



Appeal Decisions

Site visit made on 20 February 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Appeal A Ref: APP/K0425/C/22/3301878

OS Parcel 5076, The Moor, Little Marlow, Buckinghamshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Miss Bathsheba Weiss-Lijn against an enforcement notice issued by Buckinghamshire Council.
 - The notice was issued on 24 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of fencing and the creation of hardstanding.
 - The requirements of the notice are to:
 1. Remove the fencing (shown in the approximate position by the dashed line on the attached plan)
 2. Rip up the hardstanding (shown in the approximate position hatched on the attached plan)
 3. Remove from the Land (outlined on the attached plan), all materials and debris resulting from compliance with steps 1 to 2 of this Notice.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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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Appeal B Ref: APP/K0425/W/22/3290757

Parcel c 5076, Land on the north side of Kerrydale, The Moor, Church Road, Little Marlow SL7 3RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Miss Bathsheba Weiss-Lijn against the decision of Buckinghamshire Council.
 - The application Ref 21/07437/PNP6E, dated 10 August 2021, was refused by notice dated 2 September 2021.
 - The development proposed is described as "A wood cabin. Severn SideStore Log Cabin Approx W6.5m x D5m. 45 mm thick wood cabin, main cabin, 5 mx 5m and sidestore of 2.5 by 1.5m. Ideal for woodland setting. industry-leading 4-point locking system and additional shootbolt locking and toughened glass windows for increased security of tool storage".
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by:

- The deletion of 4 months from Part 6 and substitution therefor of 6 months as the time for compliance.

2. Subject to the variation, the enforcement notice is upheld.

Appeal B

3. The appeal is dismissed.

Appeal A

Ground (a) – the deemed planning application

Main issues

4. The main issues are:
 - The effect of the fencing on the character and appearance of the area, including whether it preserves or enhances the setting of the adjacent Little Marlow Conservation Area, and
 - Whether the hard-standing results in any adverse effect in terms of flooding.

Reasons

Character and appearance

5. The appeal site comprises a wooded areas positioned along a single-width lane. The thoroughfare has a distinctly rural appearance, despite the presence of residential properties along it. The properties are sporadically positioned which creates a spaciousness to the locality. I observed that generally, within the immediate vicinity of the appeal site, properties, buildings and structures are set-back from the lane, which reinforces the openness of the area. There are also views of the adjoining land from the lane, which bolsters the rural quality of the location.
6. At the time of my site visit the fencing to the frontage of the appeal site had been removed. There was therefore an attractive appearance to the site, with views into it, which positively contributed to the character and appearance of the area. However, from photographs that have been submitted with the appeal, I am confident that the previously erected fencing created an intrusive, harsh and visually dominant means of boundary enclosure. Along this stretch of the lane, this would be a discordant addition to the streetscene, at odds with the rural aspect of the location, harmfully diminishing the character and appearance of the area.
7. The enforcement notice states that the site is adjacent to the Little Marlow Conservation Area (the CA), while the appeal questionnaire states that it is not adjacent to any conservation area. Clarification was sought from the Council, which confirmed that the site is not adjacent to the CA. Nonetheless, from a plan provided showing the extent of this designated area it does appear that the site lies adjacent to it. In any event, given the extent of the previously erected fencing, and that it extends away from the core of the CA, and is visually distinct from the development within it, I find that there would be no harmful effect on, and therefore preserves, the CA and its setting.
8. I am aware that the appellant has drawn my attention to other examples of what are contended to be similar fencing within the local area. Having considered these, it is apparent that the context and situation of each of the

given examples is different from the appeal site, in terms of the extent of fencing, its positioning in relation to the public realm, as well as the existence of landscaping to soften the appearance of some features. Thus, none are directly comparable to the appeal scheme, and they do not convince me of the acceptability of it.

