



Appeal Decisions

Site visit made on 8 October 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2024

Appeal A Ref: APP/A3655/X/23/3335884

Beech Rise, Lock Lane, Pyrford, Woking, Surrey GU22 8UX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs T Lewis against the decision of Woking Borough Council.
 - The application ref PLAN/2023/0678, dated 4 August 2023, was refused by notice dated 3 October 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is reinstatement of six external lighting poles surrounding horse menage.
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Appeal B Ref: APP/A3655/X/24/3339995

Beech Rise, Lock Lane, Pyrford, Surrey GU22 8UX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a LDC.
 - The appeal is made by Ms T Lewis against the decision of Woking Borough Council.
 - The application ref PLAN/2023/1013, dated 28 November 2023, was refused by notice dated 19 February 2024.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is reinstatement of 6 external lighting poles surrounding horse menage.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

Appeals A and B

3. The applications were made under s192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act) and sought to ascertain whether proposed operations would be lawful.
4. The onus lies with the appellant to make her case on the balance of probabilities. If there is no evidence to contradict or make the appellant's

version of events less than probable and her evidence alone is sufficiently precise and unambiguous, that is enough.

5. As agreed with the appellant, Appeals A and B have been delinked from two s78 planning appeals¹, which I have also been appointed to determine.
6. For Appeal A, I note the appellant's explanation as to why 4m high lighting poles are considered necessary. I also note the character and appearance and light pollution concerns raised by a local resident on the basis that Pyrford Green is a dark area and part of the Green Belt.
7. Under Appeal B, the appellant seeks to argue that the proposed lighting would not be visible from any public space. Reference is also made to Green Belt policy in the National Planning Policy Framework and to the additional costs associated with using retractable lighting columns.
8. However, such matters, insofar as they relate to planning merits, can form no part of my assessment of the LDC appeals, which must be considered in the light of the facts and the law.

Appeal A

9. The appeal form for Appeal A cites the application reference number as PLAN/2023/1013. I have assumed that to be incorrect because that reference is also cited on the appeal form for Appeal B, and the relevant application and decision dates match up with Appeal B, rather than Appeal A. Furthermore, the date of the decision notice (reference PLAN/2023/0678) submitted with Appeal A also matches the date in the appeal form for the same.

Appeals A and B

Main Issue

10. The appeals relate to the same proposal for the reinstatement of six external lighting poles surrounding a horse menage, in a field with a lawful equestrian use. The Council's reason for refusing both LDC applications is the same. My reasoning below therefore applies to both appeals, save where I have specifically stated otherwise (reflecting that additional information was provided for Appeal B).
11. The main issue for both Appeal A and Appeal B is whether the Council's decision to refuse to issue the respective LDC applications is well-founded.

Reasons

12. S55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use. For the purposes of the Act, s55(1A) provides that building operations include demolition, rebuilding, structural alterations or additions, and other operations normally undertaken by a person carrying on business as a builder. S57 provides that planning permission is required for development, except for the stated exclusions.

¹ APP/A3655/W/23/3332357 and APP/A3655/W/23/3335791

13. To assess whether the installation of the lighting poles would amount to a building operation, established case law² has set down three primary tests relating to size, permanency, and the degree of physical attachment. No one factor will be decisive, and any assessment will be a matter of fact and degree in the given circumstances.
14. The appellant says that two companies are being considered for the lighting scheme and that both use a spigot (metal sleeve) system. It is explained that the 600mm long spigot would be placed into a hole in the ground, the same size as that for a fence post, and concreted in place. It is further explained that the spigots would sit within the same holes as the menage fence posts, so there would be no additional operations. The columns would then drop into the spigots.
15. The proposed lighting poles would be retractable to a height of 2.4m, purportedly matching the height of the previously existing poles. For the extended height, most references are to 6m, but for Appeal A there are occasional contradictory references to 4m. Nevertheless, the Appeal B submission confirms that the extended height of the poles would be 6m. In either case, the extended height would be significant, whether that be 6m or 4m. Even when retracted, a height of 2.4m is not insignificant.
16. To provide light coverage to the menage area the corner poles would have twin heads, whilst the mid poles would have a three head arrangement. Therefore, although the poles may be able to be lifted from the spigot system, it is unlikely that they would be as the spigots would be permanently concreted into place, in specific positions to provide a designed lighting scheme to the menage area.
17. Moreover, the lighting scheme would be connected to a power supply fixed to the fencing rails, running to each of the lighting poles, with six waterproof junction boxes and flexible cable runs to each head. The installation would be controlled by a single manual on/off switch and the whole supply protected by a residual current breaker. The connection to such a fixed power supply further points to a high degree of permanency for the lighting poles.
18. I appreciate that it is the owners who intend on installing the lighting poles, despite having never been engaged in any business as a builder. To that end parallels are drawn with carrying out the fencing works, not as builders or engineers, but as a non-technical DIY task. Reference is made to a barrister opinion to that effect but that has not been provided.
19. In any case, fencing or replacing fencing is normally a building operation, albeit one with a national grant of planning permission through the GPDO³, subject to relevant height limitations. Moreover, even if both the installation of the lighting poles and the associated electrical installations fall within the skill set of the owners, it is more probable than not, having regard to the wording of s55(1A), that such works would *normally* be undertaken by a builder (my emphasis).
20. Taking account of all three factors, I find that, on the balance of probabilities, the installation of the lighting poles would amount to a building operation for

² *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] EWCA CIV 5569

³ The Town and Country Planning (General Permitted Development) (England) Order 2015

the purposes of the 1990 Act, for which planning permission would be required.

