

Appeal Decision

Inquiry held on 27 July 2016

Site visit made on 28 July 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non Practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 August 2016

Appeal Ref: APP/D3640/W/16/3144389

Hookmeadow, Philpot Lane, Chobham, Woking, GU24 8HD

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 (the 1990 Act) against a refusal to grant planning permission.
- The appeal is made by Alison Hook ("Ms Hook") against the decision of Surrey Heath Borough Council (the Council).
- The application Ref 15/0868, dated 20 September 2015, was refused by notice dated 12 February 2016.
- The development proposed was described on the application form as, *"Change of use – retrospective – field shelter converted to single-storey timber cabin - grazing land to curtilidge. Residence built Sept 2005 curtilidge began 2003. Been in residence since Octo 2002"*.

Summary of Decision: The appeal is dismissed.

Definitions

1. In my Appeal Decision I will refer to:

- a) The Thames Basin Heaths Special Protection Area as "the SPA".
- b) The dwelling occupied by Ms Hook as "the Dwelling".
- c) The Dwelling together with its residential curtilage as identified by Ms Hook as "the Site".
- d) The totality of the land owned and occupied by Ms Hook at Philpot Lane as "Hookmeadow".
- e) The former field shelter as "the Field Shelter".

Background Matters

2. Ms Hook purchased Hookmeadow in 2002 and in about October 2002 she began living at Hookmeadow within a horse box.
3. In June 2003 a Certificate of Lawful Use or Development was granted in respect of the use of Hookmeadow for leisure grazing for up to three horses; the laying of scalplings to form an area of hardstanding; the erection of the Field Shelter and a shed.
4. In December 2003 Ms Hook made an application for a single-storey wooden cabin to be her residence. Permission was refused in April 2004 and an appeal was dismissed in April 2005. The Inspector who determined that appeal found that the proposal would be:

- a) Inappropriate development within the Green Belt.
 - b) Harmful to the open and rural character of the area.
5. In September 2004 the Council granted planning permission (retrospective) for the erection of two barns to be used for stables and a hay store.
 6. In April 2005 Ms Hook applied for the erection of a single-storey wooden cabin to be used as groom's quarters.
 7. Ms Hook claims that in August 2005 she "converted" the Field Shelter to the Dwelling. At that time the Dwelling did not include either the Porch Extension or the Lounge Extension. This "conversion" involved the construction of the Dwelling within the footprint of the Field Shelter. The walls and tin roof of the Field Shelter provided weather protection for the Dwelling but they were not part of the fabric of the Dwelling as built by Ms Hook. Ms Hook confirmed that there were gaps between the Dwelling and the sides/roof of the Field Shelter. Ms Hook sees this as a conversion of the space within the Field Shelter from a place where her horses had taken shelter from the elements to a residential dwelling-house.
 8. Ms Hook claims that she commenced living in the Dwelling in about September 2005.
 9. In October 2005 the Council refused planning permission for the groom's quarters.
 10. In February 2008 Council Officers became aware of the Dwelling and its residential use by Ms Hook.
 11. In February 2009 Ms Hook added a porch to the Dwelling (herein referred to as "the Porch Extension").
 12. A further inspection was carried out by Council Officers in October 2009 and within 3 days of that inspection the Council issued two Enforcement Notices dated 29 October 2009.
 13. One of the Enforcement Notices alleged a material change of use from grazing land to ancillary residential land ("the First Enforcement Notice"). The First Enforcement Notice required the cessation of the ancillary residential use and the removal of ornamental planting, flower beds and ornamental features and the reinstatement of the land to its former condition.
 14. The other Enforcement Notice alleged the erection of a single-storey dwelling-house within the Field Shelter; the erection of a single-storey extension to the dwelling-house to form the Porch Extension; the formation of hard surfaced patio areas; the siting of raised planters and an ornamental water features on the hard surfaced patio area ("the Second Enforcement Notice"). The Second Enforcement Notice required, amongst other things, the demolition of the Dwelling, the Porch Extension, the removal of the patio and the reinstatement of the land to its former condition.
 15. Ms Hook appealed the First and Second Enforcement Notices on Ground (g) (both Enforcement Notices) and Ground (d) (the Second Enforcement Notice).

