



Appeal Decision

Site visit made on 18 July 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 August 2022

Appeal Ref: APP/P0240/W/22/3294262

Warren Farm, Woburn Road, Millbrook, BEDFORD MK45 2HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr P Mullan against the decision of Central Bedfordshire Council.
 - The application Ref CB/21/02984/VOC, dated 23 June 2021, was refused by notice dated 11 October 2021.
 - The application sought planning permission for Material change of use of an agricultural building to two units for the purposes of B1 (Business) B2 (General Industrial) and B8 (Storage or Distribution) without complying with conditions attached to planning permission Ref CB/15/01352/FULL, dated 30 June 2015.
 - The conditions in dispute are Nos 3 and 4 which state that: (3) "the development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plan, number CBC/001", and (4) "no equipment, goods, waste or other materials shall be stored or deposited in the open, outside the buildings on the site".
 - The reasons given for the conditions are: (3) "to identify the approved plan/s and to avoid doubt", and (4) "to safeguard the character and appearance of the site and the surrounding area".
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Decision

1. The appeal is allowed, and planning permission is granted for a material change of use of an agricultural building to two units for the purposes of B1 (Business) B2 (General Industrial) and B8 (Storage or Distribution) at Warren Farm, Woburn Road, BEDFORD, MK45 2HY in accordance with the terms of the application, Ref CB/21/02984/VOC, dated 23 June 2021, and the associated location plan, subject to the following conditions:
 - 1) Noise resulting from the use of the plant, machinery or equipment shall not exceed a level of 5 dBA below the existing background level (or 10 dBA below if there is a tonal quality) when measured or calculated according to BS 4142:1997, at a point one metre external to the nearest noise sensitive building.
 - 2) The premises shall not be used except between 07:00 hours and 19:00 hours Monday to Friday, 08:00 hours and 18:00 hours on Saturdays and at no time on Sundays, Bank or Public Holidays.
 - 3) No equipment, goods, waste or other materials shall be stored or deposited in the open, outside the buildings on the site upon the expiry of three months of the date of this decision.

Preliminary Matters

2. During my visit I noted that external storage was taking place within the appeal site, in breach of condition 4. On the basis that the proposal is retrospective, s73A of the 1990 Town and Country Planning Act applies. I have therefore dealt with the appeal on this basis.
3. With respect to condition 4, the description of development, of the 2015 approval, states that the use of the building was already being carried out. I also note that the ariel photograph, reportedly from 2009, shows agricultural vehicles parked around the building. However, there is no substantive evidence to indicate that external storage of equipment, goods, waste or other materials was taking place. As such, it has not been demonstrated that external storage was taking place when the application was approved in 2015. Accordingly, it is unconvincing that condition 4 at the time required a compliance period.

Background and Main Issue

4. The approval of the original planning application precluded the storage of materials outside the footprint of the building by virtue of condition 4. The reasons for this, given on the decision notice, is to safeguard the character and appearance of the area.
5. Taking these points into consideration, the main issue is whether conditions 3 and/or 4 are reasonable, necessary and enforceable with particular regard to the effect of the proposal on the Millbrook Conservation area (MCA) and the site's countryside setting.

Reasons

Condition 3

6. Condition 3 requires the development to be undertaken in accordance with plan CBC/001. However, it is not appropriate to impose a plans condition when only granting consent for a change of use. Moreover, it is also often unnecessary to apply such a condition to development that has already taken place. As the condition serves no useful purpose, condition 3 is unnecessary for both of these reasons.

Condition 4

7. The appeal site is accessed from Woburn Road, a classified road. The site is part of a cluster of farm buildings and rural businesses that are within the open countryside. The building within the site occupies a relatively small area of the middle of the site and is functional in design. It is surrounded by a combination of loose gravel and hardstanding. Notwithstanding the current external storage of materials, the site retains an open character that complements its rural location. The site therefore makes a positive contribution to the character and appearance of the area.
8. The appeal site is within the MCA. My statutory duty¹, requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Furthermore, paragraph 199 of the Framework requires great weight to be given to an asset's conservation when considering the impact of the proposal on its significance. The conservation

¹ section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990

area includes a main settlement arranged in a linear pattern largely along Sandhill Close. These consist of a diverse range of community buildings and dwellings of traditional rural form and design.

