



Appeal Decision

Site visit made on 15 February 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2024

Appeal Ref: APP/K0425/C/23/3328570

Land between A404 and Clubhouse Water Sports Club, Fieldhouse Lane, Marlow (registered by HM Land Registry under title: BM238686)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Rob Marsh (Folbro Y Ltd) against an enforcement notice issued by Buckinghamshire Council.
 - The notice was issued on 27 July 2023.
 - The breach of planning control as alleged in the notice is a material change of use of the land to use for the parking of motor vehicles, and integral to that use the installation of lighting, erection of fencing, laying of hardstanding, landscaping buffers between parking spaces and installation of electricity box.
 - The requirements of the notice are:
 1. Cease the use of the land for the parking of motor vehicles;
 2. Remove all vehicles that have been brought onto the land in connection with the unauthorised use, from the land;
 3. Dismantle and remove the lighting from the land;
 4. Dismantle and remove the fencing (shown in the approximate position marked by the dotted line on the attached plan), from the land;
 5. Rip up and remove the hardstanding (shown in the approximate position marked hatched on the attached plan), from the land;
 6. Remove all landscaping buffers between parking spaces from the land;
 7. Disconnect and remove the electricity box and all associated electrical facilities provided as part of the unauthorised use, from the land;
 8. Remove all debris and materials resulting in compliance with steps 1 to 7 of this notice, from the land.
 - The period for compliance with the requirements is: Nine months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (e) 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.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Application for costs

2. An application for costs was made by Buckinghamshire Council against Folbro Y Ltd. This application is the subject of a separate decision.

Procedural Matters

3. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to

this appeal have not substantively changed from the previous iteration and, consequently, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal accordingly.

Ground (e)

4. An appeal on this ground is made on the basis that copies of the enforcement notice were not served as required by section 172 of the Town and Country Planning Act 1990 ("the Act"). Section 172(2)(a) of the Act requires that copies of an enforcement notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
5. The appellant's case is made on two grounds. Firstly, it is claimed that the Council did not follow its own procedures correctly in deciding that it was expedient to issue the notice and, as a result, that the service of the notice did not comply with the requirements of section 172(1)(b) of the Act. In particular, the appellant considers that it was not expedient to issue the notice given that a retrospective planning application¹ had been submitted to the Council, albeit the application was subsequently withdrawn on the 13 April 2023 in advance of further 'pre-application' discussions taking place.
6. The power to serve an enforcement notice is discretionary and must be exercised with regard to any material considerations. The appellant contends that it was not expedient to serve the notice and refer to this as a requirement of subsection 172(1). However, this section only requires that it must appear expedient to the local planning authority to issue the notice. Section 1 of the notice clearly states this to be the case here.
7. The courts² have also held that any challenge to whether it was 'expedient' for the Council to issue the enforcement notice must be pursued by way of judicial review. Inspectors have no jurisdiction to determine whether the local planning authority complied with section 172 in this regard.
8. The second matter raised by the appellant is that the notice was not properly served on everyone with an interest in the land. The appellant's criticism is that the Council failed to serve the enforcement notice on the owner of the land, Folbro Y Limited. It appears that the Council served the notice at the address provided on Land Registry records, whereas the appellant states that Companies House records detail the correct address to serve the notice, and that this had been the company address since March 2013. The appellant therefore contends that the Council's failure to use the current address serves to negate proper service of the notice, as the notice was not received by the appellant until a copy was provided by the tenant of the site.
9. The requirements relating to the service of an enforcement notice in S172(2) of the Act provide that an enforcement notice shall be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land, being an interest which in the opinion of the authority is materially affected by the notice. Furthermore, S176(5) of the Act states that if a person who was required to be served was not served, that fact may be

¹ Council Ref: 22/08240/FUL

² Britannia Assets v SSCLG & Medway Council [2011] EWHC 1908 (Admin)

disregarded if neither the appellant nor the person required to be served has been substantially prejudiced by the failure to serve.

10. Although the evidence before me shows that the enforcement notice was sent to the incorrect address, the owners of the land have clearly received and are aware of the notice. Furthermore, the actions of the Council have not prevented the appellant from appealing and presenting their case in full. Indeed, there is no indication in the appellant's own statement that the Council's actions have caused injustice. Therefore, no prejudice has been demonstrated.
11. For these reasons, I find that the notice was issued and served as required by section 172. As a result, the appeal on ground (e) fails.

