



Appeal Decision

Site visit made on 2 July 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th July 2024

Appeal Ref: APP/U2235/C/23/3324126

Atlas Eco Gym, Land South of Green Lane, Marden, Kent TN12 9RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Ryan Griffiths against an enforcement notice issued by Maidstone Borough Council.
- The notice was issued on 10 May 2023.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of agricultural land for the provision of a fitness/gym facility (Use Class E) including the placement of 4no. containers with a covered metal frame structure forming a barrel-like roof with new 2no. vehicular access and hardstanding parking area.
- The requirements of the notice are: a) Cease operation and trading of the fitness/gym facility. b) Remove from the land the unauthorised shipping containers, gym equipment, roof structure, gates and hardstanding/matting. c) Reinstate the land to its original form, including closing of the two accesses marked in the approximate positions on the plan with a thickened black line. d) Remove resultant materials, rubbish and debris from the land in complying with steps b) and c) above. e) Replace the gaps in the hedgerow with indigenous species.
- The periods for compliance with the notice are: Three (3) months from when the Notice takes effect for steps a) to d). e) To be completed in the next planting season following the compliance period of the notice between (Nov to Feb).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), and (g) of the Act. 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. It is incumbent on me to get the notice in order. Sections 55 and 57 of the Act set out that planning permission is required for the making of any material change in the use of any buildings or other land. With this in mind, the description of the breach of planning control can be corrected to refer to a material change of use of the land from agriculture to a fitness/gym facility without causing injustice to any parties.
2. The third requirement of the notice requires the land to be reinstated to its original form. In the interests of clarity, I shall vary this to ensure it requires the land to be restored to its condition before the breach took place, in accordance with section 173(4)(a) of the Act. As a less onerous and minor variation to clarify matters, this does not cause injustice to any parties.
3. The notice refers to the Maidstone Borough Local Plan (2017), which no longer forms part of the development plan. The Council's Local Plan Review 2021 –

2038 (2024) (LPR) now forms part of the development plan. I have taken the comments received in this regard into account.

Ground (a) and the deemed application for planning permission

Main Issues

4. The main issues are:

- The effect of the development on the character and appearance of the area;
- The effect of the development on highway safety; and
- The effect of the development on the setting of the Grade II listed building, Brook Oasthouse.

Character and Appearance

5. The site is located within the countryside, as defined by Policy SP9 of the LPR. The area is characterised by its rustic setting, notwithstanding the presence of a small cluster of industrial buildings to the south of the site and the sporadic development of residential plots. The area is distinctly rural in appearance, where open fields, hedgerows and trees make a positive contribution to the character of the countryside.
6. The site is part of what was previously a field bordered by hedgerows, and it remains interspersed with trees. Hedgerows along the southern side of Green Lane restrict views of the development from that direction. Partial views of the development are available from Longend Lane, where it is seen in the context of the access to industrial buildings, alongside grain silos.
7. The development includes 2 narrow access points created onto Green Lane, which has resulted in the removal of sections of hedgerow. One of those accesses has been removed and the hedgerow replanted. A car park has been created through the laying of crushed aggregate material, while a mix of sheeting, timber, metal framing and adapted metal storage containers have been used to create the main covered gym space.
8. The form of the gym space, which comprises a mixture of storage containers accompanied by a curved roof, is not similar in appearance to agricultural buildings or typical of rural areas. As such, it is an odd and alien feature in this part of the countryside, even though it is seen from restricted public viewpoints and near to industrial uses. External parts of the gym space have been painted green and the roof could be altered and lowered in height, but this would do little to address the fact that the development as a whole is markedly different from, and out of place in, its rural surroundings.
9. The introduction of the fitness/gym facility use to this location, and its associated vehicular access and car park, attracts large numbers of visitors in private motor vehicles. It is disconnected from the cluster of industrial buildings and uses to the south, and it has an intrusive and significant harmful urbanising effect on the otherwise sparsely developed setting. Its visual effect is not similar to that of agricultural or other countryside uses or structures.
10. Overall, the material change of use has brought about a substantial change in the character and appearance of the land which results in significant harm to

the rural character and appearance of the area. The development is therefore contrary to Policies SP14(A), SP15, QD4, and SP9 of the LPR. These require, amongst other things, development to maintain local distinctiveness and comprise high quality design which responds positively to the local or natural character of the area.

