



Appeal Decision

Site visit made on 15 April 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06th June 2024

Appeal Ref: APP/P0240/C/22/3299804

Land east of Warren Farm, Woburn Road, Millbrook, Bedford, MK45 2HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Thomas Meehan against an enforcement notice issued by Central Bedfordshire Council.
- The notice, numbered CB/EN/19/0500, was issued on 27 April 2022.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of for the use as a construction plant hire yard including the storage, servicing and repair of associated plant and equipment, the storage of HGVs and other lorries and siting of portable buildings including a mobile home and the siting of metal shipping containers and the erection of a 3m high palisade fence on the western boundary of the Land and construction of concrete hardstanding on areas of the Land and associated surface drainage installations on the Land.'
- The requirements of the notice are to:
 1. To cease the use of the Land as a construction plant hire yard including the storage, servicing and repair of associated plant and equipment, HGV's and other lorries.
 2. To remove all of the plant and equipment, the HGV's and other lorries and the portable buildings, the mobile home and metal shipping containers from the Land.
 3. To break up and remove all of the constructed concrete hardstanding areas and associated surface drainage installations from the Land.
 4. To re-instate in the areas the subject of subsection (3) works above, to their former condition before the breach took place by levelling the ground as top soil and re-seeding it with grass.
 5. Remove in its entirety the palisade fencing from the western boundary of the land.
- The periods for compliance with the requirements are:
 1. 3 calendar months in respect to requirements 5.1 and 5.5.
 2. 6 calendar months in respect to requirement 5.2.
 3. 9 calendar months in respect of requirements 5.3 and 5.4.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) 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 and varied as follows:

- Section 3 of the Notice - THE MATTERS WHICH APPEAR TO CONSTITUTE A BREACH OF PLANNING CONTROL is amended by inserting 'the Land' after the opening: 'Without planning permission, the material change of use of..'
- Paragraphs 6.1 and 6.2 in relation to TIME FOR COMPLIANCE are deleted and replaced with a new 6.1 'Six calendar months from the date this notice takes effect in respect of requirements 5.1, 5.2 and 5.5.' Paragraph 6.3 is renumbered to 6.2 to account for the above deletions.

- The plan attached to the Notice is deleted and substituted with the plan attached to this Decision which shows a reduced site area edged red.
2. Subject to the corrections and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Preliminary Matters

3. The address appearing in the banner heading above has been used by the Council when serving several enforcement notices in the locality. For the avoidance of doubt, the land identified by the Notice (the Land) is more specifically referred to as Plots 10, 11, 12 and 13 in the main parties' submissions.

The Notice

4. Section 176 of the Act requires me to consider the status of the enforcement notice and whether any defect, error or misdescription could be corrected, or its terms varied, without injustice to the appellant or the local planning authority.
5. The Land defined by the Notice includes a shared access track used by other site operations. The main part of the appeal site is separated from the track by an established fenced boundary and a gated access. A small concrete fringe to the southern side of the building also serves the office and the initial workshop building. While the site relies on the access, the track does not form part of the relevant planning unit.
6. As the removal of the access track from the Land affected by the Notice could have implications for the requirements in relation to the areas of hardstanding and fencing required to be removed by it, I wrote to the parties on that matter. There was no dispute that those amendments could be made without injustice arising or the requirements in the Notice being reduced from their intended effects. Accordingly, I have substituted the Notice plan to reflect the planning unit where the alleged uses were taking place.
7. The site includes a yard area and 2 parts of a subdivided building located at the south-eastern corner. At the site inspection, I saw that the westernmost unit contained offices and a workshop associated with the use of the yard. The second unit was occupied as a separate vehicle paint and body workshop. This falls within the Land identified in the Notice but is not directly referred to in the Notice. However, the main parties have clarified that that use was not taking place on the date the Notice was served. No change to the Notice is therefore necessary in that respect.
8. I note the appellant's contention that the Notice does not refer to a former use of the site. Although that can assist in interpretation, it is not a requirement of an enforcement notice.

Ground (b)

9. To succeed on ground (b) the appellant must prove that the use of the Land had not changed to that alleged in the Notice. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability.

10. It is the appellant's contention that HGVs and other lorries are not stored on the Land. However, there is little evidence provided to substantiate that claim. As there is no dispute that the site is accessed by such vehicles and that they are serviced and repaired there such that they are not simply parked, I find the lack of evidence in relation to their storage, even if only short-term, insufficiently precise or unambiguous to demonstrate that that activity does not occur on the balance of probability. Accordingly, the appeal on ground (b) must fail.