9. The MCA includes the dwellings within the main settlement, Warren Farm and several fields surrounding these areas. Although of limited weight it is recognised that the Council's draft MCA Character appraisal (2009) identifies that the area's special interest includes a range of traditional rural buildings of historic and architectural interest including Warren Farm. The significance of the MCA seems to derive from the buildings within the village and the farm, which are largely of traditional rural style within an open countryside setting.
10. The appeal site is recessed from the highway. It is alongside a public right of way and partially screened by tall Leylandii hedging, that is adjacent to its east and northern boundaries. However, most of the site can be seen through this screening which is thin and sparse in many places. Also, parts of the site can be seen from the access drive when approaching its entrance. The land to the rear of the site falls away. Thus, the site is in an elevated position and prominent in views from the wider countryside to the north from nearby footpaths. The storage of various materials and equipment within the site is clearly visible beyond the site boundaries. This conveys an industrial impression of the site that contrasts with its otherwise open character, resulting in harm to its appearance. The proximity of the storage areas to buildings in commercial use does not mitigate this harmful visual effect being on the more exposed northern and eastern sides of the site.
11. Furthermore, the provision of external storage has an impact on the wider countryside. This is described as including areas of open and contrasting enclosed areas along an undulating ridge, as part of the 'Mid Greensands Ridge Area' within the Council's Landscape Character Assessment (2016). Despite the hedge screening, the site contributes towards the open character identified within this Assessment and should therefore be retained as a largely open area of land.
12. Accordingly, the appearance of the site has been degraded by the external storage of materials and equipment to the side and rear of the building. This has visually encroached into the rural and open character of the site and the surrounding area. Consequently, the external storage does not preserve or enhance the character or appearance of the MCA or its countryside setting. Condition 4 is therefore necessary, and its proposed variation, to limit the storage area, would be insufficient to negate the identified harm. As such, without the condition, the scheme would be contrary to policy HE3 of the Local Plan and the Framework. These policies, among other matters, require development to preserve the significance of a heritage asset.
13. The harm identified to the conservation area would be 'less than substantial'. Paragraph 202 of the Framework, states that where harm to a heritage asset would be 'less than substantial' this should be weighed against the public benefits of a proposal. The proposal would ensure the continued use of the commercial business which is stated to support the local economy and create social benefits to the local area. Moreover, an occupier has stated that some outside storage is necessary for part of his business which includes the repair of horseboxes.

14. However, it has not been demonstrated that external storage, especially for the quantity and locations shown on the proposed layout plan, is necessary for this rural business. I am also unconvinced, based on the evidence before me, that the existing business activities on site specifically support the local rural economy. Therefore, these stated benefits are of limited weight in favour of the scheme. Furthermore, the Framework requires great weight to be afforded to the conservation of a heritage asset. As such, the benefits would not outweigh the harm found to the conservation area, which the Framework identifies as an irreplaceable resource.

Conditions

15. As such, condition 4 renumbered as condition 3, has been re-imposed to ensure that the external storage is removed within 3 months so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the use before it commences. The condition will ensure that the development can be enforced against if the requirements are not met.
16. In addition, conditions are also required to manage noise levels and the hours of use of the buildings. Both of these conditions were originally imposed by the Council. I see no reason, in the evidence before me, to conclude that these are not still required. These conditions have therefore been imposed as being necessary to protect the living conditions of neighbouring residential occupiers.

Other Matters

17. The appellant has offered an alternative condition to replace conditions 3 and 4. This would require the proposed use to undertake external storage in accordance with certain parameters and comply with an enhanced landscape screen to the east boundary. However, these measures would be insufficient to address the identified harm. The storage areas shown on the amended plan, whilst reduced, would continue to materially erode the open character of the site. Furthermore, views would still be obtained into the site from both the access drive and the right of way to the north of the site. Furthermore, the proposed landscape buffer would take a significant period of time to become established and would not screen all views of the storage areas. In any event, it is poor practice to simply screen unsightly views.
18. It appears that the site was formerly in agricultural use. This use may well have included an element of ancillary external storage. Nevertheless, upon the granting of consent for industrial use condition 4 limited the scale of external activity associated with the use in the interests of the character and appearance of the area. Consequently, whether or not agricultural storage took place within the site prior to 2015 is of limited weight in favour of the proposed variation.
19. Furthermore, I am unconvinced that ancillary storage was part and parcel of the permission, especially as this was specifically excluded by the imposed planning condition. Moreover, I am unconvinced that condition 4 can only relate to non-ancillary storage unrelated to the use of the buildings, as the building and its external areas were approved as one planning unit and the condition is clear and unambiguous.

Conclusion

20. For the above reasons the appeal is allowed in so much as with respect to condition 3. Condition 4 remains necessary and reasonable and is therefore reimposed.

B Plenty

INSPECTOR