



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/22/3299809

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 change of use of land for use for the parking of mini buses, the siting of mobile office/welfare units, skips, the storage of large plant equipment and scaffolding and the formation of a gravelled hardstanding area ("Unauthorised Development")'.
- The requirements of the notice are to:
 1. Break up and remove all hardstanding areas and re-instate the land to its former condition;
 2. Cease the use of the land for the parking of minibuses and the siting of mobile office/welfare units and for the storage of skips, large plant equipment and scaffolding; and,
 3. Remove from the land all minibuses, mobile office/welfare units, skips, large plant equipment and scaffolding.
- The periods for compliance with the requirements are:
 1. Six calendar months in respect of requirement 1.
 2. One calendar month in respect of requirement 2.
 3. Two calendar months in respect of requirement 3.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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.

Decision

1. It is directed that the enforcement notice is corrected as follows:
 - The allegation in the Notice is deleted in its entirety and replaced with: 'Without planning permission, the change of use of land for the parking of minibuses, and the storage of mobile office/welfare units, tanks, large plant equipment and scaffolding, and the formation of a gravelled hardstanding'.
 - In Paragraph 1 of Part 5 of the Notice – WHAT YOU ARE REQUIRED TO DO the reference to 'the land' is deleted and replaced with 'the Land'.
 - Paragraph 2 of Part 5 of the Notice is deleted and replaced with 'Cease the use of the Land for the parking of minibuses, and the storage of mobile office/welfare units, tanks, large plant equipment and scaffolding'.
 - The requirement at Paragraph 3 of Part 5 of the Notice is deleted. The corresponding TIME FOR COMPLIANCE set out in Paragraph 3 of Part 6 of the Notice is also deleted.

- Paragraph 2 of Part 6 of the Notice is deleted and replaced with 'Three calendar months from the date this notice takes effect in respect of requirement 2'.
 - 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 and the enforcement notice is upheld.

Preliminary Matters

3. The address and notice reference appearing in the banner heading above has been used by the Council when serving several notices in the locality. For the avoidance of doubt, the parcel of land identified by the Notice (the Land) is more specifically referred to as Plot 7 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. I contacted the main parties in the appeal to consider the precision of the wording of the allegation in the Notice and whether or not it could be varied without injustice arising to either of the main parties in the appeal.
6. The allegation in the Notice includes the 'siting of mobile office/welfare units, skips....' However, the purpose of any siting of those items was unspecified. The parties have since clarified that the items were only stored on the Land. Additionally, the Council's description of a metal container as a 'skip' was misplaced and the parties agreed it was more appropriately described as a 'tank'. The appellant and the Council subsequently agreed that a more accurate description of the alleged breach of planning control was:
- 'Without planning permission, the change of use of land for the parking of minibuses, and the storage of mobile office/welfare units, tanks, large plant equipment and scaffolding, and the formation of a gravelled hardstanding'.
7. The agreed amendment also removes an inconsistency arising from the interchangeable use of 'siting' and 'storage' by the Council across the allegation and requirements. The Notice is corrected accordingly. As the original Notice encompassed a storage use of the Land and referred to the specific items upon it, I am satisfied that that correction would not cause injustice to either party.
8. For consistency with the definition of the site in Part 2 of the Notice – THE LAND TO WHICH THE NOTICE RELATES, the references to 'the land' in Paragraph 1 of Part 5 of the Notice – WHAT YOU ARE REQUIRED TO DO is deleted and replaced with 'the Land'.
9. Pursuant to the correction of the allegation, a corresponding correction of the requirement at Paragraph 2 of Part 5 of the Notice is made by its deletion and replacement with 'Cease the use of the Land for the parking of minibuses, and the storage of mobile office/welfare units, tanks, large plant equipment and scaffolding'.

10. The requirement at Paragraph 3 of Part 5 of the Notice effectively replicates the requirement in Paragraph 2 of that part. Paragraph 3 of Part 5 is therefore unnecessary and is deleted. The corresponding TIME FOR COMPLIANCE set out in Paragraph 3 of Part 6 of the Notice is also deleted.
11. Paragraph 2 Part 6 of the Notice is also deleted in its entirety and replaced with the varied time for compliance: 'Three calendar months from the date this notice takes effect in respect of requirement 2'.
12. For consistent grammar, the word 'month' in Paragraph 1 of Part 6 of the Notice TIME FOR COMPLIANCE is deleted and replaced with 'months'.
13. The Land defined by the Notice includes a shared access track used by a number of other site operations. The appeal site is separated from the track by an established fenced boundary and a gated access. While the site relies on the access it does not form part of the relevant planning unit. Accordingly, I have substituted the Notice plan to reflect the planning unit where the alleged uses were taking place. As a reduction in the relevant site area, I find no injustice would be caused to any party as a consequence.