Ground (c)

11. An appeal on this ground is that the matters stated in the Notice do not constitute a breach of planning control.
12. There is some dispute between the main parties as to whether or not a caravan and containers sited on the Land amount to operational development under the terms of s55 of the Act. It is the Council's stance that given their scale and requirement for lifting equipment to install them, they amount to operational development. Conversely, the appellant contends that the caravan, other portable buildings and the containers are moveable structures such that they should not be considered buildings or operational development.
13. Regardless, the appellant concedes that they are ancillary items used in conjunction with the construction plant hire use. Therefore, as integral elements of the alleged use of the Land, they constitute part of the alleged 'development' (the change of use) for the purposes of s55(1) of the Act. As there is little to demonstrate that any planning permission exists for the site's use, and it is development requiring planning permission, the appeal on ground (c) therefore fails.

Ground (a) and the deemed application for planning permission

Main Issues

14. The main issues are:

- whether the development is appropriately sited having regard to the Council's spatial strategy for the distribution of new development
- the effect of the development on the character and appearance of the locality
- the effect on nearby land uses, including the living conditions of nearby residents
- the effect on highway safety
- whether or not the site poses a pollution risk as a result of ground contamination.

Reasons

15. The Land is located north of a group of sites each substantially bordered by high conifer hedging and various types of metal fencing. The open storage yard is levelled and at the time of my site visit, the majority appeared to have a loose stone/gravel surface. A subdivided building constructed of blockwork and

metal sheeting is located adjacent to the site entrance on the southern boundary. Areas adjacent to this were surfaced in concrete.

16. Public rights of way (PROW) border the site's western and northern boundaries, with predominantly open grassland beyond. To the south and east are sites in various uses. Some of those are subject to enforcement action by the Council. The site is accessed via a loose surfaced track which emerges to coincide with the western PROW close to an established surfaced entrance onto Woburn Road (A507).

Locations for development

17. There is no dispute between the main parties that the land lies outside of any of the settlements referred to in the pre-text to policy SP7 in the Central Bedfordshire Local Plan 2015-2035 [2021] (the CBLP) and that it therefore lies within a countryside area. Policy SP7 seeks to protect the intrinsic character and beauty of the countryside and limit the types of development beyond settlement boundaries. Employment uses are only permitted on allocated sites, through the re-use of existing buildings, or the redevelopment of previously developed land. Policy EMP4: Rural and Visitor Economy, allows only new employment opportunities in rural areas where it can be demonstrated that a rural location is required for technical and/or operational reasons.
18. Although a minor part of the alleged change of use utilises an existing building, the significant part of the operation is on open land. According to the Council, beyond the building the site was formerly grassed over. This is not contested by the appellant.
19. It has not been demonstrated that the use of the Land is associated with either an established rural business, any rural land-based enterprise, nor necessitates a rural location for technical or operational reasons. Although the appellant highlights that the location has good access to the strategic highway network, benefits from established screening and has good security, those benefits are not specifically dependent on a rural location. They are not, to my mind, adequate grounds to outweigh the policy restrictions to development in countryside areas.
20. There is also no dispute that access to the site by means of public transport is limited. This is a relevant consideration in the sustainability of site locations beyond settlement boundaries. Despite nearby footpaths and cycle routes, as a location relatively remote from housing and services, it is not well placed to minimise employees' or visitors' reliance on private motor vehicles to access it. Although the National Planning Policy Framework (the Framework) acknowledges that some local business needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations not well served by public transport, as the appellant has not demonstrated any rural need, there remains a policy conflict in that regard.
21. For the above reasons, I find the development conflicts with Policies SP7 and EMP4 of the CBLP as they seek to direct development to sustainable locations, protect rural areas and the countryside.

Character and appearance

22. As a formerly grassed-over area, the character of the open part of the site would previously have appeared largely undeveloped and would have retained

a degree of the predominant verdant rural character of the local countryside. The introduction of hard surfacing to replace natural growth and numerous stored items, plant and vehicles would have significantly changed the character of the Land.

