



Appeal Decision

Site visit made on 8 March 2024

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17th April 2024

Appeal Ref: APP/K0425/C/23/3325221

Land at Saddleback Barn, Lower Icknield Way, Longwick, Buckinghamshire HP27 9RL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr John Collinswood against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 1 June 2023.
- The breach of planning control as alleged in the notice is "Without planning permission, a material change of use of the land to a mixed use comprising of residential, agricultural and a memorial garden and integral to that use, the construction of new wooden gate structure and gravel pathways".
- The requirements of the notice are to:
 1. Cease the use of the Land as a memorial garden;
 2. Remove the wooden gate structure (in the approximate position as shown by 'XX' on the attached plan), from the Land;
 3. Rip-up and remove the gravel pathways (in the approximate position as shown by dashed lines on the attached plan), from the Land;
 4. Restore the Land to its condition that existed immediately prior to the commencement of the unauthorised use (for the avoidance of doubt, all items, equipment, signage and paraphernalia should be removed, and all disturbed areas returned to grassland);
 5. Remove all materials and debris resulting from complying with steps 1 to 4 of this Notice from the Land.
- The period for compliance with the requirements is six months of the notice taking effect.
- 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). 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Applications for Costs

1. An application for costs has been made by Mr John Collinswood against Buckinghamshire Council. This application is the subject of a separate decision.

Preliminary Matters

2. Whilst the appellant has not formally pleaded ground (b), the appellant's appeal statement says that no gravel pathways have been created. This is effectively a ground (b) appeal (that the matters alleged in the notice have not occurred), and I have therefore addressed this in my reasoning.

3. The enforcement notice (EN) was served on the Childrens Memorial Garden, yet the correct name of the charity is understood to be the Childrens Memorial Garden and Foodbank. Notwithstanding this error, I am satisfied that it has not caused prejudice to the appellant nor to the charity, as they were both aware of the EN and the subsequent appeal, and therefore had opportunity to make representations.
4. The appellant suggests that the planning unit has been incorrectly identified by the Council. However, this factor does not affect my findings nor the outcome of the appeal, and I have therefore not addressed this point further.
5. Since submission of the appeal, the National Planning Policy Framework has been superseded. I am satisfied that the updates do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the latest version, published in December 2023 (Framework).

GROUND B

6. Pursuant to ground (b), the appellant says that the alleged construction of gravel pathways has not occurred. This is because they are drainage channels, and not pathways.
7. During my site visit, I observed a very narrow gravelled area running around the perimeter of the memorial garden. My observations are consistent with this gravelled area being a drainage channel for the management of surface water, and not a gravel pathway.
8. This means the construction of gravel pathways, as alleged in the EN, has not occurred. The appeal on ground (b) therefore succeeds insofar as it relates to the allegation of gravel pathways, and I shall correct the allegation accordingly.

GROUND C

9. Pursuant to ground (c), the appellant says that the construction of a wooden gate is permitted development, and therefore does not constitute a breach of planning control.
10. Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended) (GPDO) permits the erection of gates, fences and walls, subject to certain height restrictions. Given the location of the gate is not adjacent to a highway, the relevant height limit is 2 metres in this instance.
11. The gate provides pedestrian access to the memorial garden, and is said to be approximately 1.7 metres in height, which is consistent with my own observations. It therefore falls within the parameters of Class A, Part 2, Schedule 2 of the GPDO. Given that the gate could just as easily be used in conjunction with any agricultural use of the appeal site, I do not consider it to be an integral component of the alleged material change of use, such that permitted development rights would not apply.
12. The gate therefore constitutes permitted development, and does not require planning permission. In turn, it does not constitute a breach of planning control. The appeal on ground (c) therefore succeeds insofar as it relates to the

alleged construction of a new wooden gate structure, and again, I shall correct the notice accordingly.

GROUND A – DEEMED PLANNING APPLICATION

Main Issue

13. The main issue, which is informed by the Council's reasoning for issuing the EN, is whether or not the location of the development is acceptable, with particular regard to its sustainability and reliance on private vehicle.

Reasons

14. The appeal site is located in the countryside, but outside of the Green Belt. Policy DM44 of the Wycombe District Local Plan (2019) (Local Plan) prescribes the types of development which may be permitted in such areas. A use of land as a memorial garden would not fall within this prescribed list. Strictly speaking, the location of the development therefore conflicts with this Policy.
15. The appeal site is also not easily accessible by public transport, which means users would mostly be reliant on private motor vehicle to access the memorial garden. In turn, the development conflicts with the overarching aims of Policies CP1 and DM33 of the Local Plan, which seek to promote sustainable modes of transport and reduce reliance on private motor vehicles. It also conflicts with Buckinghamshire's Local Transport Plan 4 (2016 – 2036) and Buckinghamshire County Council's Highways Development Management Guidance (2018), which promote similar sustainability objectives. Similarly, it leads to some conflict with the Framework, insofar as it seeks to promote sustainable modes of travel.

Planning Balance

16. Nonetheless, the harm attributed to these policy conflicts is limited. The development does not incorporate any built development, so preserves the overall openness of the site. It also incorporates extensive tree and shrub planting, which assimilates effectively with the wider countryside setting, thereby preserving the rural character of the area.
17. Visitor numbers associated with the memorial garden are said to be low, with usage taking place on approximately 60 days of the year only. This makes sense, given that users are primarily bereaved parents and families. Visitors must also pre-book an appointment, so that only a single set of parents (or family) can visit the garden at any one time. Whilst visitors will mostly rely on private transport to access the site, in reality, the level of trip generation associated with the memorial garden is therefore fairly low.
18. Set against this limited harm, there are notable benefits of the scheme. In particular, the memorial garden provides an attractive and peaceful contemplative space for bereaved parents and families. The numerous letters of public support attest to its importance and value in this regard. The garden incorporates extensive planting of native species and wildflowers, which introduce biodiversity benefits to the site. The fruit derived from tree planting within the memorial garden also helps to sustain a local foodbank associated with the site.

19. Given that some trees within the memorial garden are now relatively established, I am also mindful of the distress that their removal may cause to the bereaved parents and families who planted them. This is a further consideration which weighs in my decision.
20. Bringing these factors together, it is clear to me as a matter of planning judgment, that when taken together, the benefits and other considerations of the scheme are significant and clearly outweigh the conflict with the development plan. Consequently, the material considerations indicate that I should determine otherwise than in accordance with the development plan and allow the appeal.

Other Matters

21. I note that the Child Bereavement UK charity advises that a space designed to support bereaved families should be accessible by private and public transport. However, this is guidance only, and I am not persuaded that it should warrant refusal of the scheme, given the benefits identified above.
22. The previous appeal concerned operational development comprising a chapel of remembrance. As the present case concerns a material change of use and not built development, the developments are very different. In any event, I have broadly reached similar conclusions to the previous Inspector in terms of the site's sustainability. However, I have found that the benefits and other considerations, several of which are unique to this particular scheme, are sufficient to outweigh the associated harm. In turn, my decision does not conflict with this earlier appeal.

Conclusion – Ground (a)

23. For the reasons set out above and having regard to all other matters raised, I conclude that the deemed planning application should be allowed. The appeal on ground (a) therefore succeeds.

Conditions

24. The Council has suggested two conditions in the event that the appeal is allowed. I have reviewed these in line with guidance contained in the Framework and Planning Practice Guidance.
25. In terms of parking, the appeal site includes ample space to facilitate parking in conjunction with the memorial garden. In turn, I do not consider any formal parking arrangement is necessary, particularly as visitor numbers are low, and are likely to remain so.
26. Given the low visitor numbers and the fact they will primarily access the site for a place of quiet contemplation, any amenity impact is also likely to be minimal. In turn, a condition to restrict the hours of opening would not meet the test of necessity.

Conclusion

27. For the reasons given above, I conclude that the appeal succeeds on grounds (b) and (c) insofar as they relate to the construction of the wooden gate and gravel pathways. I shall correct the allegation in the notice accordingly. I also conclude that the appeal succeeds on ground (a), and I shall therefore grant planning permission for the use as described in the notice (and as corrected).

28. It follows that the appeal on grounds (f) and (g) do not fall to be considered.

Formal Decision

29. It is directed that the enforcement notice is corrected by deleting paragraph 3 and substituting it with the following new paragraph 3:

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission, a material change of use of the land to a mixed use comprising residential use, agriculture and a memorial garden.

30. Subject to this correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of the land to a mixed use comprising residential use, agriculture and a memorial garden, on Land at Saddleback Barn, Lower Icknield Way, Longwick, Buckinghamshire HP27 9RL as shown on the plan attached to the notice.

James Blackwell

INSPECTOR