9. The appellant has also contended that the fencing has been erected in the interests of the security of the site, as well as their own security and privacy when staying at the site, as well as to prevent the dumping of waste materials. However, given that there is no authorised residential use of the site, and that there is no consideration of alternative methods of achieving such goals, these matters have little bearing on my decision.
10. I note that there was previously a fence present at this location (in fact, this was the fence that was present at the time of my visit), however the height and materials of the fencing have materially changed, and this has resulted in the negative visual effects to which I refer to above. As such, that a fence has been present in some form at this location for some time does not dissuade me from my findings above.

Flooding

11. The appellant's flood risk assessment (the FRA) states that an area of 55 square metres (m²) has been "flattened" within the central section of the site and that the hardstanding will remain permeable. There is also an additional 6m² of hardcore for the creation of a parking space. The Council's statement of case sets out that a previous planning application for these works detailed 36 tonnes of hardcore and earth had been laid within the site, and the FRA states that a further 10 tonnes of hardcore and 10 tonnes of topsoil are required to finish works.
12. The FRA states that the "relatively small amount" of additional hardcore, which is permeable, will have a negligible effect on drainage or flood risk, and that the "slight" increase in height within the site will reduce the risk of flooding slightly. However, the FRA contains no details of the material which has made up the hardcore that has been laid and thus while it is claimed to be permeable, there is nothing that confirms this. Moreover, there is no information in respect of the previous and current ground levels and as a result it is not possible to accurately assess the effect on flood water flow within the vicinity of the site.
13. It may be that the increase in the levels within the appeal site would be beneficial in terms of the flooding of the site itself, yet this could also have the effect of displacing capacity to accommodate floodwater, thereby increasing flood risk downstream. The FRA makes no assessment in this regard.
14. It is claimed that the planting of willow trees within the site will absorb water and help to reduce surface water run-off. However, in the absence of evidence to the contrary, any such effect is likely to be negligible when compared to flood events that may take place.
15. There is reference to works to the river/stream adjacent to the site that have increased capacity for water flow, as well as works to the riverbanks by increasing their height. These works are not included within the allegation in

the enforcement notice, and as such are not matters that have influenced my consideration of this issue.

Other Matters

16. While the site is located within the Green Belt the Council raises no objection in terms of the development at the site being inappropriate. I have seen nothing that would lead me to find differently.
17. I note that part of the development that has been undertaken was to provide a parking space to enable the appellant, who is registered disabled, to safely access the site. In this respect I am conscious of my duty under the Public Sector Equality Duty (PSED), to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. However, considering my findings above, the harms that I have identified outweigh this consideration.

Overall findings on ground (a)

18. The fencing resulted in harm to the character and appearance of the area, thus it conflicts with policies CP9 and DM35 of the adopted Wycombe District Local Plan (adopted 2019) (the Local Plan), insofar as they seek to ensure that development is of a high quality of design and results in attractive spaces. In causing no harm to the CA or its setting, there would be no conflict with policy DM31.
19. I find that insufficient evidence has been submitted to demonstrate that the development has not had an adverse effect on flooding. Thus, the development conflicts with policy DM39 of the Local Plan, insofar as it seeks to ensure that development reduces the causes and impacts of flooding both on and off-site. The scheme also conflicts with the guidance of the National Planning Policy Framework in this regard.
20. The development conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above, the appeal on ground (a) fails.

Ground (f)

21. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. The enforcement notice seeks the removal of the fencing and hardstanding, and as such the purpose is clearly to remedy the breach, as stated in part 5 of the notice.
22. The appellant sets out that the fulfilment of the notice would increase the risk of flooding by lowering the riverbank, as well as increasing the impact on matters of biodiversity by allowing more dumping of materials to take place on the land. However, the notice contains no requirement to undertake any works to the riverbanks, rather it requires only the removal of the hardstanding and fencing. Moreover, it has not been demonstrated that the fencing that was erected is the only method of preventing the dumping of materials at the site.
23. There is reference to there being hardstanding present previously on site, and that this had been extended. However, there is no information before me to show that any previously present hardstanding was lawful, or in respect of its

precise extent. As such, this matter does not persuade me that the steps are excessive.