23. The site is clearly visible from the PROW along the site's western boundary. Views to it also arise when travelling eastwards along another PROW from the parish church. Although existing high hedging and a significant length of mesh covered high palisade metal fencing substantially prevent ground-level views into the site, some of the larger plant and equipment are clearly visible above the fence line. Silhouettes of other machinery can also be seen through the mesh.
24. Although there are examples of palisade fencing elsewhere in the vicinity, the height and appearance of the fence contrast sharply with the characteristic timber rail or open wire fencing typical of its countryside setting. In the absence of any external screen landscaping, it appears stark in the rural area. While I recognise that the fence was erected as a security measure following a fire causing the loss of part of the established tree line, nevertheless, in conjunction with the visible plant, the site appears developed in those views.
25. A requirement for the retention and/or enhancement of existing tree hedges and landscaping along the external side of the fence could be imposed. However, given the scale of some items stored, screening to preserve a characteristic rural landscape would be difficult to achieve and take a significant time to mature. Moreover, given that doubt, and the potential for ground contamination arising from the items stored on the Land, a condition requiring it may not meet the test of reasonableness as it could nullify the benefit of any planning permission it was attached to.
26. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty on me to have special regard to the desirability of preserving or enhancing the character or appearance of the Millbrook Conservation Area (the CA). The eastern edge of the CA coincides with the site's fenced western boundary. The CA is characterised by small clusters of development in a predominantly rural landscape.
27. As above, the developed nature of the site and use of an uncharacteristic form of rural enclosure on the CA boundary contrasts with the predominant rural character of the CA. For users of the nearby footpaths, it undermines the sense of the countryside setting of the CA. Although there are other examples of commercial businesses immediately within the CA, these are mainly within converted rural buildings. For those reasons, and contrary to the views of the appellant and the Council, I find the development does not preserve or enhance the character or appearance of the CA.
28. Whilst this harm would be no greater than less than substantial within the context of Paragraph 208 of the Framework, less than substantial harm does not equate to a less than substantial planning objection. I note the possible public benefits of the development in terms of employment opportunities and its economic contribution. However, these are not necessarily dependent on the grant of planning permission. I am not therefore persuaded that those benefits would outweigh the less than substantial harm identified.

29. I note the appellant's contention that the site lies within a group of other commercial businesses reflective of other examples of clustered development in nearby countryside areas. However, several of the adjoining sites are similarly subject to enforcement proceedings. Furthermore, together they link established development sites at Manor Farm, Warren Farm and a group of buildings to the east. The cumulative scale of the developed area is not insignificant and undermines the landscape character.
30. For the above reasons, I find the development conflicts with Policies HQ1 and EE5 of the CBLP as they require development to be of the highest possible quality, respond positively to its context and enhance or reinforce local distinctiveness. It fails to appropriately integrate with the existing natural and historic environment and safeguard the intrinsic character, scenic beauty and perceptual qualities of the landscape.

Pollution risk

31. A desk-based assessment carried out on behalf of the appellant highlights numerous potential sources of pollution associated with both past and present uses of the site and other past and present land uses in the locality. Numerous risks were identified as a consequence; these are assessed as being in the range of very low to moderate levels of risk. The report recommends intrusive site surveys to establish any actual presence and any extent of site contamination.
32. It is the appellant's position that the recommendations could be secured by a planning condition requiring the further site assessment and the remediation of any found risks. However, the absence of a detailed site assessment, and therefore any identified necessary works to remediate the site, does not facilitate an assessment of the planning effects of any necessary works. Moreover, the proposed condition falls short of any measures to prevent future contamination of the site, nor permit consideration of the effect of such works.
33. It is not therefore possible to leave that matter to be dealt with by way of planning condition. Such a condition could also nullify the benefit of any permission it might be attached to.
34. Accordingly, I find that it has not been adequately demonstrated that the site can be suitably remediated, mitigated or prevented from resulting in adverse pollution effects. It thereby conflicts with the requirements of Policy CC8 of the CBLP.

Effect on nearby land uses

35. Although the Council references potential effects on nearby land uses, there is little to suggest that any of the commercial operations currently taking place in the locality are sensitive to the movement of vehicles or noise arising from loading, unloading or servicing operations. The Council's concerns for other potential impacts on privacy, amenity and air quality are largely unqualified.
36. Only activity and movement during unsociable hours is stated as a concern in relation to the nearest residential properties. The appellant advises that the site only operates during the hours of 0800 to 1800. Subject to imposing a restriction to those hours, given the distance to residential properties, I find that the likely effects on residential living conditions (or other land uses) would be insignificant.