21. The appellant argues that the proposals are to remove the existing lighting poles and reinstate six new structures of similar appearance to the previously existing, in the same locations.
22. A photograph is provided purporting to show what was left of one existing lighting pole in July 2023. The other photographs are purported to show previously existing lighting poles. In that regard, two poles can be seen in the photograph from September 2020, along the side of the menage, although it is not possible to pick out any lighting units attached to them. A lighting unit can be seen on a single pole in the first photograph from November 2019, but it is difficult to see a pole in the highlighted location in the second picture from the same date. The other photographs from July 2023 are purported to show electrical cabling and ducting for the lighting poles.
23. The appellant seeks to highlight that the Council's case officer witnessed several existing wooden lighting columns which were clearly old and which she suggests date back to when the menage was originally formed. As part of Appeal B, that is clarified as being in October 1991. On that basis, and having regard to their aged appearance, it is argued that the poles likely date from that time, so would be circa 30 years old and thus lawful through the passage of time.
24. Also, as part of the Appeal B submission, a plan is provided showing that a lighting pattern with four lights would leave an unlit area in the centre of the menage. Accordingly, it is argued that common sense would suggest there was a six-pole lighting arrangement in place, to avoid such a scenario. Reference is also made under Appeal B to additional evidence of a mid-point light, confirming a six-light arrangement to the menage.
25. Whilst I accept that for the menage to be fit for purpose during the hours of darkness, it is more likely that a six-pole lighting arrangement would have been required, rather than four, having regard to the height of the poles shown in the pictures and the size of the menage area. However, in overall terms there is limited evidence of a full floodlighting system to the menage, and there is a contradictory submission from a local resident of 30 years who does not recall any floodlighting in the area.
26. In any case, my decisions do not turn on whether or not there was previously six lighting poles, because it is likely that all but one had been removed at some unspecified point prior to the date of the application, and there is no provision within the 1990 Act to reinstate development at some future date without the need for planning permission.
27. Therefore, even if there was a previous lighting arrangement in place which had acquired lawfulness through the passage of time, that lawfulness would have been lost, save for potentially one remaining pole which had no lighting unit. Consequently, as I have found the installation of the lighting poles to be development, planning permission would be required to reinstate those that previously existed.
28. The appellant makes reference to s55(2)(a)(ii) of the 1990 Act which excludes from the definition of development works for the maintenance, improvement,

or other alteration of any building which do not materially affect its external appearance. However, maintenance, improvement or other alteration cannot be applied to lighting poles which did not exist at the time of the application.

29. Moreover, the photographs provided point towards a fairly rudimentary arrangement of wooden poles, which are likely to have a materially different appearance to metal retractable poles, particularly when seen within the context of its rural location. Moreover, during periods of use, the poles would be extended to substantially taller structures, so would not be similar in scale.
30. I accept that it is unlikely that the columns would not be retracted when not in use, given the additional costs associated with such a solution. However, it is not possible to impose a planning condition on a LDC to ensure that they would be. Moreover, a different operator in the future may be less diligent than the appellant.
31. Therefore, even if all of the lighting poles remained in place, what is proposed would be wholesale replacement, rather than maintenance, improvement or alteration, and, as explained, s55(1A)(b) of the 1990 Act stipulates that 'building operations' include rebuilding. Therefore, replacement lighting poles with a different design, size and appearance would amount to development requiring planning permission. Consequently, a LDC should not be granted even for the single lighting pole that likely remained in place at the time of the application.
32. Moreover, even if I agreed that s55(2)(a)(ii) was applicable to that remaining pole, the works proposed would materially affect its appearance (and that of the menage), and thus would not be excluded from being development.
33. I understand that the second application (Appeal B) was submitted in an attempt to address the concerns raised by the Council for the first application (Appeal A). However, the additional information/evidence concerning mid-lighting poles does not alter my fundamental reasoning and findings for either appeal as to why LDCs should not be granted.
34. It is for those reasons that the reinstatement of six external lighting poles surrounding the horse menage would not have been lawful if instigated or begun on the date of the applications.

Other Matters

35. I note the appellant seeks to highlight that she did not receive a reply from the Council to her query as to how she could prove that the columns would be retracted when not in use. However, it is important to highlight that even if I were able to incorporate the practice of lowering the poles into the description of the LDC, it would not alter my above reasoning.
36. It is evident that the appellant feels frustrated by the Council in that she seeks to highlight that of 15 applications submitted, all bar one have been refused. The Council's understanding of equestrian matters is also questioned. The appellant further confirms that she has made formal complaints about the Council and acknowledges that relationships are now strained. However, those are not matters for these appeals, which I have considered afresh, in light of the facts and the law. In that regard, my conclusions are broadly consistent with those of the Council.

Conclusions

Appeal A

37. For the reasons given above I conclude that the Council's refusal to grant a LDC is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

38. For the reasons given above I conclude that the Council's refusal to grant a LDC is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Richard S Jones

INSPECTOR