
Appeals Decisions

Site visit made on 24 May 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 23 June 2022

Appeal A: Ref: APP/P0240/C/21/3285652

Appeal B: Ref: APP/P0240/C/21/3285479

**Land to the north of Kings Barn, How End Road, Houghton Conquest,
Bedfordshire MK45 3JT**

- Appeal A is made by Mark Primett. Appeal B is made by Tracey Hollywell. Both appeals are made under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: CB/EN/20/0329) issued by Central Bedfordshire Council on 30 September 2021.
 - The breach of planning control alleged in the notice is "Without planning permission, the material change of use of land and buildings to a mixed use as a builder's yard for the storage of materials and equipment, plant hire, and the siting of a mobile catering kitchen unit for commercial cooking purposes including the preparation, and distribution of catering products, and the use of an existing field access onto How End Road and the creation of a new hard surfaced track and parking area to serve the unauthorised mixed use."
 - The requirements of the notice are as follows: -
 - "(a) To cease the use of the Land [as] a builder's yard including the storage of materials and equipment, and the hiring of plant and siting of the mobile catering unit structure.
 - (b) To cease the use of the Land for a food catering business including the preparation, storage and distribution of catering products.
 - (c) To remove from the Land all of the builder's plant, materials and equipment, plant for hire and the mobile catering unit structure.
 - (d) To remove from the Land all of the gravel/stone surfacing from the entrance track and parking area (shown hatched on the Enforcement Notice Plan).
 - (e) To re-instate the area the subject of subsection (d) with topsoil to match the adjacent ground level and seed with grass."
 - The period for compliance with these requirements is six months.
 - Appeal A relates to all the matters alleged in the notice to be breaches of planning control. It is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g). Since Appeal A has been brought on ground (a), an application for planning permission is deemed to have been made by section 177(5) in respect of all the matters stated in the notice as constituting breaches of planning control.
 - Appeal B relates only to the alleged siting of a mobile catering kitchen unit. It is proceeding solely on the ground set out in section 174(2)(c). Although ground (a) in Appeal B was withdrawn, the deemed planning application resulting from Appeal A includes the siting of the mobile catering kitchen unit.
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Decisions

Appeal A: APP/P0240/C/21/3285652

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for development at How End Road, Houghton Conquest, Bedfordshire MK45 3JT consisting of the use of an existing field access onto How End Road and the creation of a new hard surfaced track and parking area and the siting of a mobile catering kitchen unit for commercial cooking purposes including the preparation and distribution of catering products, subject to the condition that the mobile catering kitchen unit shall not be used for supplies to visiting customers.

Appeal B: APP/P0240/C/21/3285479

2. Appeal B no longer falls to be considered following the success of Appeal A and the quashing of the enforcement notice.

Reasons for the appeals decisions

Appeals A and B: the validity of the notice

3. The appellants maintain that the notice is “fundamentally flawed and should be quashed” because it seeks to enforce against several alleged breaches of planning control that should have been dealt with separately, since they raise different legal and planning considerations, and because the notice would require extensive revision if any of the grounds of appeal were to succeed.
4. Whilst I recognise there are complexities in this case, it is not unusual for planning authorities to combine several allegations into one notice where, as here, they relate to connected matters, nor for inspectors to deal with extensive revisions to notices where they are needed following consideration of the grounds of appeal.

Appeal A: ground (c)

5. This ground of appeal relates to the allegation in the notice “the creation of a new hard surfaced track”. The appellant claims that an engineering operation within the meaning of section 55 has not occurred. He maintains that there is a historic farm track constructed of bricks underneath what currently exists and that the works carried out involved simply scraping back the thin layer of topsoil which had accumulated over time since the site was in active farm use and the laying down of a new wearing course of hardcore dressing.
6. I agree that an engineering operation does not appear to have been carried out, since the works are unlikely to have required any engineering skills, but the definition of development in section 55 also includes the carrying out of “other operations” on or over land that may not require such skills. In this instance, a new wearing course of hardcore dressing has been laid over a considerable length and width of land and to a depth that is great enough to obliterate all trace of the previous farm track beneath it. As a matter of fact and degree this in my opinion amounts to the carrying out of an “other operation” within the meaning of section 55 and is therefore “development”.

7. Planning permission was required for the creation of the new hard surfaced track. Since it was not obtained, the ground (c) appeal in Appeal A has failed.

