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## Appeal Decisions

Hearing held on 16 October 2024

Site visit made on 16 October 2024

**by David Jones BSc (Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 January 2025**

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### **Appeal A Ref: APP/K0235/C/24/3342269**

#### **Keysoe International Ltd, Church Road, Keysoe, Bedfordshire MK44 2JP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Keysoe International Ltd against an enforcement notice issued by Bedford Borough Council.
  - The notice was issued on 8 March 2024.
  - The breach of planning control as alleged in the notice is the construction of 5 raised earth mounds and associated banks and step jumps.
  - The requirements of the notice are:
    - i) Remove the earth mounds coloured yellow and green and outlined in blue on the attached Appendix 1.
    - ii) Reduce the ground levels to no greater than those shown on the plan at Appendix 2 pursuant to planning permission reference 21/02946/M73A.
    - iii) Remove the excess materials arising from the land.
  - The periods for compliance with the requirements are:
    - i) Five months from the date this notice takes effect.
    - ii) Six months from the date this notice takes effect.
    - iii) Seven months from the date this notice takes effect.
  - 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/K0235/W/24/3340987**

#### **Keysoe International Equestrian Centre, College Farm, Church Road, Keysoe MK44 2JP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Keysoe International Ltd against the decision of Bedford Borough Council.
  - The application Ref is 23/00894/M73A.
  - The development proposed is the retention of an existing equestrian all-weather XC arena, including raised mounds with step jumps and water jumps.
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## **Decisions**

### Appeal A

1. The appeal is allowed, and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development carried out, namely the construction of 5 raised earth mounds and associated banks and step jumps at Keysoe International Ltd, Church Road, Keysoe, Bedfordshire

MK44 2JP as shown on the plan attached to the notice, and subject to the conditions set out in the attached schedule.

### Appeal B

2. The appeal is allowed and planning permission is granted for the retention of an existing equestrian all-weather XC arena, including raised mounds with step jumps and water jumps at Keysoe International Equestrian Centre, College Farm, Church Road, Keysoe MK44 2JP in accordance with the terms of the application, Ref 23/00894/M73A, dated 27 April 2023, and subject to the conditions set out in the attached schedule.

### **Application for costs**

3. At the hearing an application for costs was made by Keysoe International Ltd against Bedford Borough Council. This application is the subject of a separate decision.

### **Appeal A on ground (a) – the deemed planning application, and Appeal B**

#### *Background and Preliminary Matters*

4. Despite the slight differences between the breach of planning control alleged in Appeal A and the description of development in Appeal B, both appeals essentially relate to the same development which has already taken place on site.
5. Planning permission Ref 21/02946/M73A was granted on 27 April 2022 ("the 2022 permission") at the appeal site for *"Extensions to an existing all-weather surfaced arena with works to include the removal of two arenas (as permitted under 17/03372/FUL) and the creation of a water jump, earth mounds and engineered jumps (part retrospective)"*. This permission was implemented, however what was constructed on site deviated from the approved plans including the provision of an additional water jump and the creation of additional raised earth mounds near to the southern boundary of the site.
6. A retrospective planning application Ref 23/00894/M73A was subsequently submitted seeking the retention of the development as built on site. Appeal B arises out of the refusal of this application on 20 September 2023. The reasons for refusal were solely in relation to the raised earth mounds (mounds 2-6) and their effect on the character and appearance of the area and the living conditions of occupiers of Windy Ridge Cottage.
7. The enforcement notice, out of which Appeal A arises, seeks the removal of those five earth mounds (mounds 2-6) and the reasons for issuing the notice mirror the reasons for refusal provided in the planning application decision notice. The planning issues for the appeals are therefore the same, and I am satisfied that the ground (a) appeal and Appeal B can be considered together.
8. The revised National Planning Policy Framework (the Framework) was published on 12 December 2024. I have considered the changes and as they are not material to the proposal, further comments by the parties were not sought. I have, however, determined the appeal having regard to the revised Framework.
9. The Council has commenced the preparation of the Bedford Local Plan 2040 (emerging LP) which was subject to examination in June and September 2023.

However, the examination of the emerging LP is currently paused to enable the Council to address concerns raised by the Inspector. Although those concerns relate primarily to the delivery of housing and the deliverability of strategic infrastructure, and whilst Policy DM9 which relates to horse and equestrian development was not subject to objection, the parties agree that the emerging LP currently carries limited weight in decision making. I concur with that position and that the statutory development plan remains the most important policy consideration in these appeals.

### *Main Issues*

10. The main issues are the effect of the development on:

- the character and appearance of the surrounding area; and
- the living conditions of occupiers of Windy Ridge Cottage, with particular regard to overlooking.

