



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: 07 May 2024

Appeal Ref: APP/K0425/C/22/3305844

The White House, Fieldhouse Lane, Marlow, Buckinghamshire SL7 1LU

- 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 21 July 2022.
 - The breach of planning control as alleged in the notice is a material change of use of the land to a mixed use comprising of residential and the parking and storage of motor vehicles (the "Unauthorised Use"), and integral to the unauthorised use, operational development comprising the construction of hardstanding and the erection of a gate and fencing.
 - The requirements of the notice are:
 1. Cease the use of the land for the storage and parking of motor vehicles; and
 2. Remove from the land the hardstanding (shown in the approximate location stippled on the attached plan); and
 3. Remove from the land all items and vehicles that have been brought onto the land in connection with the "Unauthorised Use"; and
 4. Remove the gate from the land (shown in the approximate location marked A to B on the attached plan); and
 5. Remove the fence from the land (shown in the approximate location dashed on the attached plan); and
 6. Remove from the land all debris and materials resulting from compliance with steps 1 to 5 of this Notice.
 - The period for compliance with the requirements is: Three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (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.
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Decision

1. It is directed that the enforcement notice is varied by:
 - In section 6 the deletion of the words "three months" and the substitution of the words "six months".
2. Subject to this variation, 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

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

Procedural Matters

4. 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)

5. 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.
6. The appellant's case is not that those required to be served with copies of the notice were not served. It is rather 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.
7. 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.
8. The courts¹ 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.
9. 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 (b)

10. To succeed on ground (b) the onus is on the appellant to show that what is alleged in the notice has not occurred as a matter of fact.
11. The appellant does not dispute that the operational development alleged in the notice has taken place, nor is it disputed that the storage and parking of vehicles is occurring at the site. However, the allegation describes a mixed use comprising residential and the storage and parking of vehicles. The gist of the appellant's case is that the residential element of the allegation has not occurred, and that in any case the vehicle storage and parking use forms a separate and distinct planning unit.
12. Dealing firstly with whether the residential use has occurred on the site, by the appellant's own admission the property known as 'The White House' is clearly a residential dwelling falling within Use Class C3 of the Town and Country

¹ Britannia Assets v SSCLG & Medway Council [2011] EWHC 1908 (Admin)

Planning (Use Classes) Order 1987 (as amended). It is the appellant's case thought that as 'The White House' is fire damaged and not currently capable of being occupied as a dwelling, that residential use now ceases to exist.

13. Whilst clearly fire damaged and not currently habitable, in my view the property remains a dwelling and retains its lawful residential use. The residential use of 'The White House' has not been abandoned and therefore, following the completion of any necessary repairs, it could be occupied as such at any given time. The key question therefore is whether the residential and storage and parking of vehicles uses comprise a mixed use within the same planning unit, or whether they form two separate and distinct planning units.
14. The leading case relating to planning units is *Burdle*². It was held in *Burdle* that the planning unit is normally the unit of occupation unless a smaller area can be identified, which as a matter of fact and degree, is physically separate and distinct and occupied for different and unrelated purposes. Three broad categories are identified for planning units, which are:
 - a) A single unit of occupation with a single primary use with ancillary and incidental activities;
 - b) A single unit of occupation with two or more separate primary uses that are not incidental to one another (mixed use); and
 - c) A unit of occupation with two or more physically separate areas which are occupied for different and unrelated purposes. Each area in this scenario forms a separate planning unit.
15. The appeal site as identified on the enforcement notice is accessed via a single gated entrance from Fieldhouse Lane. Upon entering the site there is an area of land comprising both hardstanding and grassed areas, along with the property known as 'The White House'. The remainder of the appeal site, which also includes hardstanding and grassed areas, is enclosed by palisade fencing.
16. The appellant considers that out of the three broad categories identified above, scenario c) best describes the appeal site, with the White House forming one planning unit and the area enclosed by the palisade fencing forming a second. It is stated that the storage and parking of vehicles use is contained within the area enclosed by the palisade fencing, and therefore this area is occupied for a different and unrelated purpose to the remainder of the site.
17. In this case the site identified by the notice is entirely occupied by a single commercial tenant, who uses the site for the storage and parking of vehicles prior to their transit to a nearby factory. It is therefore a single unit of occupation.
18. Although the majority of vehicles on site were stored/parked within the area enclosed by the palisade fencing, I saw at my site visit that a number of vehicles were also parked outside of this area on land to the east of the White House. Any vehicles entering or exiting the site would also utilise this area adjacent to the White House.
19. It is therefore apparent that the storage and parking of vehicles use occurs across the entirety of the site identified by the notice, and not just within the

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

area of land enclosed by the palisade fencing. The site is uniform in both character and function and there are not two or more physically separate areas which are occupied for different and unrelated purposes.

