



Appeal Decision

Site visit made on 12 June 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th JULY 2023

Appeal Ref: APP/K0425/C/22/3293721

Land at 35 The Green, Wooburn Green, Buckinghamshire HP10 0EU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr R Potyka of RAP Building and Developments Ltd against an enforcement notice issued by Buckinghamshire Council –West Area.
- The notice, numbered 21/00443/CU, was issued on 20 January 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to use for external storage, (the Unauthorised Use), and integral to the unauthorised use, the stationing of a storage container, skips and the erection of fencing and access gate.
- The requirements of the notice are to:
 1. Cease the use of the Land for external storage (the Unauthorised Use);
 2. Remove all building materials and paraphernalia brought onto the Land in connection with the Unauthorised Use;
 3. Remove the storage container (in the approximate position shown hatched on the attached plan) from the Land;
 4. Remove all skips from the Land;
 5. Dismantle and remove the fencing and gate (in the approximate positions shown by the dotted line on the attached plan) from the Land;
 6. Remove all materials and debris resulting from complying with steps 1 to 5 of this Notice from the Land.
- The period for compliance with the requirement is within two months of the Notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), and the development is fee-exempt, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections.

Matters Concerning the Enforcement Notice

1. In paragraph 3, the words '(the Unauthorised Use)' and 'unauthorised' are not necessary. The external storage use does not need to be described as the 'Unauthorised Use' when it is identified as the use without planning permission. For completeness, a full stop should also be added to the end of the sentence.
2. For consistency the words '(the Unauthorised Use)' on paragraph 5 (1) should be deleted. In paragraph 5 (2) the word 'building' should be deleted. The removal of all materials being stored in association with the alleged external storage use would be more accurate than reference to 'all building materials.' Furthermore, for consistency the word 'Unauthorised' should be deleted and substituted with 'external storage'.

3. The above-mentioned corrections do not fundamentally change the matters alleged or its requirements. As such, they would not cause injustice to either party.

Background and Preliminary Matters

4. The planning history indicates that the land at 35 The Green (the Land) was part of the access and front garden area of 35, The Green. However, permission was granted in 2017 via appeal for the demolition of the existing dwelling (35 The Green) and the erection of a terrace of three two storey dwellings and a separate apartment building¹. The dwellings erected as part of the 2017 permission are accessed via Bakers Orchard rather than The Green.
5. Since completion of the 2017 permission, the Land was severed from the residential development and has been used for external storage, most recently for a local plumbing business, including the stationing of skips and a storage container. A fence and gate access also encloses the land to the front and part of the rear to facilitate the use. A detached garage building exists on the Land but does not form part of the allegation set out in the Enforcement Notice (the Notice).
6. A planning application was submitted to the Council for the use of the Land for external storage². However, this was refused, and the Notice, referenced 21/00443/CU, was issued, requiring the external storage use to cease along with the removal of the skips, storage container, fence and gates.

The Ground (a) appeal and the Deemed Planning Application

7. Planning permission is sought on ground (a) for the external storage use, the skips, the storage container, fencing and gates. The **main issues** in this appeal are:
 - The effect of the development on the character and appearance of the area, including the preservation or enhancement of Wooburn Conservation Area (Conservation Area) and the setting of 36 The Green (Listed Building).
 - The effect of the development on the living conditions of neighbouring occupants, having regard to outlook, noise and disturbance.
 - The effect of the development on highway safety.

Reasons

Character and Appearance

8. The Land is located within the Wooburn Conservation Area (Conservation Area) Conservation Area, between 36 The Green, a Grade II Listed Building (Listed Building) and 34 The Green.
9. The Conservation Area has a central green with mature trees on its boundaries. The green is enclosed by residential and commercial uses in a mixture of contemporary and period properties fronting the green. Several of the period buildings encircling the green are Listed or recognised as significant buildings in

¹ APP/K0425/W/17/3179887

² Council reference 21/07238/FUL

the Conservation Area Character Survey for Wooburn Green. However, for the most part, the contemporary and period buildings are two storeys with a consistent building line, set behind small front gardens or parking areas, with low-lying fences and hedges. The consistent building line together with the low-lying enclosures and central area of green space results in an openness and verdant quality that is significant to the character of the Conservation Area.