Appeal B: ground (c)

8. This ground of appeal concerns the allegation in the notice that refers to “the siting of a mobile catering kitchen unit for commercial cooking purposes including the preparation, and distribution of catering products”. The appellant claims that this was permitted development that only required prior approval, which was applied for. The Council have pointed out, correctly, that the development was carried out before the application was made and that applications for prior approval cannot be made retrospectively. However, as indicated in the final bullet point above, the planning application relating to the mobile catering kitchen unit which results from Appeal A will be considered.

Appeal A: ground (d)

9. This ground of appeal relates to the allegation in the notice that concerns the use of land and buildings as a builder’s yard for the storage of materials and equipment and plant hire. The appellant states that he bought the site in 2003 and immediately started using the former piggery buildings and yard as the base for his construction and groundworks business and that this use has been continuous since then.
10. The evidence provided by the appellant in support of ground (d) includes the following: -
 - Aerial images. The first, dated 31/12/2002, shows the buildings in the yard with the yard itself empty. The appellant states that the vehicles shown at the adjoining house (which he moved into) are the previous owner’s removal vans. The second, dated 15/07/2003, shows the yard being used, the appellant has explained, by builders’ trucks and for the storage of builder’s machinery and materials. Similar activity is shown on the images dated 31/12/2006 and 02/06/2009 and more clearly on those dated 2008, 2016, 2017 and 2018. The appellant has provided a detailed commentary on the items that can be seen on the images, all of which are typical of a builder’s yard used for the storage of materials, equipment and plant.
 - Contemporaneous photographs. These consist of family and other photographs taken in the yard in 2005, 2009, 2017 and 2020, which show the yard in extensive and active use for the storage of materials, equipment and plant of the kind that would normally be found in a builder’s yard.
 - Statutory Declarations and letters from former employees and neighbours. Three former employees have confirmed that the builder’s yard has been in existence since 2003. Nine residents who have lived nearby for between thirteen and twenty years have confirmed that the appellant has been using the yard and workshop for his building company during the period of their residence.

- Accounts. Returns submitted to Companies House from 2003 onwards give the appellant's address as the adjoining house and identify him as a builder.
11. The appellant has explained that some of the plant stored in the yard is used elsewhere from time to time, either by himself, or by his sub-contractors, or by individuals who have hired it. All hiring is arranged remotely and no plant is displayed for hire on-site. The plant is usually delivered to the other locations by the appellant himself and is collected by him for return. Plant hire amounts to about 15% of the overall turnover. I agree with the appellant that this activity, on this scale, is part and parcel of the normal use of the builder's yard and does not in this instance amount to a separate or mixed use for planning purposes.
 12. The appellant acknowledges that there has been "an ebb and flow of activity", and that there have been times when the use has been dormant due to business restructuring or other trading conditions, but maintains that the evidence he has now produced demonstrates that as a matter of fact and law the use has been continuous since 2003 and is immune from enforcement action. He points out that changes in trading names and company particulars over the years are not relevant considerations in themselves.
 13. The Council have not commented in response to the evidence referred to above, but have explained that an application for a lawful development certificate was refused in 2021 because the Council concluded on the balance of probabilities that insufficient evidence had been provided to show that a builder's yard for the storage of materials and equipment had been here continuously for a period of ten years or more. I have taken into account information that has been provided to me relating to the consideration of this application but there is nothing there that casts doubt on the evidence now provided by the appellant in this appeal.
 14. This evidence, on the balance of probabilities, shows that a material change in the use of the former piggery buildings and yard took place in 2003 when the use as a builder's yard commenced, that the use then continued uninterrupted for more than ten years and that the use has since continued with only minor interruptions in activity, due to business reasons, which have not resulted in the use losing its immunity from enforcement action.
 15. Appeal A has therefore succeeded on ground (d) insofar as it relates to the material change of use of land and buildings to a use as a builder's yard.

Appeal A: ground (a)

16. As a consequence of the outcome of the ground (d) appeal, the matters now for consideration under ground (a) are whether planning permission should be granted for (i) the use of an existing field access onto How End Road and the creation of a new hard surfaced track and parking area and (ii) the siting of a mobile catering kitchen unit for commercial cooking purposes including the preparation and distribution of catering products. In each case, the main issues for consideration are their effects on the character and appearance of the area, the amenities of nearby residents and the traffic and transport conditions.