20. Therefore, in my judgment, the existence of two primary uses (residential and the storage and parking of vehicles) which are not incidental to one another, as well as the single occupation of the site, leads me to conclude that there is a mixed use within a single planning unit which is accurately defined by the solid black line on the enforcement notice plan. Accordingly, the appeal on ground (b) fails.

Ground (a) and the deemed planning application

21. This ground of appeal is that planning permission should be granted for the matters stated in the notice. The appeal site is in the Green Belt and therefore 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 ecology; 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

22. 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.
23. The appeal site encompasses the currently fire damaged and unoccupied dwelling known as 'The White House', along with its substantial grounds. The Council dispute whether the entirety of the site could be said to fall within the residential curtilage of the property. Nevertheless, it is apparent from the evidence before me that the site was previously an area of grassed land largely free from any built development, save for the dwelling itself.
24. 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)”.

25. 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 vehicle storage and parking use I saw does not achieve. Consequently, and viewed in isolation, the vehicle storage and parking element constitutes inappropriate development. The mixed use is therefore inappropriate development within the Green Belt by reason of that element. It is thus harmful by definition and should only be approved in very special circumstances.
26. The appellant concedes that the palisade fencing and access gates erected on the site are also inappropriate development. However, it is asserted that the hardstanding areas that facilitate the storage and parking of vehicles represents an engineering operation and therefore meets the exception listed at paragraph 155 (b) of the Framework.
27. 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 is capable of accommodating a large number of vehicles, is considerable in size and by occupying space that was previously undeveloped grassed land has inevitably resulted in the significant reduction of the spatial openness of the site. The significant number of vehicles that I saw parked in rows across much of the site at my visit further adds to this loss of spatial openness.
28. Despite the spatial reduction in the openness of the Green Belt, there is a more limited visual reduction in openness. This is due to the appeal site being largely screened from external view by the existing bund which runs around the perimeter of the site. Although the access gates are clearly visible from Fieldhouse Lane, the hardstanding, internal palisade fencing, and vehicles are not visually prominent. Whilst the visual harm to openness is therefore limited, there is nevertheless harm arising from the inappropriate development.
29. There are other considerations which are relevant when assessing the impact of the development on openness. The first is the frequency of the use. The evidence before me is that the site is used continually on a year-round basis, with vehicles stored and parked on the site throughout the day and night. I accept that the use is reversible, but there is no clear and clarified “end date” put forward by the appellant here. The deemed planning application is not one for a temporary planning permission, but, if the circumstances justified it, a condition could be imposed to grant a temporary permission. However, whilst the appellant states that the current commercial tenant requires the site for up to two years, there is little evidence provided with regards to need and an assessment of alternative options. As a result, I see no justification for that.
30. Among the purposes of including land in the Green Belt is to assist in safeguarding the countryside from encroachment as set out under paragraph 143 (c). Although the development is located within the grounds of an existing dwelling, given the scale of the hardstanding and fencing along with the nature of the vehicle storage and parking use, I find that the development has an

urbanising effect which runs contrary to the purpose of safeguarding the countryside from encroachment.

31. 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

32. The appeal site is enclosed by a combination of metal palisade fencing and gates at the entrance to the site, and a substantial bund which runs around the perimeter of the site. Consequently, although views are likely to be possible from some of the rooms at the adjacent hotel, views into the site are generally well screened.
33. However, the achievement of good design is not limited to only the aesthetic appearance, but also its integration into the character of the area. Notwithstanding the presence of the nearby hotel and rugby club, the overall character is rural with large expanses of green infrastructure. The wide expanse of hardstanding and significant number of vehicles parked across the site results in a cluttered and urbanised appearance that is at odds with the prevailing character of the area.
34. Although views into the appeal site itself are well screened, the fencing and gates at the entrance to the site are clearly visible and prominent in the streets scene when viewed from Fieldhouse Lane. By virtue of their design and materials, the fencing and gates appear as a harsh and incongruous form of development which is out of keeping with the character and appearance of the surrounding area.
35. The appellant has provided details³ of alternative site entrance gates to replace the existing. Whilst the proposed alternative gates would represent an improvement on the existing and be more in keeping with the character and appearance of the area, their reduced height and open nature would significantly increase views into the appeal site from Fieldhouse Lane. This would further expose the cluttered and urbanised appearance of the appeal site resulting in further harm. As such, the proposed alternative site entrance gates would not overcome the harm identified.
36. 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

37. 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.