10. The Conservation Area Character Survey for Wooburn Green identifies the Listed Building, No 36, as an early 19th Century cottage of whitewashed brick under an old, tiled roof. Based on my observations, the significance of the Listed Building is largely defined by its materials and architectural features as well as its position fronting the green. In respect of its setting, the Listed Building fronts the main road, with a small set back behind a low railing and hedge, with an appreciable gap between the Listed Building and No 34. The low-lying fence enclosure to the front together with the hedge and appreciable space to the side is a positive aspect of its setting. It also adds value to the open and verdant character and appearance of the Conservation Area.
11. There are a mix of residential and commercial uses in the area. However, from what I saw, the southern part of The Green is a mix of residential and retail type uses. For instance, the adjoining neighbours are residential, and the nearest commercial uses are small scale retail uses, public houses, and professional services, rather than employment uses. Consequently, despite being small scale, the use of the Land for external storage, as well as the stationing of skips and storage containers is not typical of its immediate surroundings or is in keeping with the predominate character of the area.
12. The set back of the Land from the main road, as well as the height and design of the fence and gates does limit views of the external storage, skips and container. Despite this, the fence and gates are visible from the road, and the height, length and close boarded design is uncharacteristic of the low-lying enclosures and openness that characterises the surrounding Conservation Area. Furthermore, the height of the fence and its solid design diminishes the space between 34 The Green and the Listed Building, No 36, which is a positive aspect of its setting.
13. Despite suggestions of an alternative enclosure, no details of its design, position and height have been submitted with the appeal. In any event, a lower or more open fence is likely to result in the external storage, skips and container being visible. This would have a different impact on the character of the area, which would need to be considered prior to granting permission. As such, in my judgement, the harm identified cannot simply be mitigated by the use of a planning condition requesting alternative enclosure details.
14. Accordingly, the employment use is at odds with the character of the area, and the height and close boarded design of the fence results in material harm to the open character and appearance of the area, failing to preserve or enhance the special qualities of the Conservation Area and the setting of the Listed Building. Given the scale of the development, the impact is a 'less than substantial' harm to the heritage assets.
15. Paragraph 202 of the National Planning Policy Framework 2021 (the Framework) is applicable in these instances and indicates that less than substantial harm to heritage assets should be weighed against the public benefits of the proposal. The development generates jobs and there are economic benefits to businesses using the site. However, the appellant has not indicated in any detail the scale of

these benefits, in terms of the number of jobs and the level of economic prosperity created.

16. Having regard to the size of the site and the type of use, I am of the view that the number of jobs created and the ongoing economic benefits to the area would be limited. I consider that these public benefits would not be sufficient to outweigh the less than substantial harm that I have identified. In coming to this conclusion, I am giving considerable weight and importance to paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area and the setting of the Listed Building.
17. In the reasons for issuing the Notice, the Council cite Policy DM20 of the Wycombe District Local Plan 2019 (Local Plan). This policy refers to matters to be determined in accordance with the Framework, such as issues relating to contaminated land and pollution. However, the policy does not refer to development affecting the character and appearance of an area or heritage assets. As such, this policy is not relevant in this instance.
18. I, therefore, conclude that the development adversely impacts upon the character and appearance of the area, failing to preserve or enhance the Conservation Area and the setting of the Listed Building. As such, the scheme is contrary to Policies CP9, CP11, DM31 and DM35 of the Local Plan. These policies require development to achieve a high quality of design, which takes the opportunities available for improving the character and quality of an area as well as conserving or enhancing the historic built environment and their settings.
19. The development is also contrary to the design and heritage policies contained in section 12 and 16 of the Framework respectively. These policies are largely consistent with the aims and objectives of the Local Plan policies set out above.