### *Reasons*

#### *Character and Appearance*

11. The appeal site is in a distinctly rural location to the east of Church Road, and forms part of the wider Keysoe International site which operates as an equestrian training and competition facility. The wider site includes an indoor arena with spectator seating, an outdoor arena, grass cross country course, car parking area, and a café/restaurant.
12. The appeal site itself comprises an all-weather arena with a silica sand fibre top surface that incorporates several raised earth mounds creating a more undulating surface, step jumps, and water jumps. The all-weather arena is bound by timber post and rail fencing and is screened on three sides by an existing band of large Leyland Cypress trees. Two public rights of way (PROW) border the appeal site, with PROW No. 70 running along the western boundary and PROW No. 101 along the southern and eastern boundary.
13. The surrounding area is characterised by predominantly agricultural land which is gently undulating and enclosed by hedgerows. The site also falls within character area 1B "Riseley Clay Farmland Area" as identified in the Bedford Borough Landscape Character Assessment (BBLCA). The BBLCA identifies several key characteristics of the area which include "*open lowland founded on Oxford Clay, subtly varied with gently undulating valleys*" and "*views are generally distant over the subtly undulating open farmland with blocks of woodland and wind turbines often visible on the skyline*".
14. The Council contend that the change in land levels caused by the earth mounds and associated banks and step jumps has resulted in an incongruous feature that is out of character with the surrounding area. Whilst I accept that the surrounding area is predominantly flat, due to its secluded location the appeal site is not visible in the wider vista. Indeed, the Council accept that the mounds are not visible from the wider area and therefore any visual harm was restricted to views from PROW Nos. 70 and 101. The development therefore does not have an adverse impact on the key characteristics of the wider area.
15. In terms of any impact of the development upon views from the adjacent PROW, the starting point is the context in which those views are obtained. Due

to the presence of the large expanse of mature Leyland Cypress trees along the eastern, southern, and western boundaries, along with further vegetation along much of the northern boundary, there are no long-distance views afforded and the open gently undulating agricultural land that is common in the wider area is not appreciable. In addition, the development has not taken place on undeveloped open countryside but within the confines of an existing and relatively long-standing equestrian site. The views available from PROW Nos 70 and 101 across the appeal site are restricted to the equestrian site itself, and in that sense the earth mounds, associated jumps and other equestrian paraphernalia do not appear incongruous or out of keeping.

16. The earth mounds and associated development are clearly visible from various positions along the PROW that extends around much of the perimeter of the appeal site, in particular from PROW No. 70, and where PROW No. 101 runs along the eastern boundary of the appeal site. However, these views are against the backdrop of the large Leyland Cypress trees that surround the site which significantly reduces the visual impact of the earth mounds and associated jumps.
17. The Council's concerns relate, in part, to the fact that the raised ground levels have resulted in the site's topography being far more undulating than much of the surrounding area. There is no dispute that the 2022 permission is extant and includes the provision of three raised earth mounds. The principle of raised earth mounds on the appeal site has been established and should the enforcement notice be upheld, then the notice would require the land to be returned to the levels as shown on the 2022 permission. The topography of the appeal site is therefore not going to be "flat" in any event.
18. I accept that the three raised earth mounds approved as part of the 2022 permission were in a more central position within the site and lower in height. There can be no doubt therefore that the development subject of these appeals has resulted in views across the appeal site from PROW Nos 70 and 101 being noticeably changed.
19. That change is most pronounced from PROW 101 along the southern boundary of the appeal site, where the increase in ground levels is most noticeable with a grassed bank leading up from the PROW to the arena. This largely obscures any views across the appeal site from this location, albeit for a relatively short stretch of the PROW.
20. However, change does not equate to harm and although views across the appeal site from the PROW have undoubtedly been altered, in my judgement the development respects the context in which it sits, is effectively assimilated into the landscape, and does not have an adverse effect on the character and appearance of the area.
21. Additionally, the development does not have an adverse impact on users of the PROW and their enjoyment of the countryside, nor does it detract from their overall experience. During my site visit I walked along PROW Nos 70 and 101 around the appeal site, and for much of the route there is an element of enclosure caused by the narrow nature of the footpath and the large expanse of mature trees and vegetation that immediately borders it. Nevertheless, even when passing along the section of PROW No 101 adjacent to where the change in ground levels is most pronounced, due to its gradient and the distance it is

set back from the footpath itself, the development does not give rise to an undue sense of enclosure nor is it overbearing for footpath users.

22. Accordingly, I find that the development does not cause harm to the character and appearance of the surrounding area. As such, it accords with Policies 7S, 29, and 30 of the Bedford Borough Local Plan 2030 (adopted January 2020) (BBLP). These policies require, amongst other things, that developments contribute positively to the area's character and identity, respect the context within which it will sit, and not give rise to other impacts that would adversely affect the use and enjoyment of the countryside by others.

