages with the right to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human Rights Act 1998. However, this right is not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy, and the importance of preserving and enhancing the character and appearance of the area are matters of legitimate public interest.
32. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellant's rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

Planning balance and conclusions of ground (a)

33. I find that the benefits of the development are clearly outweighed by the harm that I have found, and by the conflicts with the relevant policies of the development plan. Thus, for the reasons given above, the appeal on ground (a) fails and planning permission is refused.

Appeal on ground (f) – that the steps required exceed what is necessary to remedy the breach

34. The compliance steps do no more than is necessary to remedy the breach. No lesser steps have been suggested, and none are obvious to me. The appeal on ground (f) therefore fails.

Appeal on ground (g) – that the period for compliance is too short

35. The notice specifies a compliance period of 4 months. In view of my finding that, on the balance of probabilities, the motorhome is not the appellant's sole residence, I consider that 4 months is more than sufficient a period to comply with its requirements. The appeal on ground (f) therefore fails.

Overall conclusions for Appeal A

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, subject to correction, and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B – the earth bund

Ground (c) – that the matters specified in the notice do not constitute a breach of planning control

37. The bund has been formed by the deposition of site scrapings, mainly comprising earth and vegetation, to create an embankment which extends across the whole width of the plot along its southern boundary, a length of some 140m of so. It would have required an excavator to create the bund, and at the time of issue of the notice it had been roughly shaped, and now has a

more precise profile, with a flattened top. I consider that this is an engineering operation, which constitutes development under s.55 of the Act. Since the issue of the notice, the bund has been reduced in height and re-profiled, but for the purposes of this ground of appeal, I need to address the development as it was originally carried out.

38. Section 57 of the Act provides that, subject to exceptions which do not apply here, planning permission is required for the carrying out of the development of land. No planning permission has been granted for the bund by the local planning authority.
39. The appellant argues that the development is permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015. Article 3 of that Order grants planning permission for certain classes of development. Class A of Part 6 of the order deals with agricultural development on units of 5 hectares or more, which does not apply here, as the unit is considerably smaller than that. Class B deals with agricultural development on units not less than 0.4 hectares but smaller than 5 hectares. It permits, amongst other things, the deposit of waste, but not engineering operations, and therefore it falls outside of the permitted class of development.
40. Firstly, I am not satisfied that at the time that the development was carried out, that the site comprised as "agricultural unit". Nothing was being grown at that time, and even now, several months later, the scale of horticultural activity is minimal. Accordingly, the site does not benefit from permitted development rights under Class 6.
41. Even if I am wrong on this, if I were to treat the construction of the bund as merely "the deposit of waste", the caveat to the deemed permission is that it is only permitted where the development is reasonably necessary for the purposes of agriculture within the unit. The appellant argues that the construction of the bund is to drain the appellant's land, protect it from the elements, allowing an intrinsic part in the cultivation of the two large plots. Beyond this assertion, no evidence has been provided to show that it is needed for drainage purposes. The land levels fall gently from north to south, and the southern boundary is marked by a watercourse. There is no suggestion that the land floods from the watercourse, and thus the bund only acts as a partial barrier to the natural flow of water across the site. It offers little protection from the elements; only the land immediately to the north of the bund would be protected from winds from the south. I find that the bund is not reasonably required for the purposes of agriculture.
42. I therefore consider that on the evidence before me, the bund amounts to development and does not benefit from the deemed planning permission provided under the Order. The matters alleged in the notice constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

Appeal on ground (a) – that planning permission should be granted

43. By way of background, the Council has issued an Article 4 Direction to prevent the erection of means of enclosure without the specific grant of planning permission. The appellant criticises this Direction, but it is not my place to comment on its merits, and its existence means that there is no fallback position for other means of enclosing the site.

44. Even with its reduced height and altered profile, the bund's height, length, and lack of obvious purpose gives it an incongruous appearance which is at odds with the character of the surrounding fields. The bund is in view of the public footpaths which run along the southern and western boundaries of the site. Whilst the lower profile reduces the extent of incongruity, it is nevertheless something of an oddity, which causes some small harm to the appearance of the area.
45. The bund has been planted with a few fruit bushes, which may help to lessen the visual impact, but this would take time, assuming that the bushes thrive. In my experience, plants tend not to do well on bunds because of the tendency for the bunds dry out in warm weather. Even if more planting takes place and the plants do well, it would not adequately mitigate the harm that I have identified.
46. The bund marks the southern boundary of the plot and whilst separate plots on the site may have been demarcated in the past, I see no clear need to do so now by way of a bund. The existence of the Article 4 Direction does not prohibit enclosures; it just means that specific planning permission from the local planning authority is required, and any agricultural need would no doubt weigh in the balance of considerations.
47. I therefore conclude on this issue that the bund results in some small harm to the character and appearance of the area, and conflicts with CS Policies CP51 and CP57.

Other matters

48. I have taken into account the appellant's right to property, referred to in paragraph 31 above, and again, there are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellant's rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

Overall conclusion

49. For the reasons given above, I find that the bund results in harm to the character and appearance of the area, and conflicts with the relevant policies of the development plan, and there are no material considerations which justify determining the deemed application otherwise than in accordance with the plan.

Appeal on ground (f) – that the steps required exceed what is necessary to remedy the breach

50. The compliance steps do no more than is necessary to remedy the breach. The bund has already been lowered in height and I have given consideration above to mitigating the impact of the development by planting, but have found it to be insufficient to remedy the harm to the character and appearance of the area. No other steps have been suggested and none are obvious to me. The appeal on ground (f) therefore fails.

Appeal on ground (g) – that the period for compliance is too short

51. The notice specifies a compliance period of 4 months. The recent changes made to the bund by the appellant has resulted in the removal of a significant amount of material, and this work was carried out in the space of only a few

weeks. No explanation has been provided as to why a longer compliance period might be necessary. I therefore conclude that the period of 4 months is not short of what should reasonably be allowed. Accordingly, the appeal on ground (g) fails.

Overall conclusions for Appeal B

52. For the reasons given above, 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.

JP Roberts

INSPECTOR