Ground (b)

14. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability. To succeed on ground (b) the appellant must prove that the use of the Land identified in the Notice had not changed to a use for the parking of minibuses, the siting of mobile office/welfare units, skips, the storage of large plant equipment and scaffolding and the formation of a gravelled hardstanding area.
15. The appellant asserts that no skips, large plant equipment or scaffolding were sited or stored on the site when it was visited by his representative on 10 May 2022. However, the relevant date is 22 April 2022, as the date on which the Notice was issued.
16. The evidence presented by the appellant includes 4 photographs showing various aspects of the site. However, the images do not cover it in its entirety. The Council's photographs, taken on 27 January 2022, show a raised concrete area and land alongside storing various excavator bucket attachments. The photos show scaffolding poles and brackets stored on the site, and various metal and plastic tanks in various states of repair. From the photos provided by the Council, it seems that one or more of these containers is described as a 'skip'. However, as above, I find the misdescription of a metal tank as a skip is not material to the wider allegation of the use of the Land for storage.
17. On the evidence provided, it seems to me that the corrected change of use of the Land alleged in the Notice (including the storage of tanks) is more likely than not to have occurred on the balance of probability. The ground (b) must therefore fail.

Ground (c)

18. An appeal on this ground is that the matters stated in the Notice do not constitute a breach of planning control. It is the appellant's position that the welfare building referred to in the allegation is mobile, limited in scale and not permanently fixed to the ground. As such, it is contended that it is not a building operation requiring planning permission.

19. However, that is not what is alleged in the Notice. The Notice only alleges the siting of mobile office/welfare units as part of the alleged change of use of the Land. This is supported by reference to its occurrence within the last 10-years¹ in Part 4 of the Notice.
20. As an element of a material change of the use of land, the alleged siting of those units is 'development' for the purposes of s55(1) of the Act. Although the appellant asserts that the site was in a previous commercial use, there is little evidence before me to demonstrate that claim. In the absence of evidence to demonstrate that the land has established lawful use, or benefits from planning permission for the alleged use, it is development requiring planning permission.
21. For the above reasons, the appeal on ground (c) fails.

Ground (a) and the deemed application for planning permission

Background and Main Issues

22. The Land lies within a number of plots bordered by high conifer hedging. It is accessed off a winding shared driveway from Woburn Road (A507) to the south. The site is bordered by a range of former agricultural-type buildings to the north, and various other compartmentalised sites to the south, east and west. The Millbrook Conservation Area (the CA) lies some distance to the west of the site. The CA initially coincides with the access from Woburn Road, however, thereafter its eastern boundary follows the route of a track (and public right of way) separating off from the surfaced route to the site.
23. There is no dispute between the main parties that the proposed development would not have an adverse effect on the character and appearance of the CA. Pursuant to the duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, having considered the development and visited the site I concur with that view. This is because the degree of the site's enclosure by high conifer hedging, the intervening distance to the CA, and other intervening hedges which largely obscure simultaneous views. Accordingly, it is my view that the development preserves the setting of the designated area.
24. Having regard to the stated reasons for issuing the Notice, 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.

Locations for development

25. 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). The policy seeks to protect the intrinsic character and beauty of the

¹ Section 171B(2) of the Act (as of the date of the Notice)

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. Under Policy EMP4: Rural and Visitor Economy, only new employment opportunities in rural areas will be permitted where it can be demonstrated that a rural location is required for technical and/or operational reasons.

26. According to the Council, aerial photographs prior to May 2018 show the Land to be a substantially grassed-over area. In the absence of any site planning history or evidence confirming a particular lawful use of the site, as a previously undeveloped greenfield site, the Land falls outside of any of the Policy SP7 provisions.
27. Furthermore, there is little before me to demonstrate that the use is associated either with an established rural business, any rural land-based enterprise, or necessitates a rural location for technical or operational reasons. Although the appellant highlights that the location has good access to the strategic highway network, this is not, in my view, sufficient argument to outweigh the restrictions to development in countryside areas.
28. The main parties agree that access to public transport is limited. Notwithstanding that vehicles parked there would be driven to sites elsewhere, locations isolated from sustainable modes of transport will inevitably require greater use of private motor vehicles to access the location of their storage. As a location relatively remote from housing and services, it is not well placed to minimise reliance on private motor vehicles to access it.
29. In support of the development, the appellant highlights that the National Planning Policy Framework (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. It states that sites to meet 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. However, in the absence of demonstrating any particular local rural need or that beyond the opportunities provided by allocated employment sites, that provision is not without regard to the requirements of the development plan and other relevant material considerations. Accordingly, I find this is an argument of limited weight.
30. For the above reasons, 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

31. As a formerly grassed-over area, the site's character would previously have appeared largely undeveloped and consistent with the surrounding partitioned fields prior to their development. As grassland enclosed by high hedging, it 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 and vehicles would significantly change the character of the Land.