³ As shown on drawing no: 2738 PL 100

38. 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.
39. It is readily apparent that the development is not related to outdoor recreation, nor does it provide safe, convenient, and direct access to Marlow and Bourne End. 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, there is conflict with Policy RUR4 and guidance contained within the SPG.
40. Nevertheless, given the private ownership of the site and its lawful residential use, public access to the appeal site was already restricted and the site did not previously deliver these aims and objectives. The harm arising from this policy conflict is therefore moderate.
41. 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

42. In support of the appeal, a Preliminary Ecological Appraisal was prepared which concluded that the development was unlikely to have an adverse impact on protected or notable species. The appellant also proposes new planting on the existing bund around the perimeter of the site to deliver a measurable net gain in biodiversity.
43. The Council accepts that a planning condition could be imposed on the grant of planning permission to secure a scheme of planting or other landscaping works on-site which would deliver a net gain in biodiversity. I find no reason to disagree with this position and consider that an appropriately worded condition could be imposed to secure such enhancements.
44. Thus, subject to a suitable condition, the appeal scheme would accord 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). These seek to protect and enhance biodiversity, including protected species.

Other Considerations

45. The appellant indicates that the current commercial tenant employs around 120 staff. Consequently, there are significant social and economic benefits associated with the development which helps sustain existing jobs and support a local business.
46. However, there is limited evidence before me which indicates that there are no suitable alternative sites for the development or that the business would cease to operate in the event the notice is upheld. Nonetheless, I accept in practical

terms, that it would likely be more difficult for the business to operate without the development. It is also probable that there would be an impact on the economic performance of the business, at least in the short term, whilst alternative premises were found. On that basis, I afford moderate weight in favour of the social and economic benefits of the development.

47. The appellant also raised the 'fallback' position of being able to reduce the height of the means of enclosure in line with the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. Nevertheless, it follows that a reduction in height of the means of enclosure would have less of an impact on the openness of the Green Belt and the character and appearance of the area than the development as enforced against. As such, the fallback position would not justify the harm that I have identified in this instance and thus I afford it limited weight.

Planning Balance and Conclusion

48. 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.
49. In this case the Green Belt harm relates to the significant loss of openness in a spatial sense, along with limited harm to openness in visual terms and 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 and the policy conflict in relation to Little Marlow Lakes Country Park.
50. The social and economic benefits of the development attract moderate weight in favour of the development, with the 'fallback position in relation to the means of enclosure on the site attracting limited weight. However, even when taken together, these other considerations do not clearly outweigh the substantial weight 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.
51. 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.

Ground (f)

52. An appeal on ground (f) is that the steps required to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity. The notice seeks to remedy the breach of planning control by requiring the cessation of the unauthorised use and the removal of the associated items, vehicles, and operational development.
53. The appellant contends that the steps required to be taken are excessive as it is not possible to comply with the requirement set out at step 3 of section 5 of the notice ("remove from the land all items and vehicles that have been

brought onto the land in connection with the unauthorised use”). This is because the appellant considers that the residential element of the alleged mixed use does not exist on site.

54. I have however concluded in the ground (b) appeal that the mixed use alleged in the notice has occurred as a matter of fact. The removal of any items and vehicles brought onto the land in connection with that unauthorised use is therefore both reasonable and necessary in order to remedy the breach of planning control.
55. Accordingly, the steps required by the enforcement notice do not exceed what is necessary as the notice does no more than seek remedy of the breach. No lesser steps have been drawn to my attention by the appellant, nor are there any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice. As a result, the appeal on ground (f) fails.

Ground (g)

56. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of three months after the notice takes effect.
57. The appellant argues that the compliance period is insufficient as the existing commercial tenant would first need to identify an alternative site and then enter into a new lease. The appellant contends that a period of nine months would be a more reasonable timeframe for this to take place. It is further asserted that as the hardstanding and other debris cannot be removed until an alternative site has been found and the business relocated to it, a further three months is required giving a suggested overall compliance period of twelve months.
58. I acknowledge that the removal of the hardstanding and other operational development is unlikely to be able to take place until an alternative site has been sought, and all vehicles have been removed from the appeal site. However, a period of twelve months would be tantamount to a temporary planning permission. It would not provide the necessary balance between the public interest in securing expeditious compliance with the notice and the private interests bound up in the development.
59. I shall therefore extend the compliance period to six months, which in my view strikes the appropriate balance and represents an appropriate and reasonable compliance period. Accordingly, the appeal on ground (g) succeeds to that extent.

Conclusion

60. For the reasons given above I conclude that the appeal does not succeed, save for ground (g). I have upheld the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR