



Appeal Decision

Site visit made on 6 September 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal Ref: APP/J0405/C/23/3315386

Land at Plot 2, Aga Farm, Main Road, Buckland, Buckinghamshire HP22 5JA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nigel Paul Smith against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 19 December 2022.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land to residential, agricultural and leisure use, including the construction of a mooring/landing stage, and storage of items not required for the lawful use of the Land.
- The requirements of the notice are to:
 1. Permanently cease the residential and leisure use of the Land.
 2. Permanently remove from the Land all canal-side development, including the jetty, rebuilt bank inclusive of hard standing, mooring point and light post.
 3. Permanently remove all domestic planting and domestic items from the Land, including but not limited to tables and chairs and flower pots and beds.
 4. Permanently remove from the Land all unauthorised storage, including but not limited to, wood pile and trailer.
 5. Permanently remove the residential houseboat from the Land.
 6. Restore the affected areas of the Land to its use and appearance immediately prior to the breach of planning control occurring.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected by:
 - replacing “jetty” with “mooring/landing stage” at sub-paragraph 5.2and varied by:
 - deleting sub-paragraph 5.5
 - renumbering sub-paragraphs 5.6 as 5.5, and 5.7 as 5.6
2. Subject to the correction and variations, the appeal is allowed to the extent that planning permission is granted for the construction of the mooring/landing stage, on the application deemed to have been made under section 177(5) of the 1990 Act (the Act) as amended, subject to the following condition:
 - 1) No external lighting shall be installed at the site.

3. The enforcement notice is upheld and planning permission is refused for the material change of use of the Land to residential, agricultural and leisure use, including the storage of items not required for the lawful use of the Land on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for Costs

4. An application for costs was made by Buckinghamshire Council against Mr Nigel Paul Smith. This application is the subject of a separate Decision.

The Requirements of the Notice

5. Requirement 2 of the notice requires the removal of all canal-side development, including the jetty. To my mind, what has been constructed does not comprise a jetty, as it does not protrude from the canal-side into the canal. It is more accurately described as a mooring/landing stage, as set out in the allegation. I shall amend this requirement to reflect the wording used in Part 3 of the notice. There would be no injustice to any party in my doing so.
6. While not mentioned by the appellant, I have concerns over requirement 5 of the notice, which requires the removal of "the residential houseboat" from the land. It is contended by the appellant that there is no houseboat present and there was no such houseboat present at the time of my visit. Notwithstanding, any houseboat would be moored within the canal and the area of the land as defined within the notice extends only to the canal side, not into the canal itself. In this regard, the requirement is excessive in that it requires works outside of the land covered by the notice. I shall therefore delete this requirement.

Ground (b)

7. This ground is that the matters alleged in the notice have not occurred, as a matter of fact. The onus is on the appellant to demonstrate this.
8. The appellant focuses on the material change of use part of the allegation and on the basis that the Council has not provided evidence to prove any change of use, contends that this has not occurred.
9. However, no actual evidence has been provided by the appellant, other than to state disagreement with the allegation, to show that the alleged change of use has not taken place. Bearing in mind the onus being on the appellant to demonstrate that the alleged breach has not occurred, in the absence of such evidence, the appeal on ground (b) must fail.

Ground (a) – the deemed planning application

Main issues

10. The main issues are:

- The effect of the development on the character and appearance of the appeal site and surrounding area,
- Whether or not the development preserves or enhances the setting of a Grade II listed canal bridge, and

- The implications of the development in regard to transport matters, including the effect on the local road network and sustainable travel.

Reasons

Character and appearance

Material change of use of the Land to residential, agricultural and leisure use, and storage of items not required for the lawful use of the Land.