32. Subject to the retention of the treed boundaries, the visual effect on the wider rural landscape would be limited due to their successful screening of the site. As the appellant asserts, the surrounding succession of high hedges means the perception of openness of the area is limited. It would only be visible from nearby areas of private land and could not be easily viewed from the highway or nearby public footpaths. Furthermore, the hedge could be conditioned for retention or to be replaced in the event of its failure.
33. I note the appellant's contention that the site lies within a cluster of other commercial businesses. However, several of the adjoining sites are similarly subject to enforcement proceedings. Although some nearby buildings have been re-purposed for commercial uses, as development permitted under the terms of the CBLP, those sites are distinct from the appeal site.
34. It is acknowledged that there is sporadic development in the locality. Nevertheless, that is not a good planning reason to permit further encroachment into countryside areas protected by the development plan.
35. For the above reasons, notwithstanding my finding in favour of the appellant that the visual effects of the use of the Land are limited, there would nevertheless be a conflict with Policies HQ1 and EE5 as they seek to protect the intrinsic character of the countryside and ensure development is complimentary to the landscape character and positively responds to, and enhances or reinforces, local distinctiveness.

Nearby land uses

36. According to the appellant, the site is used for 4 minibuses. These leave the site in the morning and return when no longer needed by the operator. This occurs only during the hours of 0800 to 1800.
37. Limited detail of the actual number of vehicle trips generated by the site, or those required to transport or tow the welfare/office units has been provided by the appellant. Based on the allegation, it seems to me that the main effects of the development would be the movement of vehicles, the loading and unloading of plant equipment, scaffolding or other items and the associated noise.
38. 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 or unloading operations. The Council's concerns for other potential impacts on privacy, amenity and air quality are largely unqualified.
39. The nearest residential property, identified on the Notice plan as 'Ringwood', lies beyond the site's eastern hedged boundary and an adjacent plot which provides a limited buffer to its garden boundary. Although I have little doubt that louder activity on the site would be audible in the garden area of that dwelling, subject to restriction of that use taking place during sociable hours, which could be conditioned, I find the effects on the living conditions of its occupiers would likely be limited.
40. A residential property at Warren Farm farmhouse lies at sufficient distance that activity on the site would be unlikely to have direct effects on the occupier's living conditions. Any noise due to the increased movement of vehicles at the

junction of the access with the highway would likely be negligible due to an intervening converted building range in commercial use.

41. For the reasons above, I find that subject to restriction of the times of operational activity and comings and goings, the effects of the development on nearby land uses would be negligible. The development would therefore align with the requirements in Policy HQ1 of the CBLP to avoid unacceptable adverse impacts upon nearby existing or permitted uses, including impacts on amenity, privacy, noise or air quality.

Highway safety

42. The use of the site relies on a shared internal track that forks away from another track (and public right of way) 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 surrounding the Land.
43. 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.
44. 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. Furthermore, sufficient visibility for users of the other track, including the public right of way, exists to minimise risks to users.
45. Despite the lack of objective analysis of the total amount and type of traffic using the access onto Woburn Road, at the claimed limit of use of the site for 4 minibuses, which could be conditioned, I find that any effect on highway safety or capacity would not be material. As the existing access could readily accommodate the type of vehicles identified in the Notice, 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.

Conclusion on Ground (a)

46. Whilst I have found in favour of the appellant with respect to the matters of effects on nearby land uses, including resident's living conditions, highway safety and the effect of the appearance of the development, I do not consider these matters outweigh the identified harm in relation to the Council's policies for the spatial distribution of development including its aims of preserving the intrinsic character of the countryside and reducing travel by unsustainable modes of transport. I therefore conclude that the development conflicts with the development plan read as a whole and there are no material considerations, including the Framework, to outweigh this conflict. The ground (a) appeal is dismissed, and planning permission for the development alleged in the Notice is refused.

Ground (f)

47. An appeal on ground (f) claims that the steps required by the Notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
48. The appellant contends that the use of the Land for the storage of HGVs and lorries does not occur so steps to cease that use are excessive. Furthermore, it claims that a mobile home, portable buildings and metal containers do not amount to development such that requirements to remove them are excessive.
49. However, the use of the site in conjunction with HGVs, lorries and a mobile home does not form part of the allegation and there are no requirements in the Notice in relation to those matters.
50. The storage of portable buildings and metal containers (tanks) form part and parcel of the alleged breach of planning control as a material change of use of the Land. Their retention on the site would not remedy the unauthorised storage uses taking place there. Accordingly, those requirements are not excessive and the appeal on ground (f) fails.

Ground (g)

51. This ground of appeal is that the period for compliance specified in the Notice falls short of what should reasonably be allowed. The period for compliance specified in the Notice is 2 months in relation to the cessation of the site's use and 6 months in relation to removal of the hardstanding and reinstatement of the site.
52. The appellant claims that for business continuity purposes, the 2-month compliance period would be too short to enable the user to find alternative premises. Although the extent of the storage is relatively limited, I find that the period to search for and arrange alternative facilities, and relocate the stored items and vehicles elsewhere is unreasonably short. I find an extended period of 3 months would be a more reasonable proposition in relation to that requirement.

Other Matters

53. 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.

Conclusion

54. 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

Land east of Warren Farm (Plot 6), Woburn Road, Millbrook, Bedford, MK45 2HY

Reference: APP/P0240/C/22/3299811

Scale: not to scale

