



Appeal Decision

Site visit made on 8 October 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 14th NOVEMBER 2024

Appeal Ref: APP/P0240/C/22/3306640

Land to the north of 6 Crossways Close, Henlow, Bedfordshire, SG16 6BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by GPS Estates Limited against an enforcement notice issued by Central Bedfordshire Council.
 - The notice was issued on 11 August 2022.
 - The breach of planning control as alleged in the notice is: 3.1. Without planning permission, the material change of use of the Land to a builder's storage compound, including for the open storage of building materials; 3.2. Without planning permission, the open storage of building materials and skips, the siting of 4 shipping containers, the erection of close boarded fencing and metal security fencing on the Land; 3.3. On 15th May 2019 planning permission was granted by the Council under reference number CB/18/01002/OUT for the "Outline planning application for up to 20. Dwellings, including demolition of no.23 High Street and existing business structures, upgrade of existing site access to accommodate vehicles, pedestrian links, landscaping, car parking, drainage and other associated works. All matters are reserved except for access" (the "Outline Planning Permission"), subject to conditions. One of those conditions, condition number 2, was that the development permitted shall be carried out in accordance with the approved details of the appearance, landscaping, layout and scale of the development. It appears to the Council that the condition has not been complied with because the planting forming part of the approved landscaping scheme has not been carried out in accordance with the approved details; 3.4. On 15th March 2021 planning permission was granted by the Council under reference number CB/20/03911/RAM for the "Reserved Matters following Outline application CB/18/01002/OUT (Outline planning application for up to 20 dwellings, including demolition of no.23 High Street and existing business structures, upgrade of existing site access to accommodate vehicles, pedestrian links, landscaping, car parking, drainage and other associated works. All matters are reserved except for access): Appearance, landscaping, layout and scale" (the "Reserved Matters"), subject to conditions. One of those conditions, condition number 1, was that the development permitted shall not be carried out except in complete accordance with the details shown on the submitted plans and as referenced with condition 1. It appears to the Council that the condition has not been complied with because the planting forming part of the approved landscaping scheme has not been carried out in accordance with the approved details.
 - The requirements of the notice are: 1) Cease the use of the Land as a builder's compound including the open storage of building materials and remove from the Land all materials associated with this use; 2) Remove from the Land all building materials and skips, the erection of the close boarded fencing and metal security fencing on the Land associated with the use of the Land as a builder's compound and sited around the perimeter of the compound on the Land; 3) Remove from the Land all shipping containers; 4) Carry out and complete the planting detailed on approved landscaping scheme plan no 4160.Welch.GPS.LPP Rev B pursuant to Condition 2 of the Reserved Matters Planning Permission CB/20/03911/RM and Condition 1 the Outline Planning Permission CB/18/01002/OUT.
 - The periods for compliance with the requirements are: 1) Two calendar month in respect of requirement 1 – 3; 2) Seven calendar months in respect of requirement 4.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by in paragraph 6 the deletion of the wording 'seven calendar months' and its substitution with 'In the first planting and seeding seasons following compliance with requirements 1-3' as the time for compliance in respect of requirement 4.

2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appeal was originally also proceeding on ground (e). However, the appellant withdrew this ground during the course of the appeal.
4. Some of the appellant's submissions under ground (b) represent a 'hidden' ground (c) appeal - that the matters alleged do not present a breach of planning control (rather than that they have factually not occurred). I have separated these aspects below as appropriate. The content of these submissions has been addressed by both parties in existing representations.

The appeal on ground (b)

5. The appeal on ground (b) is that the matters alleged in the notice have not occurred. The onus is on the appellant to make their case on the balance of probability.
6. The appellant's submissions on this ground are that the matters alleged have not occurred on the basis effectively that the open storage of building materials, siting of shipping containers and fencing erected is all required until such time as highway works are completed in connection with the wider residential development. It is argued on the same basis that a material change of use ('MCU') has not occurred. The appellant's argument also follows then that there is no breach of the approved plans condition for the residential development on the basis that the landscaping scheme will be completed on the appeal site following completion of the highway works.
7. To be clear then, the appellant does not dispute that, as at the date of the notice, building materials were stored on the land, shipping containers were sited there and fencing was erected. The submissions on these points in fact represent a 'hidden' ground (c) appeal - i.e. that the matters alleged have occurred but that they do not represent a breach of planning control.
8. As regards the allegation of a MCU to a builder's storage compound, this properly represents a ground (b) appeal as the appellant appears to submit that the appeal site is not in a separate use as a builder's yard but rather is seemingly an ancillary builder's compound use in connection with the residential development of the wider site.
9. As to the alleged breach of condition ('BOC'), again this is properly a ground (b) appeal since the focus of the appellant's argument is that there has been no BOC on the basis that there has not been a deviation from approved plans, rather the residential development is yet to be completed pending completion of the remaining highway works - and that the landscaping scheme will be carried out once those works are finalised.
10. Turning then to the MCU allegation, it is not entirely clear as to the basis upon which the appellant argues that a MCU has not occurred. Certainly, no evidence is offered as to any past use and as to whether there has been a change in the character of activities. Rather, the appellant refers to the need for the appeal site to remain in use for a site office and storage pending completion of works in the public highway in respect of which a s278 Agreement is being negotiated. It seems then that the appellant seeks to

demonstrate that no MCU has occurred on the basis that the appeal site is in an ancillary use.