17. The Council maintain that the construction of the track and parking area have had an adverse visual impact on the character of the countryside, contrary to Policy EE5 of the Central Bedfordshire Council Local Plan. This policy states:

"All development will be required to respect, retain and enhance the character and distinctiveness of the local landscape by:

 1. Reflecting the local character and distinctiveness in terms of the scale and pattern of the surrounding landscape and existing settlement form; and
 2. Integrating on-site mitigation sympathetic to local character in scale with the landscape setting as well as the scale of the development."
18. Although it is apparent that the track follows the course of a track that was surfaced with bricks, the surface had become grassed over with the passage of time. The removal of the grass and the use of hardcore to resurface the track and create the parking area has had an impact on the appearance of the field.
19. I do not consider this impact to be significant in the context of the wider local landscape and there are convincing reasons for carrying out these works because of recent changes affecting access to the builder's yard. When the appellant occupied both the house and the builder's yard it was acceptable for the access to both of them to be shared and to pass close to the house. Now that the house has been sold and the barn, which also shared that access, has been converted into a second dwelling, it is no longer appropriate for the access to be used by commercial as well as residential traffic.
20. The track provides a new access to the opposite end of the builder's yard and the parking area provides a turning space there. The track and the parking area are located well away from both the house and the new dwelling, which are screened from them by hedging. In my opinion, the track and the parking area should be accepted as necessary improvements to the access arrangements for the builder's yard, which enhance residential amenities and have no additional impact on road traffic conditions. Appeal A has therefore succeeded in this respect on ground (a) and planning permission has been granted. No planning conditions are required.
21. I turn now to the mobile catering kitchen unit. Policy EMP4 of the Local Plan states that proposals to expand existing employment generation uses within the rural area, and for new employment opportunities within the rural area, will be supported where a list of criteria are met. With regard to these criteria, the Council have raised concerns about the effect of the mobile catering kitchen unit on the adjoining resident, the justification for a rural location for the unit and traffic and transport considerations. Similar concerns have been expressed by the adjoining resident.
22. The catering business was originally run from the operator's home, which is also in How End Road. The move to the container was made to provide improved facilities to deal with additional business. The operation is still a very low-key use which provides employment for only one person, full time, and one person, part time. There is no room for further expansion in the container. The food products are delivered to customers by staff and there are no direct supplies to customers from the container. Vehicle movements average about six journeys per day by staff using cars or light vans.

23. Paragraphs 24 and 25 below consider the criteria in Policy EMP4 in more detail.
24. This is an expansion of an existing employment generating use in a rural area, rather than a new employment opportunity in a rural area: there is therefore no requirement to demonstrate a need for a rural location. I have no reason to doubt that the business is viable. The container is large enough to allow two full-time staff to be engaged instead of the existing complement of one full-time and one part-time employee. Suitable access and parking provision exist by way of the new hard surfaced track and parking area. Any increase in traffic movements that might occur on the road network will be minimal, given that the business previously operated from How End Road as well.
25. The remaining criteria are that there will be “no adverse impact on the location, neighbouring land uses or residents” and “Any identified adverse impacts on the historic and natural environment, including designated sites and landscapes, can be appropriately mitigated”. I have considered whether any such impacts arising in this instance could reasonably be regarded as “adverse”. The container is next to the builder’s yard, where it is away from public view and has little effect on its rural location or the landscape, and where there are comparable structures in the yard. It is about 32m away from the nearest dwelling, from which it is partially screened, and it is no higher than a domestic outbuilding. The activity generated is not noisy and any fumes from cooking are controlled by an approved filtration system.
26. My conclusion is that the mobile catering kitchen unit complies with Policy EMP4 and that there are insufficient reasons to withhold planning permission for it. Appeal A has therefore succeeded in this respect on ground (a).
27. I have considered whether planning conditions should be imposed in this event. The Council have suggested two, relating to the fume extraction system and the hours of operation. I do not consider that these are necessary. Firstly, the fume extraction system is not noisy and has already been controlled by the Council under environmental health legislation. Secondly, the activity generated by this low-key use is so unexceptional that it should not have an adverse impact whenever it occurs. I have, however, imposed a condition that will prevent the container being used for supplies to visiting customers, since this would result in disturbance and additional traffic.

Appeal A: grounds (f) and (g)

28. These grounds of appeal no longer fall to be considered following the success of Appeal A on grounds (d) and (a) and the quashing of the enforcement notice.

D.A.Hainsworth

INSPECTOR