Highway Safety

11. Details have not been provided to demonstrate the use does not harm highway safety. In particular, I note the absence of a detailed assessment of the suitability of the site's access for quantified vehicle movements and an explanation of how suitable visibility splays could be provided, based on vehicle speeds along this specific part of Green Lane. As such details are fundamental to the safe operation of the use, it would be inappropriate to assume acceptable details could be submitted for approval at a later date, unless if I am satisfied it would be possible to provide and implement them.
12. Green Lane is an unlit winding country road with no footpath and a maximum speed limit of 60 miles per hour. There is a bend in the road and a junction with Longend Lane to the west of the site which limit vehicle speeds in this location, but to an unknown extent. It remains a location where vehicles can travel at high speeds, which is difficult to access on foot or by public transport.
13. The site entrance is not clearly visible when driving along Green Lane in a westerly direction and I saw vehicles traveling in that direction braking sharply behind cars entering the site. Details are not before me to explain how appropriate visibility splays have been provided or how it is possible to implement and maintain them without causing further unacceptable harm to the character and appearance of the area. It appears likely that sufficient parking spaces could be provided, full details of which could be required by condition if planning permission were to be granted.
14. I am unconvinced that the use does not unacceptably increase the risk of vehicle collisions on Green Lane. This is on account of the likely quantum of vehicles entering and exiting the site, likely vehicle speeds, and the poor visibility of and from the site's access. I am particularly concerned that the access does not and cannot achieve appropriate visibility to/from the west. Sufficient evidence has not been presented to convince me otherwise, considering the potential for vehicles to be travelling at high speeds from that direction. It is also unclear how pedestrians and cyclists could safely enter and exit the site.
15. I therefore conclude on this main issue that the development has an unacceptable harmful effect on highway safety, and it has not been demonstrated that this could be addressed by further details and works which could be required by conditions. The development fails to accord with Policy SP15 of the LPR in this regard, which requires development to safely accommodate vehicular and pedestrian movement generated by the development on the local highway network and through the site access, amongst other things.

Heritage

16. A former Oasthouse is located approximately 200 metres to the southeast of the site, which is a Grade II listed building. The Council has not provided

evidence to support its claim that the development has an unspecified 'impact' on the heritage asset. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

17. The former oasthouse can be seen in restricted views from Green Lane and the site as a rural historic building forming part of the Brook Farm complex. The setting of the listed building is restricted on account of trees and hedgerows demarking plot and field boundaries and the listed building's proximity to former farm buildings. So far as relevant to this appeal, the significance of the listed building relies on it being seen as an historic building experienced in close countryside surroundings.
18. The development is not within the close countryside surroundings which make a positive contribution to the significance of the listed building, and it does not impinge on clear views of the listed building. Based on everything I have read and seen, the development does not affect the setting or any features of special architectural or historic interest of the listed building; nor does it harm the significance of the listed building. The development therefore preserves the setting and significance of the heritage asset.
19. The development does not conflict with Policies ENV1 and SP14(B) of the LPR, which require, amongst other things, development to conserve the significance of heritage assets.

Other Matters

20. Policy SS1 of the LPR sets out the Council's spatial strategy. With relevance to the development, Policy SS1 states that small scale employment opportunities will be permitted at appropriate locations to support the rural economy. As a business, the development provides employment opportunities. However, the extent and nature of those opportunities are unclear. In the absence of information to show otherwise, the development does not support the rural economy in any meaningful way and draws very little support, if any, from Policy SS1.
21. I have been referred to various other benefits associated with the development, such as its role as a community leisure facility which promotes the health and well-being of local residents at affordable rates. There are also biodiversity/ecological benefits which could be secured through conditions, including those relating to tree planting, fruit growing, habitat creation, and bee population support. Together with employment opportunities, these are all benefits which attract moderate weight cumulatively in favour of the development.