11. The Council emphasises though the very minor nature of the highway works which are yet to be carried out and submits that these do not justify the ongoing use of the appeal site. In my view, the concept of an ancillary use entails some sense of objective reasonableness in the sense of what would ordinarily be ancillary. I concur with the Council that the use of the appeal site is not ordinarily ancillary bearing in mind the minor nature of the outstanding highway works. I find thus as a matter of fact and degree and on the available evidence that a MCU has occurred as alleged in the notice.
12. As regards the alleged BOC, plainly if the wider residential development was far from complete, the appellant could properly argue that it was premature for the Council to take enforcement action on the basis that the approved landscaping scheme had not been carried out in accordance with the approved plans. However, the residential development is complete with the exception of the modest highway works outlined. I found that use of the appeal site was not ordinarily ancillary in the context of the outstanding highway works. As such, it follows that the wider residential development is sufficiently complete to warrant enforcement action on the basis of a breach of the approved plans condition by reason of approved landscaping works not being undertaken. Thus, I find that a BOC has occurred as alleged.
13. The ground (b) appeal fails for the reasons stated above.

The appeal on ground (c)

14. The appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is again on the appellant to make their case on the balance of probability.
15. As regards the open storage of building materials, shipping containers and fencing, the appellant also makes no detailed argument that these do not represent operational development. On the available evidence and having regard to case law tests as to size, permanence and degree of physical attachment, I find that the fencing and shipping containers represent building operations.
16. The quantity of building materials at my site visit would not amount to operational development having regard to these tests. However, I am mindful of the appellant's comments that surplus materials had been moved during the course of the appeal. Since open storage is capable of representing operational development and the onus is on the appellant to make their case that it did not represent development, I find also that open storage of building materials as at the date of the notice also represented operational development.
17. The Council draws my attention to permitted development ('PD') rights under Article 3 and Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). Class A grants deemed planning permission for the provision on land of buildings, moveable structures and other items which are required temporarily in connection with, and for the duration of, works being or to be carried out on the land in question, or adjoining that land.

18. The appellant does not specifically reference these PD rights but submits that provision of a site office and storage facilities are necessary pending completion of the highway works. No detailed information is provided though as to why these facilities would be reasonably required for very minor highway works (described by the Council as being limited to 'surfacing works around the pavement at the site entrance along with a small amount of road surfacing at the boundary with the highway'). In my view, taking into consideration the very limited extent of the highway works outstanding, a site office and the extent of storage facilities on the appeal site are not reasonably required in connection with those works.
19. The matters alleged as detailed above represent operational development requiring planning permission and do not benefit from either a specific grant of planning permission nor from deemed planning permission pursuant to Class A. They are a breach of planning control and the ground (c) appeal fails.

The appeal on ground (g)

20. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
21. The notice stipulates a two month compliance period for requirements 1-3 (being for ceasing using of the land as a builder's compound including open storage, removal of fencing and shipping containers) and seven months for requirement 4 (requiring implementation of the approved landscaping scheme).
22. The appellant requests a six month compliance period for steps 1-3 in view of the 'current limited availability of labour and resources' and twelve months for step 4 so landscaping can be carried out at 'the correct time of year in order to maximise the potential for it to be able to flourish'. The Council submits that 2 months is adequate for steps 1-3 but accepts that it would be reasonable to vary requirement 4 to coincide with the date of the appeal decision and that of the planting season.
23. In my view, absent any detailed evidence as to the claimed limited availability of labour and resources, and bearing in mind the relatively minor nature of the activities and works entailed in steps 1-3, a two-month compliance period is a reasonable one for these steps to be completed.
24. As regards step 4, I agree that it is reasonable that implementation of the landscaping scheme should be deferred so as to coincide appropriately with the next planting season. There is no detailed basis submitted by the appellant to explain why a twelve month period would be justified for this. Since the appellant will not be able to implement the landscaping scheme until such time as steps 1-3 are completed, I shall reference the first planting season following compliance with steps 1-3, rather than the first following the date of this appeal decision. The ground (g) appeal succeeds to this limited extent.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

V Bond

INSPECTOR