16. A Public Inquiry was held by Inspector Jarratt in April 2010. The appeals were dismissed by way of Appeal Decisions dated 24 May 2010¹. The Appeal Decisions were not challenged by way of an appeal to the High Court. Both Enforcement Notices should have been complied with in full by the end of February 2011.
17. At the Inquiry I explained to Ms Hook that many of the matters which she was raising in this appeal related to the findings of Inspector Jarratt. These matters had been determined when the Inspector Jarratt's Appeal Decisions were issued. Those matters were fairly and squarely before Inspector Jarratt and there has been no material change in circumstances. His determinations related to a mixture of facts and law and Inspector Jarratt had made unequivocal decisions on these matters. Accordingly, I do not consider that this appeal allows for those findings by Inspector Jarratt to be re-opened.
18. I understand that the mental wellbeing of Ms Hook deteriorated following the receipt of the Appeal Decisions. In addition Ms Hook was also suffering from physical problems. The Council extended the periods for compliance with both Enforcement Notices.
19. In early 2013 Ms Hook informed Council Officers that the Field Shelter was collapsing and that this was damaging the ceiling/roof of the Dwelling. Ms Hook removed the Field Shelter in its entirety and replaced the roof of the Dwelling with a grass roof. I was informed that some of the timbers from the Field Shelter were incorporated into the reconstructed roof and other timbers were used as internal props for the Dwelling. I do not consider that the use of some of the Field Shelter's materials results in the Dwelling being a conversion of the Field Shelter.
20. In October 2013 Ms Hook carried out further works to the Dwelling by way of an extension which is used as a lounge (herein referred to as "the Lounge Extension").
21. Council Officers carried out a further inspection of Hookmeadow in May 2014.
22. In August 2014 the Council commenced injunction proceedings against Ms Hook. I have noted her complaints that the Council informed her that the High Court Hearing that she went to was for interim relief whereas it ended up as the full Hearing. I explained that I was not in a position to do anything about that.
23. The Injunction Hearing was held in late October 2014. The Injunction Order² is dated 30 October 2014 and was sealed on 4 November 2014 ("the Injunction"). The Injunction carries a Penal Notice which explains that if Ms Hook disobeys the Injunction she may be held in contempt of Court and liable to imprisonment or fined or have her assets seized.
24. The Injunction requires Ms Hook, amongst other things, to:
 - a) Cease any residential use or ancillary residential use of the garden and patio area at the Site by 30 April 2015.

¹ Document 5

² Document 6

- b) Remove of ornamental planting, flower beds, and ornamental features from the garden and patio area at the Site by 30 October 2015.
 - c) Demolish the Porch Extension by 30 October 2015.
 - d) Demolish the Dwelling and the Lounge Extension by 30 April 2016.
25. The Injunction has not been complied with.
26. The Council do not accept that the Dwelling is a conversion of the Field Shelter. Inspector Jarratt explained in his Appeal Decisions that, *"Although the appellant has not challenged the wording of the allegation in Notice B³, she refers to having converted the field shelter to a dwelling. The Council submitted that the works undertaken cannot reasonably be considered works for conversion. From my observations on site and from the evidence at the inquiry, I find that the dwelling is not a conversion of the shelter but a freestanding building constructed within the field shelter. I am therefore satisfied that the wording of the allegation is correct."*
27. I consider that Inspector Jarratt has established that the Dwelling was a freestanding building constructed within the Field Shelter. The parties to this argument remain the same, namely Ms Hook and the Council. I explained at the Inquiry that this is now a settled matter and it is not right to re-open that issue. Ms Hook accepted that. Even if I was able to make a new determination on this matter I would come to the same conclusion as the both the Council and Inspector Jarratt.

Procedural Issues

28. On the Council's Decision Notice they described the application as, *"Change of use of former field shelter and erection of extensions to it, to form single storey dwelling house and creation of residential curtilage (retrospective). (Additional information recv'd 22/12/15)"*
29. On the Appeal Form the appellant described the proposed development as, *"Retrospective change of use of former field shelter to single-story residence with porch and extension and surrounding curtilage & landscaped area."*
30. Ms Hook submitted a plan showing a proposed extension to the existing bedroom within the Dwelling. I explained at the outset of the Inquiry that I did not intend to deal with this as part of this appeal because the proposed bedroom extension did not form part of the application submitted to the Council and had not been the subject of any public consultation.
31. The second reason for refusal of the application referred to the absence of an Agreement under Section 106 of the 1990 Act. At the Inquiry Ms Hook made a payment to the Council towards the strategic access management and monitoring of the SPA. This money will be refunded to the Appellant if planning permission is not granted pursuant to this appeal. The Council accepted that the payment by Ms Hook meant that the second reason for refusal had been overcome.
32. Hookmeadow is within the Green Belt and in the open countryside. I note the Ms Hook's view that it is within the settlement of Chobham. It is clear

³ The Second Enforcement Notice

from the evidence that Hookmeadow falls well out outside the defined settlement boundary of Chobham.

Policy

33. The Development Plan for the area includes Policies CP1 and CP3 of the Core Strategy & Development Management Policies 2011-2028 Document ("the Core Strategy").
34. I have also been referred to advice in the National Planning Policy Framework ("the NPPF").
35. The Core Strategy explains that within the countryside the current extent of the Green Belt will be maintained.
36. The NPPF explains that:
 - a) The Government attaches great importance to the Green Belt.
 - b) Inappropriate development within the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
 - c) Decision makers should ensure that substantial weight is given to any harm to the Green Belt.
 - d) Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Main Issues

37. The main issues are set out in the sub-headings within the "Reasons" section below.

Reasons

What is the development for which planning permission is being sought?

38. I have explained above that the Dwelling is, and was, a freestanding building used as a dwelling-house. Planning permission is sought for the retention of the Dwelling, the change of use of grazing land to garden land and the retention of the patio area serving the Dwelling.

Is the development inappropriate in the Green Belt?

39. The NPPF explains that the construction of new buildings is inappropriate in the Green Belt. I have explained above that the Dwelling is a building and applying the NPPF guidance it must be inappropriate development. There are exceptions to this and those exceptions are set out in paragraph 89 of the NPPF. None of the exceptions apply in this case.
40. The change of use of grazing land to garden and patio is also development i.e. the making of a material change of use of land. Paragraph 90 of the NPPF sets out what change of use of land are allowed in the Green Belt. None of the types of development which may be allowed pursuant to paragraph 90 apply in respect of the change of use which has occurred at the Site.

41. I therefore conclude that the Dwelling and garden (including the patio) are inappropriate development in the Green Belt contrary to the NPPF.

What is the effect of the development on the openness of the Green Belt?

42. The NPPF explains that:
- a) The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.
 - b) The essential characteristics of the Green Belt are its openness and permanence.
43. Ms Hook is of the view that the Dwelling has no greater impact on the openness of the Green Belt than the Field Shelter had. I do not agree with that assessment because:
- a) The footprint of the Dwelling is greater than the footprint of the Field Shelter because of the additions to the Dwelling i.e. the Porch Extension and the Lounge Extension.
 - b) According to the application plans the overall height of the Dwelling is higher than the Field Shelter.
44. Further, when the Field Shelter was used for agriculture i.e. in connection with the horses kept at Hookmeadow it would not have been inappropriate development in the Green Belt.
45. Further still, the demolition of the Field Shelter in its entirety has closed the planning history of that building and it could not be rebuilt without the grant of a further planning permission. Therefore, it is not appropriate to compare the Dwelling against the Field Shelter in terms of their respective impact on the openness on the Green Belt.
46. I also consider that the patio and the raised planters within the garden area have an impact on reducing the openness of the Green Belt.
47. I therefore conclude that the Dwelling, the structures within the garden including the patio all harm the openness of the Green Belt contrary to the NPPF.