11. In respect of the change of use of the land to residential, agricultural and leisure use, when I visited the site, much of it had been cleared of items and returned to grass. However, the evidence submitted by the Council shows that previously there were domestic items present, including planters, chairs, and benches. Photographs also clearly show the presence of a boat moored at this location, adjacent to the location of these domestic items. There were also features, such as partitions, which served to partially enclose part of the land. These, in my view, facilitated the change of use of the land and imparted a distinctly residential appearance to the appeal site. This is at odds with the other areas of the canal banks within the vicinity of the site, which were for the most part clear of such features and contained significant amounts of vegetation, which further reinforced the rural nature of the canal side.
12. The change of use, together with the presence of the paraphernalia, thereby has a deleterious effect on the character and appearance of the appeal site and the surrounding area. Thus, this element of the development is contrary to policies BE2 and NE4 of the Vale of Aylesbury Local Plan (adopted September 2021) (the LP), as well as policy BP15 of the Buckland Neighbourhood Plan (adopted February 2016) (the NP). Together, and amongst other things, these policies seek to ensure that development respects and complements the characteristics of a site and its surroundings, minimises the impact on visual amenity and that the natural environment is preserved. There would also be conflict with the design aims of the National Planning Policy Framework (the Framework), and section C1 of the National Design Guide 2021, which requires development to relate well to its local and wider context.

The construction of a mooring/landing stage

13. In regard to the physical works at the site, these have resulted in the creation of an engineered mooring/landing stage, formed from sheet piling with timber capping over, holding back the re-built canal bank. Photographs provided by the Council, dated March 2021, show an area of gravel behind this. In this photograph, the mooring/landing stage is an obvious feature.
14. However, I am particularly conscious that such development is not an alien feature at this location. I observed that the bank opposite the appeal site was similarly constructed from sheet piling. While the photographs show that the feature was quite stark when first constructed, at the time of my site visit vegetation had grown along the top of the piling which softened its appearance considerably.
15. Consequently, I find that the operational development comprising of the mooring/landing stage is not a feature that is unfamiliar within the context of this canal side location and thus does not harm the character or appearance of the locale. Therefore, the construction of the mooring/landing stage accords with policies BE2 and NE4 of the LP, as well as policy BP15 of the NP. There

would also be no conflict with the design aims of the Framework, or section C1 of the National Design Guide 2021.

Setting of listed canal bridge

16. Near to the site is a bridge over the canal, identified as Grand Union Canal Aylesbury Arm Bridge Number 8, that is Grade II listed.

17. The listing description identifies the details of the bridge as:

"Bridge over canal. 1811-13. Engineer Henry Provis for Grand Junction Canal Company. Red brick, mostly in English bond. Battered plinth. Round arch with number plate over. Raised band below parapet which is rebuilt (late C20) on east side and has chamfered brick coping with end stones. Square projecting end piers on stepped battered plinths terminate the outswept ends of the parapet. The bridge carries a farm track over the canal and has been little altered since the Aylesbury arm opened in 1815."

18. The setting of this designated heritage asset encompasses a reasonably limited area surrounding it, comprising of the canal and the adjacent land. The surrounding area is characterised by the simple and uncluttered appearance of the canal banks and the land that borders them, thereby enhancing the appreciation of the bridge. There is dense planting along one of the canal sides which aids in screening a nearby industrial development, with further planting to the other with fields beyond. As such, there are funnelled views of the bridge along the canal and from the adjacent tow path, which further highlight the bridge. These matters all directly contribute to its special interest and the appreciation of the bridge.

Material change of use of the Land to residential, agricultural and leisure use, and storage of items not required for the lawful use of the Land.

19. The change of use of the land has resulted in associated paraphernalia being positioned within the land, notwithstanding that much of this has now been removed. From the submitted evidence, the presence of this paraphernalia detracted from the uncluttered appearance of the surrounding area and imparted a much more residential appearance to the appeal site. This degrades the attractive rural setting in close proximity to the listed bridge and thus detracted from the appreciation of the bridge and has a harmful effect on its setting.

20. I am mindful of the presence of a large industrial development near to the appeal site and the effect this has. However, the scale of this is significantly different from that which is before me and the consideration of that scheme, including any planning balance, would undoubtedly have been different to that which I am considering. As such, the presence of this nearby development does not alter my findings in respect of the development on the appeal site.

21. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have a clear and convincing justification. I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under

such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal.

22. Given the above and in the absence of any defined substantiated public benefit, I conclude that, on balance, the material change of use, and specifically the associated paraphernalia, would fail to preserve the setting of the Grade II listed building. This would fail to satisfy the requirements of the Act, paragraph 197 of the Framework and conflict with policy BE1 of the LP and policy BP14 of the NP, insofar as they seek to ensure that the historic environment is preserved and impacts on the setting of heritage assets are avoided. As a result, this part of the development conflicts with the development plan.