### *Living Conditions*

23. A short distance to the south of the appeal site is a residential property known as Windy Ridge Cottage (WRC). The boundary of WRC and its curtilage is adjacent to PROW No 101. The Council contend that due to the location and height of the raised earth mounds, the development has a detrimental impact on the living conditions of occupiers of WRC. These concerns relate primarily to the overlooking of the private garden area of WRC.
24. The Council confirmed at the hearing that, due to the large expanse of mature Leyland Cypress trees measuring approximately 10 metres in height which run along the southern boundary of the appeal site, they were satisfied that there was no overlooking concerns or loss of privacy at present. It was readily apparent from my site visit that this was indeed the case, and that screening provided by the existing trees and vegetation means that there is no overlooking of WRC or its garden area.
25. The Council's concerns therefore relate entirely to the potential overlooking of WRC in the future, should any of the existing trees along the southern boundary die or are felled. In the Council's view, the existing trees cannot be relied upon as a form of screening as there is no guarantee that they will remain in perpetuity. A planning condition requiring the replacement of any trees which died or were felled was not considered suitable by the Council, as any newly planted trees replacement would not provide the same level of screening.
26. I shall turn firstly to the condition of the existing trees which surround the appeal site. The appellant commissioned an arboricultural report<sup>1</sup> to assess the condition, life span, and quality of the trees. This concluded that the Leyland cypress trees were of moderate quality and have a remaining lifespan of between 20-40 years. The Council have not disputed these findings, and I too find no reason to disagree with the conclusion of the report. Given their condition, quality, and expected life span, there is no evidence to suggest that the existing trees will not be in situ and providing the current level of screening for the foreseeable future.
27. There is also no indication that the appellant would seek to intentionally fell, damage, or otherwise remove the trees along the southern boundary of the site. Whilst I appreciate that unforeseen or unpredictable events resulting in the loss of one or more trees could occur, such events are unlikely. I also consider that due to the nature of the equestrian use which sees riders on horseback frequently travelling across the site at speed, combined with the

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<sup>1</sup> Zebra Trees – Assessment of trees adjacent to new XC Arena, dated 1 November 2023

distance between the appeal site and the garden of WRC, the loss of a single tree or presence of a small gap in the tree line would be unlikely to result in an unacceptable loss of privacy for occupiers of WRC. In such circumstances, any views possible from the appeal site would likely be fleeting and at a distance of around 15 metres.

28. In the unlikely event that any of the existing Leyland cypress trees died or were removed, the appellant has demonstrated<sup>2</sup> that replacement mature trees of 9 metres in height could be planted. The Council's Tree Officer<sup>3</sup> accepted that the planting of such trees is possible, albeit requiring a sustained period of aftercare and maintenance to ensure the new tree(s) became established and adapt to their new location.
29. The primary concern that the Council's Tree Officer had was that given the closely planted arrangement of the existing trees, it would not be possible to replant a tree in the exact same location without damaging the roots of other nearby trees. However, I am satisfied that, as explained in the appellant's response<sup>4</sup> to the Council's Tree Officer, this could be overcome by removing a section of the row of trees to enable the planting to take place. I therefore find no reason why, should any of the trees die or be removed, trees of a similar size and maturity could not be planted so that the current level of screening was maintained. This could be secured by planning condition.
30. The Council also raised concerns that as the planting of replacement trees could only take place within the planting season (November to March), there may be a period of several months before the replacement planting could take place. Whilst I acknowledge that the loss of trees along the southern boundary could potentially result in some harm to the living conditions of occupiers of WRC, any harm would not be long-lasting and could be sufficiently remedied through adequate replacement planting.
31. To summarise, I find that the development does not cause harm to the living conditions of occupiers of WRC, with particular regard to overlooking. With regards to the potential for overlooking and a loss of privacy in the future, I am satisfied that the retention of the existing trees, along with a requirement to replace any trees that die or are removed with an appropriately sized replacement, can be suitably controlled by a planning condition. As such, the development accords with Policy 32 of the BBLP which seeks, amongst other things, that developments minimise disturbance to neighbours and the surrounding community, including overlooking.

## **Other Matters**

32. I note the content of the third-party representation received from the occupiers of WRC. This includes concerns regarding the alleged removal of fencing and foliage belonging to them by the appellant, the diversion of the PROW by the appellant, and a request for unconditional funding to be provided to the owners of WRC. Such matters though do not fall within the remit of this appeal decision, and in any event do not alter my findings in relation to the main issues set out above.