Does the development harm the character of the Site and surrounding area?

48. The NPPF explains that the core land-use planning principles includes, amongst other things,:
- a) Protecting the Green Belt.
 - b) Taking account of the different roles and character of different areas.
 - c) Recognising the intrinsic character and beauty of the countryside.
49. The Core Strategy explains that the countryside will be protected from inappropriate development and maintained.
50. The character of the area is that of attractive open countryside. I am aware that there are buildings and non-agricultural uses taking place elsewhere along Philpot Lane and Sandpit Hall Road.

51. The Dwelling and its garden (including the patio) have resulted in an encroachment into the open countryside and this also has an impact on the permanence of the Green Belt. One of the purposes of the Green Belt, as explained in the NPPF, is to safeguard the countryside from encroachment.
52. The Dwelling and its garden (including the patio and the structures within it) together with residential paraphernalia within those areas (flower pots containing decorative flower displays, benches, outside tables, outside chairs and a swing bench seat with canopy) all erode the countryside character of the Site. Clearly, the development that has taken place does not reflect the character of the open countryside surrounding it.
53. I conclude, for the reasons explained above, that the countryside encroachment resulting from the unauthorised development at the Site has resulted in a materially harmful impact on the character of the open countryside contrary to the Core Strategy and the NPPF.

Are there any "other considerations" which weigh in favour of the development?

54. Ms Hook submitted a document entitled, "Very Special Circumstances"⁴ (the Very Special Circumstances Document").
55. Ms Hook has, by herself, looked after the non-residential part of Hookmeadow. She has largely done all the work resulting in the construction of the Dwelling, the Porch Extension and the Lounge Extension. In addition she owns horses and dogs which live at Hookmeadow.
56. Ms Hook has set out in her Very Special Circumstances Document twenty reasons why very special circumstances apply to her in this case. She also made oral representations on other matters. I do not intend to rehearse all of these matters.
57. Ms Hook explains that:
 - a) She lives and works at Hookmeadow.
 - b) She has built and developed Hookmeadow including the Dwelling and has established and cultivated the garden.
 - c) She works part-time as a self-employed gardener and earns a low seasonal income. She claims that she cannot afford to have a home that is away from Hookmeadow not least because of the need to travel between wherever she lived and Hookmeadow and the travel costs that would incur.
 - d) She owns two old vehicles – one of which she uses primarily for her paid work. She is concerned that if she cannot continue to live at Hookmeadow (which she considers to be secure site) this work vehicle could be subject to thefts and without the contents of this vehicle she would lose her ability to secure an income.
 - e) She is concerned that if she is unable to live at Hookmeadow then Hookmeadow could be broken into and her animals and property would be at risk.

⁴ Document 1

- f) She is responsible for all of the maintenance works to the land at Hookmeadow.
- g) She is concerned that having to travel between a home off-site and Hookmeadow could result in a motoring accident. She describes the roads serving Hookmeadow in winter as being lethal and that Philpot Lane can be closed due to incidents of flooding.
- h) She will never comply with the Enforcement Notices or the Injunction because she cannot bring herself to destroy what she describes as her "beautiful home".
- i) The work she does at Hookmeadow is not done for money – it is her way of life and it keeps her fit and active.
- j) There have been other nearby developments in the Green Belt, some of which have been authorised by the Council, and these developments are worse than what she has done or have only been allowed because of the personalities involved. She considers that she has not been treated even-handedly compared with others in the area. I have not been provided with any information that suggests that the Council have not followed policy or that other considerations may have applied in those cases.
- k) There is a vendetta within the Council against her much of which is fuelled by misinformation. I do not consider that the evidence before me shows this to be the case.
- l) She has created at Hookmeadow habitat for vulnerable species to survive and to flourish.
- m) The enforcement action taken by the Council in late October 2009 denied her the opportunity of seeking a Certificate of Lawful Use or Development for the Dwelling and its garden. I do not accept that. Ms Hook appealed the Enforcement Notice relating to the Dwelling on Ground (d) which is an argument that it was too late for the Council to take enforcement action because the alleged breach of planning control was lawful. She failed to convince Inspector Jarratt of that at the Public Inquiry held in April 2010.
- n) She has transformed Hookmeadow from a derelict and unkempt area to a site which is beneficial to her, her animals and the environment generally.
- o) She is the main carer for her mother who lives about 20 miles away from Hookmeadow.
- p) She believes that the Council have treated her very badly in terms of:
 - i) Not communicating their intentions regarding the use of the Dwelling and its garden.
 - ii) Delaying taking enforcement action between becoming aware of the breaches of planning control and the issuing of the Enforcement Notices.
 - iii) Not offering her advice of helping her with her housing needs.