Conclusion on the appeal under ground (a) and the deemed application for planning permission

22. The development has a harmful urbanising effect on the rural character and appearance of the area, and it has not been demonstrated that safe access has been, or can be, provided to the site. I assign significant weight individually to the harm caused to the character and appearance of the area and highway safety, which is contrary to the development plan. The development does not harm heritage assets and there are benefits associated with the employment

opportunities and community leisure facilities it provides, and further biodiversity/ecological enhancements which could be secured by conditions. However, overall, the benefits associated with the development do not outweigh the harm caused.

23. I therefore find that the development fails to accord with the development plan as a whole and there are no material considerations, including the National Planning Policy Framework, which indicate planning permission should be granted.
24. The appeal under ground (a) fails, and the deemed application for planning permission is refused.

Ground (f)

25. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required to be taken, or the activities required to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
26. The notice requires the use to cease, associated items to be removed, and the land to be restored to its previous condition. The purpose of the notice is therefore to remedy the breach of planning control, rather than any injury to amenity.
27. There are no obvious alternatives or lesser steps which could achieve the purpose of the notice with less costs or disruption. The steps required by the notice are not onerous and they are proportionate, considering the purpose of the notice. This remains the case if the appellant intends to discuss possible changes to the development with the Council and submit further planning applications.
28. The appeal under ground (f) therefore fails.

Ground (g)

29. To succeed under this ground of appeal the appellant would need to show that the periods specified for the notice's requirements to be complied with fall short of what should reasonably be allowed. The notice provides 3 months for steps a) to d) to be complied with, while step e) is to be complied with before the end of the following planting season (specified as November to February). It is requested that 12 months is allowed for steps a) to d) to be complied with.
30. The community benefits associated with the development and the difficulties in closing the business are insufficient to justify an extended compliance period relating to the use, for the same reasons set out in the appeal under ground (a). Furthermore, I have identified harm to highway safety, which is a compelling consideration in this case. It is not therefore reasonable to extend the 3 month period for step a) to be complied with.
31. It is reasonable to allow a longer period to remove all associated items from the land and, aside from replanting the hedgerow along Green Lane, restore the land to its former condition. This is on account of the extent of items and works involved, and the popularity of the business which indicates its relocation may be a likely consideration for the appellant. Arrangements may need to be

made to find alternative premises to operate the business or store items, while time may also be needed to submit planning applications, even if the Council refuses to consider any relating to this site. Taking all matters raised into account, it is unclear why any period in excess of 9 months would be reasonably required to comply with steps b) to d).

32. I saw that one of the gaps in the hedgerow has already been replanted. It remains reasonable for the other gap in the hedgerow to be replaced with indigenous species, but this would need to be before the end of the planting season following compliance with steps b) to d).
33. The appeal under ground (g) therefore succeeds insofar as I shall vary the compliance periods for steps b) to e) as set out above.

Conclusion

34. For the reasons given above, I conclude that the appeal under grounds (a) and (f) should not succeed. The appeal under ground (g) succeeds in part. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

35. It is directed that the enforcement notice is corrected and varied by:
- The deletion of the text 'change of use of agricultural land for the provision of' at paragraph 2 of the enforcement notice and its substitution for the text 'material change of use of the land from agriculture to';
 - The deletion of the text 'Reinstate the land to its original form' at paragraph 5 of the enforcement notice and its substitution for the text 'Restore the land to its condition before the breach of planning control took place'; and
 - Deletion of the text 'Three (3) months from when the Notice takes effect for steps a) to d). e) To be completed in the next planting season following the compliance period of the notice between (Nov to Feb)' at paragraph 6 of the enforcement notice and its substitution for the text 'For step a): Within 3 months from when the notice takes effect; For steps b) to d): Within 9 months from when the notice takes effect; and For step e): before the end of the planting season (November to February) which immediately follows the compliance period for steps b) to d)'.
36. Subject to the correction and variations, 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 Act.

L Douglas

INSPECTOR