Living Conditions

20. The Land does adjoin several residential properties. The closest residential properties are 34 and 36 The Green (Listed Building), and the recently constructed terrace to the rear on Bakers Orchard. The private gardens on Bakers Orchard are situated at a higher level and separated by a high fence. The garden of No 34 adjoins the site and is separated by a boundary wall. Two non-habitable windows are situated in the side elevation of No 34 and face the Land. The garden of the Listed Building, No 36, adjoins the site but is separated by the neighbour's garage along the side boundary.
21. The use gives rise to an increased level of noise and disturbance, particularly when associated with the running of a commercial external storage use. Vehicles entering and exiting the site and manoeuvring within the site generates noise, by virtue of engines running, reversing alarms from larger delivery vehicles, gates being opened and closed as well as skips being moved or emptied. Furthermore, any staff and deliveries arriving at and departing from the site and raised voices contributes to the overall level of noise and disturbance emanating from its use.
22. Its position adjoining the neighbour's private garden spaces, coupled with the use inevitably causes unacceptable noise and disturbance to the occupiers of nearby residential properties. This is particularly the case with No 34, which adjoins and is the most exposed to the Land. The noise and disturbance is going to be clearly discernible to the occupants, to the extent that it has a detrimental effect on the enjoyment of their home and garden.

23. I am mindful of the fact that the Land is in a busy location with a mix of residential and commercial retail uses. However, the private gardens of these properties provide a secluded, quiet space for their occupants, away from the noise. In this context, I do not agree that the noises emanating from the use would be indistinguishable from the noise generated from the traffic on the road. Furthermore, there is insufficient technical information before me to support the contention that the noise generated by the use would not have any greater impact on the living conditions of the nearest neighbours.
24. With respect to outlook, I appreciate that the external storage is visible from neighbouring windows and, on occasions can appear untidy. Despite this, the recently constructed properties on Bakers Orchard are situated at a much higher level and the adjoining properties on The Green have mostly west facing habitable windows. As such, the external storage does not dominate the outlook from the nearest neighbour's gardens or habitable windows.
25. I have considered conditions that limit hours of operation, restrict the type/size of vehicles and delivery times. Although hours of operation, times for delivery and the type of vehicles can be agreed with the appellant, companies delivering the goods would normally determine these matters, not the appellant or tenant. Furthermore, a condition can only be applied to the limits of the Land, meaning no vehicle delivering to the site would breach the condition until it accesses it. As such, conditions such as this would not be enforceable and are unlikely to prevent larger vehicles delivering and idling outside at busy or unsociable times.
26. Although I acknowledge that the outlook from neighbouring properties is not adversely affected, the development would cause material harm to the living conditions of the occupiers of adjoining residential properties, with respect to increased levels of noise and disturbance. The development would be contrary to the aims of Policies CP9 and DM35 of the Local Plan. These policies, amongst other things, require development to contribute positively to making places better for people and preventing significant adverse impacts on the amenities of neighbouring land and property.

Parking and Highway Safety

27. The access is directly onto The Green and sits in between, but opposite, two junctions. The fence and gates are set back slightly from the front of 34 The Green. The Green is a busy highway and there is on street parking on one side, but it is heavily restricted with double yellow lines around the central green and near to junctions.
28. An external storage use means that the premises could be occupied by any business within a B8 use class. The size of the site does limit the potential scale of storage use but given the wide range of businesses that could operate in this use class, it has the potential to generate a notable increase in traffic movements. Also, given the type of use, vehicles visiting the site have the potential to be large and could be at the site for a period of time to load or unload any materials. There is limited information submitted with the appeal that sets out the potential traffic numbers associated with the use or any technical drawings showing parking or how vehicles can enter and exit the site in a safe manner.
29. The size of the site and the siting of the skips and container would suggest that that vehicles would be able enter the site, but many would be unable to turn and

exit in forward gear. Consequently, to exit, most vehicles would have to reverse out onto the busy road. The position of the adjoining house (No 34) and the curve in the road means that when reversing out of the site, the driver's visibility in a southerly direction is somewhat limited. When combined with the potential number of movements from a storage use together with the busy road, the development increases the risk of vehicle conflicts to the detriment of highway safety.