The Council have acknowledged that there were long periods of time when they should have communicated with her but didn't. However, I do not consider that is a good reason to allow inappropriate development in the Green Belt.

58. I am aware:

- a) Of the need to safeguard the welfare of the horses living at Hookmeadow.
- b) That part of Hookmeadow floods at times and Ms Hook needs to get her horses off the flooded fields and into the stables.
- c) Of the physical problems that Ms Hook has suffered from following a motorcycle accident when she was 19 years old and the on-going pain that this still causes her.
- d) The mental health problems which Ms Hook has suffered primarily since the Appeal Decisions into the appeals against the Enforcement Notices.
- e) Of the support from local residents for Ms Hook to retain the Dwelling, the surrounding garden land and the patio. I accept that local support for the proposal is a material consideration in this case which weighs in favour of the appeal proposal.
- f) That the Dwelling is used as a rest and recuperation room when Ms Hook is working on the land at Hookmeadow.

59. There is no obvious place that I am aware of where Ms Hook could live if planning permission to continue the use of the Dwelling is refused and the Enforcement Notices or the Injunction are followed through. However, there is no evidence before me that opportunities to secure accommodation elsewhere and close to the Appeal Site are not available. Ms Hook said that she cannot afford market rents or mortgages to secure a home away from Hookmeadow. Whilst I have sympathy for her housing predicament that is an argument that would be open to many people who would seek to live within the Green Belt on the basis that they could not afford to live in nearby settlements.

60. The Council have explained that they are trying to address the issue of the lack of affordable housing in the area. They referred me to their recent decision to grant planning permission for 35 affordable housing units including 19 social rented and 16 shared ownership on a site near Chobham⁵ which is less than three miles from Hookmeadow. I am aware that it will take some time for this very recently approved scheme to be implemented but it clearly shows the Council's determination to address this issue. Ms Hook asserts that she would not be able to afford the social rents charged for such properties. However, there was no evidence before me to show that socially rented properties are not a financially viable option available to Ms Hook.

61. Ms Hook believes that Hookmeadow is in a sustainable location and that local facilities are accessible by means other than a private car. That part of Philpot Lane near the Appeal Site does not benefit from a footway and it does not have any proper street lighting. It is not possible to walk along the grass verge because the height and density of the vegetation growing within it.