24. In the absence of any lesser steps being put before me that would remedy the breach of planning control, the appeal on ground (f) fails.

Ground (g)

25. The ground of appeal is that the time given to comply with the notice is too short. The notice requires the removal of the hardstanding and fencing, and the clearance of all debris from the site within four months.
26. Having regard to the circumstances of the appellant as I have set out above and the PSED, I agree that four months could be considered to be too short a timeframe. However, the appellant has offered no alternative time. In these circumstances, I shall extend the period to six months, which in my view strikes an appropriate balance between the rights and needs of the appellant, and the legitimate aim of remedying the breach of planning control.
27. Accordingly, the appeal on ground (g) succeeds to this limited extent.

Conclusion on Appeal A

28. For the reasons given above, while the appeals on grounds (a) and (f) fail, I conclude that the period for compliance with the notice falls short of what is reasonable and the appeal on ground (g) succeeds to that extent. I shall vary the enforcement notice prior to upholding it.

Appeal B

Main issues

29. The main issues are:

- whether or not the proposed development would be permitted development under Class E of Part 6 of Schedule 2 of the GPDO; and,
- if so, whether the proposed development would satisfy the prior approval matters including its siting, design, and external appearance.

Reasons

Whether the development would be permitted development

30. Class E of Part 6 of Schedule 2 of the GPDO permits works for the erection of a building if the land on which it is sited is used for the purposes of forestry and the building is reasonably necessary for that purpose.
31. The application details a building, extending to 25m², with the appearance of a log cabin. The proposed building has a shallow pitched roof, overhanging to the front with glazed doors and windows to the front elevation.
32. The appellant states that the building is required to store machinery used in the upkeep of woodland. Such items are to include a chain saw, secateurs, compact tractor and strimmer. The appellant further indicates that 15 willow trees have been planted, with a further 20 to be planted. These trees are to be used to produce cricket bats. I have no reason to doubt that the growing of these trees falls within the ambit of a forestry operation.

33. There is some explanation of the frequency of works that are undertaken, in that it is contended that nettles within the site will need to be cut back every two weeks during the growing season, and every 1-2 months at other times. It is also stated that the surrounding foliage and branches should be cut "regularly." There is reference to future works that may take place which may require storage for fertiliser, topsoil, and certain tools.
34. I note that the appellant has included details of an email from a specialist in willow growing outlining the importance of keeping the area "topped" to prevent competition with the willow.
35. Overall, I find that there is sufficient detail provided to enable me to conclude that the proposed building would be reasonably necessary for the purposes of forestry. Therefore, the building can be considered as permitted development under Class E of Part 6 of Schedule 2 of the GPDO.

Prior approval matters

36. The appeal site lies within an area that is susceptible to flooding and no information has been submitted to demonstrate the building would be safe from the effects of flooding. I share the concerns of the Council that there are likely to be fuels stored within the building, in connection with tools and equipment that is likely to be used on site. There are no details in respect of the storage of these fuels.
37. Consequently, I find that the siting and design of the building are unacceptable, in the absence of details to show that there would be no adverse effects arising from the location of the building within an area that is susceptible to flooding. Thus, approval of the proposed siting and design should not be forthcoming.
38. While there is some concern over the external appearance of the building, at this location I do not find the building proposed to be objectionable. Nonetheless, this does not allay my concerns in respect of flooding that I set out above.

Other Matters

39. There is reference to the presence of other buildings within adjacent properties. However, this is a matter related to the planning merits of the proposal, not the principal consideration of whether it is reasonably necessary for forestry.
40. I am also conscious of the stated reasons for the inclusion of toilet facilities within the building, which include the personal circumstances of the appellant, together with the alleged benefits to wildlife. However, such matters are again related to the planning merits of a proposal, to be considered under a planning application, not an application seeking a determination in respect of prior approval.

Conclusion on Appeal B

41. For the reasons set out above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Martin Allen

INSPECTOR