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<sup>2</sup> Park Hood Specialist Chartered Landscape Architects, Specialist Trees – Planting of Leylandii, November 2023

<sup>3</sup> Council Tree Officer Memo, dated 15 October 2024

<sup>4</sup> Park Hood – Response to Tree Officer Memo, dated 21 October 2024

## **Conditions**

33. I have considered the various conditions discussed at the hearing having regard to the six tests in the Framework. Where necessary I have made changes to the wording of conditions in the interests of precision, clarity, and enforceability.
34. For the reasons already set out in the main issues above, a condition requiring the retention of the existing trees along the western, eastern, and southern boundaries is necessary to protect the living conditions of occupiers of the nearby residential property. In the event that a tree is cut down, uprooted or destroyed or dies, the condition requires that a replacement tree of a similar size and species shall be planted in the same place. It was discussed at the hearing that, whilst it is possible for trees to be planted outside of the planting season, this comes at far greater risk of the planting failing and the tree(s) not surviving. As a result, it was agreed that in line with standard practice the condition should require any replacement planting to be undertaken during the first available planting season.
35. A condition requiring the submission of a post-excavation analysis report is also necessary to ensure the proper recording, reporting, and presentation of any heritage assets affected by the development. The form of this condition is imposed to ensure that the required details are submitted, approved, and implemented. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the Local Planning Authority or the Secretary of State, or if the details are approved but not carried out in accordance with those approved details and timetable.
36. I have also imposed a condition stating that no external lighting, sound systems, or public address systems can be installed on the application site without first receiving approval in writing by the Local Planning Authority. A similar condition was imposed on the 2022 permission, and given the proximity of the nearest residential property, I find that such a condition is reasonable to safeguard the living conditions of neighbouring occupants.
37. Finally, a condition is required specifically in relation to Appeal B to confirm the approved plans in the interests of certainty.
38. A further condition was suggested requiring the submission of a soft landscaping scheme for the bank along the southern boundary of the site. However, as I have found that the development does not cause harm to the character and appearance of the area or the living conditions of occupiers of the neighbouring residential property, such a condition is not reasonable or necessary.

## **Conclusion**

39. For the reasons given above, I conclude that Appeal A succeeds on ground (a) and planning permission is granted in accordance with the application deemed

to have been made under section 177(5) of the 1990 Act as amended. Appeal B is also allowed.

40. In these circumstances Appeal A on grounds (f) and (g) do not fall to be considered.

*David Jones*

INSPECTOR



## **SCHEDULE OF CONDITIONS IN RELATION TO APPEALS A AND B**

- 1) The trees along the site's southern, western, and eastern boundaries shall be retained. No retained tree shall be cut down, uprooted, or destroyed and any topping or lopping shall be carried out in accordance with British Standard BS 3998:2010 (Tree Work). If any retained tree is cut down, uprooted, or destroyed or dies, a replacement tree shall be planted in the first available planting season. The replacement tree shall be planted in the same place and shall be of a similar size and species to that of the tree lost.
- 2) The development hereby permitted shall be removed and the land returned to its previous condition and levels, with all materials arising being removed from the land, within seven months of the failure to meet any of the requirements set out in (i) to (iv) below:
  - (i) Within 3 months of the date of this decision, a post-excavation analysis report shall be submitted to the Local Planning Authority. The post-excavation analysis report shall be in accordance with the initial Archaeology Mitigation Strategy partly approved by the Local Planning Authority under application reference 22/01203/AOC issued on the 29 July 2022 to satisfy part of the requirements of condition 5 of planning approval 21/02946/M73A. The post-excavation analysis report will include a timetable for the completion of the remaining post-excavation tasks:
    - (a) Preparation of the site archive ready for deposition at a store approved by the Local Planning Authority, completion of an archive report, and submission of a publication report (to be completed within one year of the approval of the post-excavation analysis report). The remaining tasks shall be carried out in accordance with the approved details and timings.
  - (ii) If within 6 months of the date of this decision the Local Planning Authority refuse to approve the post-excavation analysis report or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - (iv) The approved scheme shall have been carried out and completed in accordance with the approved details and timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) No external lighting, sound systems or public address systems shall be installed on the application site unless details of such lighting, sound systems and public address systems, including their location, intensity of illumination, predicted lighting contours and volume have been first submitted to and approved in writing by the Local Planning Authority. Any external lighting, sound system, or public address system that is installed shall accord with the details so approved.

**ADDITIONAL CONDITION IN RELATION TO APPEAL B ONLY**

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Layout Plan Ref: L102 REV M V No: VO2B

Block Plan Ref: L105 REV N V No: VO3B

Site Section Plan Ref: L103 REV M V No: VO6B

Location Plan Ref: L100 REV G V No: VO1