30. I have had regard to the appellant's position, which is that the development would be acceptable subject to conditions, alike those requested by the Highways Authority. The Highways Authority raised no objection to the recently refused planning application³ subject to conditions limiting the type of vehicles entering the site, a vehicle tracking plan and a parking layout plan.
31. However, I am not satisfied that these details can be conditioned. The information requested by condition is fundamental to determine the acceptability of the scheme in respect of highway safety. Without this information it is not possible to ascertain that the Land has the necessary capacity to allow vehicles to enter and exit in a safe manner. Furthermore, for the reasons outlined above, I do not consider a condition limiting the type and size of vehicles accessing the site and delivery times would be enforceable.
32. Accordingly, based on the evidence before me, I consider the external storage use, together with the stationing of the skips, container and the erection of the fence and gates has an adverse impact on highway safety. The development is contrary to Policy DM33 of the Local Plan, which requires development to a safe and convenient access and ensure that there is no adverse impact from overspill parking.

Other Matters

33. The appellant has set out that the development is acceptable in terms of flooding, drainage, archaeology, arboriculture and land contamination. The employment use also generates jobs and economic benefits to the area.
34. Although the development might be acceptable in respect of the other material considerations, this would be neutral effect, and is not a benefit of the scheme. Given the size of the site and the type of use, I am of the view that the development results in a minor uplift in the number of jobs and the economic prosperity of the area. The benefits outlined above do not outweigh the harm I have identified, which results in a significant conflict with development plan policies that protect the character and appearance of an area, the preservation of heritage assets and neighbours' living conditions.

Conclusion on Ground (a)

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the Notice with corrections and refuse to grant planning permission on the deemed application.

The Appeal on Ground (g)

36. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed.

³ Council reference 21/07238/FUL

37. The period for compliance with the requirements is within two months of the Notice taking effect. The appellant contends that additional time is required due to the existing business occupier having to secure an alternative location, the potential loss of employment and economic hardship. Also, it is contended that an alternative form of fencing that provides appropriate security to the land would need to be agreed with the Council. Consequently, a period of six months to comply with the requirements of the Notice is requested.
38. Having regard to the potential disruption to the business and the time it may take to relocate, I consider that a period of time in excess of two months can be justified. However, extending the period of compliance to 6 months would be excessive given the scale of the use and how it would prolong the identified harm to neighbour's living conditions, highway safety and heritage assets. Further to this, I note the appellant wishes to erect an alternative form of fencing and have it agreed with the Council. However, this is not requirement of Notice and permitted rights to erect enclosures still exist on the land, allowing it to be secured.
39. On this basis, I consider that a period of 3 months for the appellant to comply with the corrected Notice would strike an appropriate balance between the need to minimise the identified harms and the need to minimise disruption to the business. To this limited extent, the appeal on ground (g) succeeds. I shall vary the terms of the Notice accordingly.

Formal Decision

40. It is directed that the Notice be varied and corrected by:

In paragraph 3 of the Notice, *the deletion of the words '(the Unauthorised Use)' and 'unauthorised' and insertion of a full stop to the end of the sentence.*

In paragraph 5 (1) *the deletion of the words '(the Unauthorised Use)'.*

In paragraph 5 (2) *the deletion of the word 'Unauthorised' and substituted with 'external storage'. Also, the deletion of the word 'building'.*

In paragraph 6, specifying the time for compliance, *the deletion of the word 'two' and its substitution with the word 'three'.*

41. Subject to the variation and corrections, the appeal is dismissed, and the 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.

M. P. Howell

INSPECTOR