Ground (c)

12. For the appeals to succeed on ground (c) the onus is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
13. The argument raised by the appellant under this ground relates solely to the erection of palisade fencing, and not the other operational development or the change of use. The appellant suggests that the fencing erected along the northern, western, and eastern boundaries of the site benefits from a grant of planning permission under Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). This is on the basis that the fencing is no higher than 2m and is not adjacent to a highway.
14. Although the fencing erected along the northern, western, and eastern boundaries is within the height permitted by the GPDO, from the evidence before me it seems that the fencing has been erected to enclose the site. As held in *Murfitt*³, as this facilitates the unauthorised change of use it can be required to be removed in order to remedy the breach, even if it would have been permitted development had it not been constructed to facilitate the change of use.
15. Thus, for the reasons given above, the matters stated in the notice constitute a breach of planning control and the appeal under ground (c) fails.

Ground (a) and the deemed planning application

Background and Main Issues

16. The appeal site is located within the Green Belt, adjacent to the A404 and to the east of Globe Business Park and the settlement of Marlow. The site is currently occupied by a local company who are based at Globe Business Park and use the site as an overflow car parking facility.
17. On the 17 January 2018 planning permission⁴ ("the 2018 permission") was granted at the appeal site for the '*Creation of car park providing 200 spaces with associated lighting, landscaping and access for a temporary period of 5 years*'. Condition 1 of the permission stated that the use should be

³ *Murfitt v SSE* [1980] JPL 598

⁴ Council Ref: 17/06833/FUL

discontinued, and the land restored to its former condition by the 31 January 2023.

18. A planning application⁵ was subsequently refused on the 30 July 2021 which sought permanent permission for the car park, along with an additional area to the east. A final planning application⁶ was submitted in December 2022 ("the 2022 application") which again sought permanent permission for the car park and additional area to the east, along with other associated works. This application was withdrawn in April 2023. As a result, since the expiration of the 2018 permission, the development has remained at the appeal site without the necessary planning permission.

19. Consequently, the main issues are:

- whether the development is inappropriate development in the Green Belt for the purposes of the Framework and any relevant development plan policies;
- the effect of the development on the character and appearance of the area;
- the effect of the development on Little Marlow Lakes Country Park;
- the effect of the development upon biodiversity and protected species;
- the effect of the development on existing trees; and
- if the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether the development is inappropriate development

20. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policies CP8 and DM42 of the Wycombe District Local Plan (adopted August 2019) (WDLP) broadly conform to the general thrust of the national Green Belt policy.

21. The Framework directs that development within the Green Belt is inappropriate, with the exception of the types of development set out in paragraphs 154 and 155. Paragraph 155 of the Framework identifies certain forms of development, other than the construction of new buildings, that are not inappropriate in the Green Belt. This is subject to their preserving the openness of the Green Belt and not conflicting with the purposes of including land within it. Included, at 155 (e), are "material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)".