37. Subject to that limitation, which could be secured by planning condition, I find that the development could be made acceptable sufficient to comply with the requirements in Policy HQ1 of the CBLP insofar as it seeks to avoid unacceptable adverse impacts upon nearby existing or permitted uses, including impacts on amenity, privacy, noise or air quality.

Highway safety

38. The use of the site relies on a shared internal road that forks away from another track coinciding with the north-south PROW a short distance from a combined access with Woburn Road. The highway access is used by a number of commercial premises utilising both tracks. This includes sites at Warren Farm, Manor Farm and those located to the east and south of the Land.
39. The initial length of the access from Woburn Road is a permanent bound surface with sufficient space for large vehicles to pass. On emergence onto Woburn Road, visibility at the junction is good. Forward visibility to vehicles turning into the site on the approaches is also unimpeded.
40. A transport assessment carried out by the appellant identifies that traffic generation by the site is limited to about 16 daily trips by various sized vehicles. This would include a large low-loader transporting large plant to and from the site.
41. The winding internal route is loose surfaced. It varies in width such that some vehicle passing along its length is possible. If used by larger vehicles, opposing traffic may be required to wait; however, given the extent of its use in conjunction with the sites it serves, I find it unlikely that the arrangement would cause any significant highway safety concerns on the internal track.
42. The assessment falls short of measuring the extent to which the access at Woburn Road is used by several established commercial uses served by it. Notwithstanding, during the times of my site visits associated with this and other appeals, albeit only snapshots in time, there was little to suggest that the extent of its use or the nature of vehicles using it would prohibit safe access or egress, or endanger highway or PROW users.
43. The appellant's assessment concludes that the use of the site would generate less traffic than its former use by a scaffolding company. However, in the absence of clear demonstration that that was an established lawful use of the Land, I find that argument of limited weight.
44. Nevertheless, based on the evidence before me, I find that any effect on highway safety or capacity in the locality would not be material. As the existing access could readily accommodate the type of vehicles used on the site, I find there is little conflict with Policy T2 of the CBLP as it requires development to avoid detrimental effects on highway safety and provide appropriate access.

Other Matters

45. In support of the development the appellant highlights that the Framework encourages planning decisions to help create the conditions in which businesses can invest, expand and adapt. It states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Whilst I have little doubt that the use of the site would support

employment opportunities and provide wider economic benefits, in the absence of demonstrating any particular local rural need or that such benefits could not be realised through opportunities provided by allocated employment sites, I find this is an argument of limited weight.

Conclusion on Ground (a)

46. Whilst I have found in favour of the appellant with respect to the matters of effects on neighbouring land uses, nearby resident's living conditions and highway safety, I do not consider these matters outweigh the totality of the harm identified. I therefore conclude that the development conflicts with the development plan read as a whole and there are no material considerations, including the Framework, that outweigh this conflict. The ground (a) appeal is dismissed, and planning permission for the development alleged in the Notice is refused.

Ground (g)

47. The appellant contends that the timescale to cease the use of the Land is unreasonably short as it would provide insufficient time to secure alternative premises to enable the appellant's business to continue. I agree that, in practice, a 3 month period to relocate this type of business could impose an unreasonable burden on the appellant. However, as the appellant's proposed timescale of 12 months would be tantamount to a temporary planning permission, I find that proposed period excessive in the case circumstances.
48. In balancing the public interest in securing expeditious compliance with the enforcement notice against the private interest bound up in the development subject to the Notice, I find that a period of 6 months to be consistent with the requirement of step 5.2 of the Notice would be a more reasonable proposition. Furthermore, to avoid undue risk to the appellant's business, it would be reasonable and pragmatic to enable the security fencing to be retained during that period.
49. The appeal on ground (g) therefore succeeds in part and the period for compliance with the requirements at Paragraph 5.1 and 5.5 of the Notice are varied to 6 months.

Other Matters

50. I note the frustrations expressed by the appellant in relation to the level of communication from the Council leading up to the service of the Notice. However, this is not a matter for this appeal which I have determined on the evidence and observations at my site visit.

Conclusion

51. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. The appeal on ground (g) succeeds to that extent. I shall vary the corrected enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

R Hitchcock INSPECTOR



Plan

This is the plan referred to in my decision dated: 06th June 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

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Reference: APP/P0240/C/22/3299804

Scale: not to scale