The construction of a mooring/landing stage

23. As I have set out above, the mooring/landing stage is not an alien feature at this location and sheet piling is used in other locations near to the bridge, and to a much greater extent. Furthermore, sheet piling is a common feature of canal sides. Given that I observed that the development has been substantially softened by vegetation, its presence at this location has a neutral effect on the setting of the listed bridge.
24. Given the above I conclude that, on balance, the presence of the mooring/landing stage preserves the setting of the Grade II listed building. There is thus no conflict with the requirements of the Act, paragraph 197 of the Framework and no conflict with policy BE1 of the LP and policy BP14 of the NP. As a result, this part of the development accords with the development plan.

Transport matters

25. The Council contends that the development would result in a level of traffic that would be out of character with the "low-key character of the locality." However, there is nothing to substantiate that any traffic associated with the development, over and above that which could be associated with the established agricultural use of the land, would result in such an effect as to be harmful. While I am mindful that at the time of my site visit I observed little in the way of traffic movements within the vicinity of the site, I am also conscious that there are other sites along this highway that would likely generate traffic. In this context, the development at the appeal site would not substantially increase this.
26. I accept that the development is likely to be served by the private car. However, the Framework also accepts at paragraph 105 that "opportunities to maximise sustainable transport solutions will vary between urban and rural areas". In my view and in this instance, the limited movements that would be associated with the development would not be harmful and would be acceptable considering the context of the location.
27. Thus, I find that the scheme would not be harmful, having regard to transport matters, including the effect on the local road network and sustainable travel. Therefore, the scheme would accord with policy T1 of the LP, insofar as it seeks to deliver sustainable transport options.

Other matters

28. There is reference by the Council to permission being required from the Rivers and Canal Trust. This however is a matter that is covered by separate

legislation and not one which influences my decision on the planning merits of the development.

Conclusion on Ground (a) and the deemed planning application

29. While I have found that the change of use of the land is not acceptable at this location, the construction of the mooring/landing stage is acceptable and planning permission should be granted for this element of the development only.
30. I shall not vary the notice to delete the requirement to remove the mooring/landing stage. S180 of the Act provides that where planning permission is granted after the service of an enforcement notice, for any development carried out before the grant of permission, the notice shall cease to have effect so far as inconsistent with that permission. In other words, the grant of permission for the mooring/landing stage shall override the requirement of the notice to remove it.

Conditions

31. The Council have recommended two planning conditions in the event that I grant planning permission. The condition preventing the residential use of the land is not necessary as this would require planning permission in its own right. Given the rural character of the location and to protect the areas character and appearance, the suggested condition in respect of external lighting is necessary.

Ground (f)

32. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach.
33. The notice as issued required the cessation of the alleged unauthorised uses of the land and the removal of the alleged unauthorised structures. Thus, the purpose of the notice was to remedy the breach. The ground (f) appeal can only succeed if the appellant shows that the requirements are excessive to remedy the breach, and that lesser steps would achieve the same aim.
34. I have found above that the landing/mooring stage is acceptable and that in granting planning permission for this, the requirement of the notice to remove this is overridden. The appellant makes no reference to other requirements being excessive and, in any event, does not set out any lesser steps that would be appropriate.
35. The appeal on ground (f) therefore fails.

Ground (g)

36. Ground (g) is that the period for compliance with the notice falls short of what is reasonable.
37. The appellant contends that the period of three months is insufficient, due to a lack of specificity within requirement 7 of the notice, which states:

"7. Restore the affected areas of the Land to its use and appearance immediately prior to the breach of planning control occurring."

38. However, I find that when read in conjunction with the other requirements as stated in the notice, this is sufficiently precise and specific to enable the appellant to understand what must be done. The appellant requests a period of 6 months, and the Council are amenable to this. However, given the extent of works required and that since I am granting planning permission for the mooring/landing stage it does not need to be removed, I find that the period of 3 months is reasonable and proportionate.

39. The appeal on ground (g) therefore also fails.

Conclusion

40. For the reasons given, I conclude that the appeal on ground (a), the deemed planning application, should succeed in part; I will grant planning permission for the mooring/landing stage but otherwise uphold the notice with correction and variations, and refuse to grant planning permission in respect of the remaining matters alleged in the notice. By virtue of s180 of the Act, the requirements of the notice will cease to have effect so far as they are inconsistent with the planning permission granted.

Martin Allen

INSPECTOR