⁵ Council Ref: 20/06165/FUL

⁶ Council Ref: 22/08240/FUL

22. The words 'such as' indicate that 155 (e) is not an exhaustive list of uses that may be found to be not inappropriate. However, the exclusion it provides should only apply to uses that compare closely with the examples given. To my mind, those examples are defined by the presence of green infrastructure throughout the site, which the material change of use of the land at the appeal site does not achieve. Consequently, the use of the land for the parking of motor vehicles constitutes inappropriate development within the Green Belt. It is thus harmful by definition and should only be approved in very special circumstances.
23. I am also not persuaded that paragraph 155 (c) of the Framework is relevant to the unauthorised development. Although not specifically defined in the Framework, "Local transport infrastructure which can demonstrate a requirement for a Green Belt location" is more likely to refer to development such as new road schemes or public transport improvements. In any event, such development is still required to preserve openness and not conflict with the purposes of the Green Belt.
24. The appellant concedes that the palisade fencing, access gates, lighting, and electric EV charging points erected on the site are inappropriate development. However, it is asserted that the hardstanding areas (and swale) that facilitate the parking of vehicles represents an engineering operation and therefore meets the exception listed at paragraph 155 (b) of the Framework.
25. In respect of openness and not conflicting with the purposes of including land within the Green Belt, openness can be perceived both spatially and visually. The hardstanding area, which can accommodate around 200 vehicles, is considerable in size and occupies space that was previously undeveloped land that was free from built form. This has inevitably resulted in the significant reduction of the spatial openness of the site. At the time of my site visit there were several vehicles parked on the site which, along with other associated operational development including lighting and fencing, further added to this loss of spatial openness.
26. In addition to the spatial reduction in the openness of the Green Belt, there is also a visual reduction in openness. Vehicles parked on the site are arranged in rows and reasonably close together, exacerbating their visual impact. The open nature of the palisade fencing along the southern boundary affords clear views of the site from Fieldhouse Lane. The visual presence of vehicles parked on the site, along with the hardstanding and other associated operational development has created an appreciable sense of enclosure by obviously man-made features of varying size. The frequency with which vehicles are present at the site means that the visual consequences of the use are likely to be evident for long periods, particularly during the daytime. This is appreciably and noticeably different to the pre-existing situation, where there would have been an absence of man-made features in views of the site.
27. As a result, the unauthorised use has also given rise to a significant and appreciable reduction in openness in visual terms. Illumination of parts of the site, for example when the installed lighting is on, or when vehicles are arriving or departing in the hours of darkness such as during the winter months in the early morning and late afternoon, is highly likely to further add to the adverse visual impact of the unauthorised use in relation to openness.

28. Furthermore, when compared with the pre-existing situation, there has been a significant increase in the number of daily vehicular comings and goings at the site. Therefore, the unauthorised use has also resulted in a considerably greater sense of urbanisation at the site, adding to the adverse effects on openness. By introducing an inherently urban activity in this location to the east of the A404, which serves as a physical boundary to the built-up area of Marlow, the unauthorised use has resulted in encroachment into the countryside. This conflicts with one of the purposes of including land within the Green Belt set out in paragraph 143 of the Framework.
29. For the reasons given above, I conclude that the development does not fall within the exceptions outlined in the Framework and would be in conflict with Policies CP8 and DM42 of the WDLP. Accordingly, the development is inappropriate development, which, by its very definition is harmful to the Green Belt and should not be approved except in very special circumstances.

Character and Appearance

30. There are notable visual intrusions from urban forms of development and infrastructure in the vicinity of the site, including the nearby hotel complex. Even so, the predominantly rural character of the surrounding land gives the area a definite rural setting. From the available evidence it is apparent that the site surface possessed largely open and vegetated characteristics prior to the car parking use commencing. This meant that in both a visual and physical sense the site related well to its rural setting, the timber fencing along the southern boundary notwithstanding.
31. When in use, the vehicles parked on the site are visually assertive features that individually and cumulatively fail to assimilate with the softer profiles of the largely green and rural surroundings found to the east of the A404. Furthermore, the large expanse of hardstanding along with other built form including the fencing and lighting columns gives the site a cluttered and urbanised appearance. Although public views of the site from the north, west, and east are limited, clear views of the site are possible from Fieldhouse Lane to the south. These clear views into the site only serve to emphasise the visual impact and urban nature of the development.
32. Given the scale and nature of the development, I do not consider that the provision of additional landscaping or planting would adequately overcome the visual harm identified. In any event, the ability to screen an otherwise unacceptable development is not a good reason for granting permission. Though I also acknowledge that the development has been in situ for more than five years, this does not in itself justify the permanent retention of the development which would in fact exacerbate the harm caused.
33. The development therefore causes harm to the character and appearance of the area, and conflicts with Policies CP9, DM35, and DM37 of the WDLP. These seek, amongst other things, that all developments achieve a high quality of design which improves the character of the area and the way it functions.

Little Marlow Lakes Country Park

34. The appeal site falls within Little Marlow Lakes Country Park, a country park which includes several former gravel pits and areas of woodland. The supporting text to Policy RUR4 of the WDLP identifies that the main purpose of

the park is to provide and improve opportunities for the enjoyment of the countryside by the public.