⁵ See Committee Report – Document 6

62. I walked the short stretch of Philpot Lane between the Appeal Site and Sandpit Hall Road on two separate occasions and at different times of the day. On both occasions there was a steady flow of traffic (including cars, pick-up trucks, HGVs and transit vans) and it was necessary to take refuge on the grass verge so that traffic could pass by without deviating into the path of on-coming traffic. Even whilst standing on the grass verge care had to be taken so that wing mirrors on larger vehicles did not strike you.
63. I do not consider that Hookmeadow is in an a sustainable location. Ms Hook explained that she often bought provisions that she needed whilst returning from her work locations and whilst I have no doubt that she has walked to facilities in Chobham and Woking I do not consider this would happen very often especially when daylight hours fade in the winter months or during inclement weather.
64. I am aware that Ms Hook wished to question Council Officers who were not called by the Council. I explained to Ms Hook that this was an Inquiry into the refusal of planning permission and was not an opportunity to re-visit her grievances about the way in which she had been treated by the Council in the past. I consider that the witness called by the Council was able to deal with all the relevant planning matters raised by Ms Hook.
65. I do not accept that it would be appropriate to grant a personal planning permission to Ms Hook to use the Dwelling as her home. The Dwelling as a building is unlawful and it is, for the reasons explained above, inappropriate development in the Green Belt.
66. I understand that the Council do not have a five year housing land supply. However, this appeal relates to a single dwelling which would make very little difference to that issue. The small benefit of allowing the Dwelling to remain is clearly outweighed by the harms explained above.
67. I have had regard to Ms Hook's reference to Section 102 of the 1990 Act. This statutory provision does not apply in this case.
68. Ms Hook stated at the outset of the Inquiry that, *"This is my home, it is where my horses and dogs live, it is my first home and I am extremely attached to it. I will never demolish it, I will never sell it; I will live in my cabin on my land until the day I die"*.
69. I have also had regard to the Medical Report⁶ submitted by Ms Hook's Doctor in which she explains that Ms Hook is receiving medication for depression and anxiety. The Doctor states that Ms Hook, *"is still minded that should it be decided that her house needs to be destroyed that she will end her life as she will have no further purpose in living"*.
70. These matters are of significant concern to me. I understand Ms Hook emotional attachment to the Dwelling and Hookmeadow in general. However, these attachments relate to lifestyle choices made by Ms Hook and they do not outweigh the harm to the Green Belt as explained above.
71. Finally, I have had regard to the Appeal Decision⁷ submitted by Ms Hook. This Appeal Decision does not assist in the determination of this appeal.

⁶ Document 3

⁷ Document 2

If there are other considerations do they clearly outweigh the harm to the Green Belt and any other harm that may exist?

72. I have had regard to all of the other considerations and I do not consider that any individually or cumulatively outweigh the harm to the Green Belt, its openness and the character of the area.

Human Rights Act 1998

73. Dismissing this appeal may interfere with the human rights of Ms Hook relating to respect for her home. Ms Hook may be displaced from her home if, and when, she complies with the Enforcement Notices and/or the Injunction and there is no currently identified place for her live. However these matters must be balanced against:
- a) The significant harm to the Green Belt.
 - b) The substantial harm to the openness of the Green Belt.
 - c) The material harm to the character of the Site and surrounding area.
74. There is no evidence before me that Ms Hook's rights to privacy have been breached by the Council.
75. I am satisfied, on the basis of the various harms identified above, that the dismissal of this appeal is necessary and proportionate in the public interest.
76. I wholly reject Ms Hook's assertions that the Council have subjected her to torture, or to inhuman or degrading treatment or punishment.

Overall Conclusions

77. I therefore conclude that the appeal should not succeed.

Formal Decision

78. The appeal is dismissed.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANT

The Appellant, Ms Hook, represented herself.

FOR THE COUNCIL

Richard Wald of Counsel
Instructed by the Council's Principal Solicitor

He called:

Michelle Fielder MSc (Urban Planning), MRTPI – Development Management
Team Leader.

DOCUMENTS

- Document 1 – Ms Hook's document entitled "Very Special Circumstances".
- Document 2 – Appeal Decision dated 14 April 2015 – Building 1 at Home Farm – Inspector Michael Lowe.
- Document 3 – Medical Report dated 13 July 2016.
- Document 4 – Committee Report – Planning Applications Committee – 21 July 2016 – Land at Former Little Heath Nursery, Burr Hill Lane, Chobham.
- Document 5 – Appeal Decisions dated 24 May 2010 – Hookmeadow – Inspector P. N. Jarratt.
- Document 6 – The Injunction.