35. Policy RUR4 further states that, amongst other things, the country park is allocated for outdoor recreation, and that any development will be required to provide safe, convenient, and direct access to Marlow and Bourne End for pedestrians, cyclists, and disabled users. The Little Gravel Pits Supplementary Planning Guidance (March 2002) (SPG) identifies the appeal site as a potential development area, albeit for a use related to leisure and recreation.
36. It is clear that the development is not related to leisure or recreation, given that it serves as an overflow car park for a nearby private company at Globe Business Park. Considering the large expanse of hardstanding and lack of green infrastructure at the appeal site, I do not agree with the appellant's assertion that an outdoor recreational use would likely result in a less visually permeable form of development or that it would have a greater visual impact. Policy RUR4 also specifically states that car parking facilities should be provided in the east side of the park, whereas the appeal site is located at its extreme western side.
37. Furthermore, the development does not currently provide safe, convenient, and direct access to Marlow and Bourne End for pedestrians, cyclists, and disabled users. The appellant refers to the 2022 application which is said to have included pedestrian and cycle connections from the site, therefore complying with this part of Policy RUR4. However, I do not have sufficient information before me with regards to either the specific details of any such connections, including its specific route or construction, or how it would be delivered and secured going forward.
38. The development also fails to provide publicly accessible open space or contribute to the continued development and long-term management of the country park. Accordingly, the development fails to meet the overall aims and objectives of the country park, and is in conflict with Policy RUR4, and guidance contained within the SPG.
39. The Council has also referred to Policy CP7 of the WDLP which sets out the key infrastructure requirements necessary to support growth. It further states that provision will be made for new infrastructure to support growth through planning obligations and other funding streams. However, given the type and scale of the development subject of this appeal, I do not find that there is any direct conflict with the policy.

Biodiversity and Protected Species

40. The Council's reasons for issuing the enforcement notice includes concerns that the development has an adverse impact on protected species and/or their habitats, and that it has not been demonstrated that the development has led to a measurable net gain in biodiversity.
41. Paragraph 180 of the Framework requires development to provide net gains for biodiversity, however, it does not indicate how much gain is required. Similarly, whilst the development plan policies referred to by the Council require there to be biodiversity enhancements or a net gain, the level of that gain is not specified. Although from January 2024 the Environment Act 2021 requires all sites, except small sites, to deliver at least 10% biodiversity net gain, this does not apply to planning applications submitted prior to this date. Nevertheless,

both the relevant development plan policies and the Framework require the development to provide some net gain.

42. As part of the appeal the appellant has provided a Biodiversity Net Gain Assessment (NGA). Though the Council have raised concerns over the baseline and calculations used in the NGA, even when taking the appellant's calculations, it concludes that the development results in a biodiversity net loss of 6.9%. The NGA further concludes that there is insufficient land available within the site to provide the onsite biodiversity required. Given the wide expanse of hardstanding and parking spaces across the site, I find no reason to disagree with this view.
43. In view of the above it is stated that the appellant is reviewing off-site alternatives to deliver the necessary biodiversity net gain (BNG) or, if no off-site alternatives can be found, that the appellant will review options to deliver BNG through the purchase of biodiversity credits. There is no scheme for the off-site provision of BNG before me, and at this stage it is unclear how the required BNG would be achieved. The appellant asserts that this could be secured with a suitable planning condition.
44. However, noting advice regarding the use of planning conditions set out in the PPG, a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Such condition should only be used in exceptional circumstances. This is not the case here. I do not therefore consider that in this instance the matter of BNG can be suitably addressed by planning condition.
45. With regards to the effect of the development on protected species, the appellant has undertaken a Preliminary Ecological Appraisal (PEA) which concluded that, subject to all outlined mitigation being carried out, there would be no impact to protected species or their habitats. The Council however contend that the PEA is not based on the condition of the site prior to any works taking place. In any event, I note that when approving the 2018 permission the Council considered that the development was acceptable, subject to securing ecological enhancements, including benefits for birds, invertebrates, reptiles, and other species. Accordingly, I see no reason why a similar suitable planning condition could not be imposed on any future grant of planning permission.
46. Therefore, on the basis of the information before me, I am unable to conclude that the proposal does not adversely affect biodiversity or that it would deliver a net gain in biodiversity. It therefore conflicts with Policies CP10, RUR4, and DM34 of the WDLP, and Policies DM11, DM13, and DM14 of the Council's Adopted Delivery and Site Allocations Plan for Town Centres and Managing Development (adopted July 2013) (SAP). Together these require development to protect and enhance biodiversity to ensure a net gain in biodiversity within individual development proposals. It would also not comply with the Framework which requires development to minimise impacts on and provide net gains for biodiversity.

Trees

47. The Council's fifth reason for issuing the notice relates to the impact that the development has on existing trees, including those which are covered by Tree

Preservation Orders. Although the Council states in its reasons for issuing the notice that, without contrary evidence, the development would have an adverse impact upon existing trees, it is not explained what that adverse impact is or would be.

48. Whilst the Council have referred to what they describe as outdated arboricultural information being submitted, a Tree Survey and Preliminary Arboricultural Assessment (AIA) dated December 2023 has been provided by the appellant as part of the appeal submissions. Whilst the AIA encompasses the area that was subject of the 2022 application, namely both the appeal site and an adjoining area of land to the east, overall, the AIA concluded that there should be no long term negative impact to the retained trees. Most of the recommendations included in the AIA related to tree protection measures that would be required during works to form a pedestrian footpath and cycle route proposed as part of the 2022 application. There is no indication in the AIA that the retention of the existing development on the appeal site is, or will have, an adverse impact on any retained trees.
49. Overall, I accept the appellant's case in relation to the trees. Particularly given the length of time that the development has been in situ, the Council has not adequately explained how the development subject of the enforcement notice has an adverse impact on retained trees on the site. The development therefore accords with Policies CP10, RUR4, and DM34 of the WDLP, and Policy DM11 of the SAP. These seek, amongst other things, to ensure that developments enhance green infrastructure and that trees are protected and retained.

Other Considerations

50. The appellant indicates that the car park is necessary to help support the requirements of its current occupier, a business located at Globe Business Park, and allow them to continue to contribute to the local economy. This has a knock-on benefit to the wider business park, by a reduction in the level of demand for the on-street parking spaces. There are therefore social and economic benefits associated with the development which helps retain existing jobs and support local businesses.
51. The appellant has provided a Parking Needs Assessment dated November 2022, with a further addendum dated December 2023. Both documents detail a significant shortfall of parking spaces at the nearby Globe Business Park. The latest survey revealed that 179 cars were parked on the appeal site, which currently assists in alleviating some of the parking stresses in the area. Clearly, should the notice be upheld then those cars using the appeal site would have to seek an alternative parking arrangement. It is further considered that if the business park was at full capacity, then there would be a need for around 365 parking spaces. The Council accepts that there is a clear and known parking issue at Globe Business Park.
52. It is evident that the 2018 permission was granted in part to afford time to investigate alternative solutions to the parking issues at the business park. However, although reference is made to a 'concerted' effort being made to find alternative parking locations, very little evidence has been provided in support of those efforts or that demonstrates that there are no other suitable sites or alternative options available. There is also no evidence to indicate that the business which currently uses the car park would cease to operate or seek to

relocate away from the business park should the notice be upheld. On that basis, I afford moderate weight in favour of the social and economic benefits of the development.

Planning Balance and Conclusion

53. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be supported except in very special circumstances. It goes on to advise that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
54. In this case the Green Belt harm relates to the significant loss of openness in both a spatial and visual sense, as well as a conflict with Green Belt purpose (c). Taken together this amounts to a matter of substantial weight, to which I must also add the harm to the character and appearance of the area, biodiversity, and the policy conflict in relation to Little Marlow Lakes Country Park.
55. The social and economic benefits of the development attract moderate positive weight in favour of the development. However, these considerations do not outweigh the substantial weight that I have given to the harm caused to the Green Belt and the additional harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.
56. For the reasons set out above, the development conflicts with the development plan when read as a whole, and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all other matters raised, I therefore conclude that the appeal on ground (a) should be dismissed, and planning permission be refused on the deemed application.

Conclusion

57. For the reasons given above, I conclude that the appeal does not succeed. I have upheld the enforcement notice and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR