

Appeal Decision

Hearing held and site visit made on 26 April 2017

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

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

Decision date: 05 May 2017

Appeal A - Ref: APP/W3005/C/16/3153149 – Gary Holmes

Appeal B - Ref: APP/W3005/C/16/3153150 – Ethan Gaskin

Appeal C - Ref: APP/W3005/C/16/3153151 – Neesha Cooper

Land north of Selston Road, Jacksdale, Nottingham, NG16 5HL

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act").
- The appeal is made by Gary Holmes, Ethan Gaskin and Neesha Cooper ("the Appellants") against an Enforcement Notice issued by Ashfield District Council ("the Council").
- The Enforcement Notice, numbered E/2016/00001, was issued on 24 May 2016.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission: (i) The making of a material change of use of the land from an agricultural/forestry use to a commercial use for the keeping of ponies and the stationing of a caravan used for residential purposes. (ii) The construction of a wooden field shelter on the land (in the approximate position shown edged green on the plan attached to the Enforcement Notice) and the construction of a wooden shed on the land (in the approximate position marked by a green circle on the plan attached to the Enforcement Notice). (iii) The formation of a hard standing on the land; and (iv) The construction of a palisade fence on the land in excess of 1 metre in height adjacent to the highway and located in the approximate position shown by a blue line on the plan attached to the Enforcement Notice.
- The requirements of the Enforcement Notice are: (i) Cease the use of the land for the stationing of caravans used for residential purposes and permanently remove from the land any caravan used for such purposes; and (ii) Remove from the land all vehicles, equipment, plant and machinery brought onto the land for use in connection with the stationing and use of caravans for residential purposes; (iii) Remove the timber field shelter and wooden shed from the land; (iv) Remove the hard standing from the land; (v) Remove completely or reduce in height the metal palisade fence so that no part of it exceeds 1 metre in height measured from ground level; (vi) Remove from the land all materials and rubble arising from compliance with requirements (i), (ii), (iii), (iv) and (v) above; and (vii) Reinstatement of the land to its previous level and condition by re-seeding it to grass with an agricultural mix seed species.
- The period for compliance with the requirements (i) to (vi) above is four months.
- The period for compliance with requirement (vii) above is five months.
- Appeal B is proceeding on the ground set out in Section 174(2)(a) of the 1990 Act.
- Appeals A & C were also proceeding on the ground set out in Section 174(2)(a) of the 1990 Act. However, since the prescribed fees have not been paid within the specified period for Appeals A & C, the appeal on Ground (a) and the application for planning permission deemed to have been made under Section 177(5) of the 1990 Act in relation to those appeals have lapsed and do not fall to be considered.

Summary of Decisions: Appeal B is dismissed and the Enforcement Notice upheld. Appeals A & C have lapsed.

Application for costs

1. At the Hearing an application for costs was made by the Council against the Appellants. This application is the subject of a separate Decision.

Procedural Matters

2. In this Appeal Decision I will refer to:
 - a) The land to which the Enforcement Notice relates as "the Appeal Site".
 - b) The caravan referred to in the Enforcement Notice as "the Mobile Home".
 - c) The wooden field shelter referred to in the Enforcement Notice as "the Field Shelter".
 - d) The wooden shed referred to in the Enforcement Notice as "the Shed".
 - e) The palisade fencing referred to in the Enforcement Notice as "the Fencing".
3. The Appeal Site and the Mobile Home are occupied by Ethan Gaskin, Neesha Cooper and five children.
4. The Appeal Site is within the Green Belt.
5. The children occupying the Mobile Home are aged between about 1 and 7. Four of the children attend either a local Primary School or a Nursery.

Relevant Background Matters

6. The Appeal Site is divided into two parts, namely
 - a) The area of land immediately adjoining the entrance to the Appeal Site. I will refer to this as "Area 1". The Field Shelter has been erected within Area 1. There is a hardstanding around the Field Shelter. Various items are stored on the hardstanding including pony-traps and a trailer. The hardstanding is also used as an area for the parking of vehicles. The Appellants claimed that the hardstanding within Area 1 existed prior to development referred to in the Enforcement Notice being carried out. The Appellants cleared undergrowth from Area 1 and repaired/carried out maintenance to the pre-existing hardstanding. The Council did not dispute this.
 - b) I will refer to the remaining area within the Appeal Site as "Area 2". Area 2 is used for the stationing of the Mobile Home. Also within Area 2 is the Shed which is used for ancillary residential purposes. It is the hardstanding within Area 2 which is required to be removed by the Enforcement Notice.
7. The Field Shelter is a large four bay open fronted mono-pitched building.
8. The Mobile Home contains two bedrooms which are used by the children. The main living area is converted to sleeping accommodation at night for use by Ethan Gaskin and Neesha Cooper.
9. The Mobile Home was brought onto Area 2 in November 2015 and has been occupied since that date.

10. I was informed that Ethan Gaskin and Neesha Cooper lived in touring type caravans prior to their occupation of the Mobile Home on the Appeal Site. However, they found that having five children to look after whilst travelling around in a touring caravan was difficult so they acquired the Mobile Home and intend to bring the children up on the Appeal Site which they use as their home.
11. The Fencing is about 1.8m in height. It has been erected adjacent to the footway along the vast majority of the Appeal Site's frontage. I was advised that the Fencing replaced wire fencing attached to concrete posts which had two strands of barbed wire stretching between the posts¹. The former fencing was about 2.1m in height.
12. Ethan Gaskin explained that:
 - a) He had always worked with horses.
 - b) The current business mainly involves breeding horses and selling the horses to riding schools.
 - c) He had about 150 horses. No documentary evidence was provided to substantiate this claim and I was not taken to see these horses grazing in the locality.
 - d) Most of the female horses are retained for breeding purposes.
 - e) The majority of horses which are sold are sold when they are about 9-months old.
 - f) He would like to keep more of the horses and break them in. This would entail retaining the horses that were to be broken in until they were about four years old. Horses which are sold when broken in fetch a much higher price than those sold at 9-months old.
 - g) About 25 to 30 horses could be kept within the Field Shelter. The Appellants' agent and I counted 12 horses in the Field Shelter at the site visit.
 - h) The horses being kept in the Field Shelter were horses that were:
 - a) About to, or who had recently, given birth of foals, or
 - b) unable to graze on pasture land, or
 - c) being broken in, or
 - d) ill.
13. From time to time Ethan Gaskin and Neesha Cooper take in ponies which can no longer be looked after by people who have acquired them. These "rescued" ponies are either used for breeding or sold-on (if appropriate).
14. Ethan Gaskin explained that he rented about 17 fields for the grazing of his horses. He did not rent any buildings at the present time although he confirmed that he had done so in the past. However, he was unable to confirm:

¹ See Photograph 1

- a) Where the rented land was other than within 4 or 5 miles of the Appeal Site.
 - b) What the acreage of the rented land was.
 - c) What security of tenure he had in respect of any of the rented land.
15. Although I was informed that the business had been carried on for some years and that Ethan Gaskin had an accountant no accounts were provided to me. I was informed that the business had never secured a profit to such an extent that tax had to be paid.
16. Further, Ethan Gaskin did not produce a Business Plan showing how he intended to grow the business if he were granted planning permission to stay at the Appeal Site. I was not given any financial information as to monies arising from the sales of horses and only scant information as to the financial costs of running the business. The clear impression that I got was that horses were sold when money was needed or when Ethan Gaskin had insufficient land for grazing his horses especially during the winter months.
17. It was clear from other information provided by Ethan Gaskin that he did not have all year round access to the rented land as some of the owners of the rented land did not want horses damaging that land during the wet weather months.

Planning History

18. There has previously been a building on the Appeal Site. In May 1979 planning permission was granted to use this building as a piggery. I will refer to that building as "the Piggery". I was advised that the Piggery was demolished by the Appellants. No-one was able to confirm the dimensions of the Piggery.
19. Gary Holmes explained that his father had, at one time, owned the Appeal Site and had operated up to eight lorries from it. However, it was agreed that there was no planning permission granted for that use and there is no evidence before me that the use had become lawful.

Policy

20. The Development Plan for the area includes the saved policies of the Ashfield Local Plan Review 2002 ("the Local Plan"). I was also referred to various parts of the National Planning Policy Framework ("the NPPF"). The relevant saved policies and the parts of the NPPF are listed on a document entitled "Policy Referred to During the Appeal"² which I handed out at the Hearing.
21. The NPPF explains that:
- a) The Government attaches great importance to Green Belts.
 - b) The essential characteristics of Green Belts are their openness and their permanence.
 - c) Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

² Document 2

- d) When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. '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.
- e) A local planning authority should regard the construction of new buildings as inappropriate development in the Green Belt. One of the exceptions to this includes the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
- f) Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These exceptions are set out in paragraph 90 of the NPPF. I will refer to them as "the Paragraph 90 Exceptions".

Main Issues

22. The main issues in this case are set out in the sub-headings under the 'Reasons' section of this Appeal Decision.

Reasons

Is the commercial use for the keeping of ponies and the construction of the Field Shelter inappropriate development in the Green Belt?

23. The Local Plan explains what appropriate development in the Green Belt is. Appropriate development includes:

- a) Uses of land which preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt.
- b) New buildings which are genuinely required for uses of land which preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt.

24. It was agreed at the Hearing that if the Appeal Site was used solely for the keeping of horses then that use would preserve the openness of the Green Belt and would not conflict with the purposes of including land in the Green Belt.

25. However, the change of use of the Appeal Site and the Field Shelter are inextricably linked to one another. There would be no change of use but for the erection of the Field Shelter. I have explained above what the Field Shelter is used for. The remainder of Area 1 and parts of Area 2 are also used, amongst other things, for the breaking in of horses but those horses being broken in would not be on the Appeal Site if the Field Shelter had not been erected.

26. The Field Shelter does not preserve the openness of the Green Belt. It is a very large building. Accordingly, I am of the view that the Field Shelter and its associated commercial use amount to inappropriate development and the Field Shelter and its associated commercial use conflict with the purposes of including land in the Green Belt because the Field Shelter does not safeguard the countryside from encroachment.

27. The Appellants suggest that the Field Shelter does not conflict with the NPPF because it is a replacement building for the Piggery. I do not agree. The NPPF states that the replacement building must be in the same use. The Field Shelter is used for a non-agricultural use whereas the Piggery was in an agricultural use. The NPPF also explains that a replacement building should not be materially larger than the one it replaces. There is no evidence before me that the Field Shelter is of a comparable size to the Piggery.
28. The commercial use of the Appeal Site for the keeping of ponies is also inappropriate development when judged against the NPPF as it is not one of the uses specified in the Paragraph 90 Exceptions.
29. I therefore conclude that the commercial use of the Appeal Site for the keeping of ponies and the construction of the Field Shelter are inappropriate development in the Green Belt. Such development is contrary to the Local Plan and the NPPF.

Is the residential use of the Appeal Site by virtue of the stationing of the Mobile Home inappropriate development in the Green Belt?

30. It was agreed at the Hearing that the residential use of part of the Appeal Site by virtue of the stationing of the Mobile Home does not preserve the openness of the Green Belt and that it conflicts with one of the purposes of including land in the Green Belt in that it does not safeguard the countryside from encroachment. Accordingly, the residential use is inappropriate development in the Green Belt and is therefore contrary to the Local Plan.
31. Further the residential use involving the stationing of the Mobile Home is not one of the Paragraph 90 Exceptions and therefore it is inappropriate development when judged against the NPPF.
32. I therefore conclude that the residential use of the Appeal Site by virtue of the stationing of the Mobile Home is inappropriate development in the Green Belt and is contrary to the Local Plan and the NPPF.

Is the erection of the Shed inappropriate development in the Green Belt?

33. The Shed is a new building used ancillary to the residential use of the Appeal Site. I have explained above that the residential use involving the stationing of the Mobile Home is not a use which preserves the openness of the Green Belt and that it conflicts with the purposes of including land in the Green Belt. Accordingly, I consider that the Shed cannot be appropriate development as defined in the Local Plan.
34. Further, the Shed involves the erection of a new building in the Green Belt which is inappropriate development. The exceptions to that rule are set out in paragraph 89 of the NPPF. The Shed is not one of those exceptions.
35. Further still, the Shed itself erodes the openness of the Green Belt.
36. I therefore conclude that the erection of the Shed on the Appeal Site is inappropriate development in the Green Belt and is therefore contrary to the Local Plan and the NPPF.

Is the formation of the hardstanding inappropriate development in the Green Belt?

37. It was agreed at the Hearing that the formation of the hardstanding was an 'other operation' for the purpose of assessing it against the provisions of the Local Plan. The hardstanding:

- a) Does not preserve the openness of the Green Belt.
- b) Conflicts with the purposes of including land in the Green Belt because it does not safeguard the countryside from encroachment.

38. The formation of a hardstanding is not one of the forms of development allowed by the Paragraph 90 Exceptions.

39. I therefore conclude that the formation of the hardstanding on part of the Appeal Site is inappropriate development in the Green Belt and is therefore contrary to the Local Plan and the NPPF.

Is the erection of the Fencing inappropriate developments in the Green Belt?

40. It was agreed at the Hearing that the erection of the Fencing was an 'other operation' for the purpose of assessing it against the provisions of the Local Plan. The Fencing:

- a) Does not preserve the openness of the Green Belt.
- b) Conflicts with the purposes of including land in the Green Belt because it does not safeguard the countryside from encroachment.

41. The erection of the Fencing is not one of the forms of development allowed by the Paragraph 90 Exceptions.

42. I therefore conclude that the erection of the Fencing is inappropriate development in the Green Belt and is therefore contrary to the Local Plan and the NPPF.

What is the impact of the breaches of planning control identified in the Enforcement Notice on the openness of the Green Belt?

43. I have explained above that the commercial use and the Field Shelter which have to be considered together, the stationing of the Mobile Home, the erection of the Shed the formation of the hardstanding and the erection of the Fencing are all inappropriate development in the Green Belt. I have also explained the impact of these various types of inappropriate development on the openness of the Green Belt.

44. I therefore conclude that the breaches of planning control identified by the Enforcement Notice harms the openness of the Green Belt.

What are the effects of the breaches of planning control identified in the Enforcement Notice on the character and appearance of the Appeal Site and the surroundings?

45. The NPPF explains that:

- a) The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development and is indivisible from good planning.

- b) Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.
46. The Local Plan explains that development will be permitted if it does not adversely affect the character, quality and amenity of the environment.
47. The Field Shelter is a crude example of a utilitarian shelter for horses. It is visible from the public domain. In my assessment it is not a good example of design for a field shelter and it has an adverse impact on the character and quality of the Appeal Site and the surrounding area.
48. The stationing of the Mobile Home and the Shed which is used ancillary to the Mobile Home are not good examples of design when viewed in the context of the open countryside within which these developments have been carried out. They are visible from the public domain. They have an adverse impact on the character, quality and amenity of the Appeal Site and the surrounding area.
49. The hardstanding has created a harsh developed surface within the open countryside which would otherwise have a verdant character. Whilst areas of hardstanding are found in the open countryside and are used by farmers for various agricultural uses I consider that the hardstanding when combined with the lawful area of hard-surfacing around the Field Shelter creates a harsh appearance which is highly detrimental and has an adverse impact the character, quality and amenity of the Appeal Site and the surrounding area.
50. The Fencing is of the style that is often found as a security measure on industrial estates. It is totally out of place within the open countryside. I am aware that there are other forms of fencing along Selston Road that are inappropriate in the open countryside but this is not a good reason to allow development that had an adverse impact the character, quality and amenity of the Appeal Site and the surrounding area.
51. I have also explained that I am aware of the boundary treatment that existed prior to the erection of the Fencing. I also note that some form of boundary treatment would be necessary so as to provide security and to prevent horses escaping onto Selston Road on those few occasions when they were outside the confines of the Field Shelter. However, there are permitted development rights available to have a fence not exceeding 1m in height and it is clear from what Council Officers said at the Hearing that a higher means of enclosure maybe acceptable depending on its design and appearance.
52. I therefore conclude that the breaches of planning control identified in the Enforcement Notice:
- a) Have a materially harmful impact on the character and appearance of the Appeal Site and the surroundings.
 - b) Are contrary to the relevant parts of the Local Plan and the NPPF.

Are there any other considerations that weigh in favour of granting planning permission for the breaches of planning control?

53. The Local Plan explains that unless there is an overriding need, dwellings are usually best sited within existing villages or, failing that, close to existing buildings, in order to preserve the openness of the Green Belt. However, one

of the few circumstances in which isolated residential development in the Green Belt may be justified is when accommodation is required to enable those employed in agriculture, or forestry to live at, or in the immediate vicinity of their place of work. The Council will require a functional test to satisfy itself that a dwelling is essential.

54. It is agreed that the business use of rearing horses for sale to riding schools is not an agricultural or forestry use. Accordingly, the residential use of the Appeal Site is contrary to the Local Plan.
55. The NPPF explains that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside.
56. Ethan Gaskin explained that there was a need for him to live on the Appeal Site so as to look after the horses which are kept in the Field Shelter. He explained that he had to attend the horses during the night on most nights of the year:
- a) When horses were giving birth to foals.
 - b) To feed foals where their mothers had either died or were unable to provide care for their foals.
 - c) To look after horses that were ill.
57. There is no convincing evidence before me that the horse rearing business carried on by the Ethan Gaskin requires such intensive overnight care for horses. I have no doubt that from time to time there may be occasions when overnight stays maybe necessary but this could be achieved, in my assessment, without a permanent residential presence on the Appeal Site.
58. I therefore conclude that there is no essential need for Ethan Gaskin to live at the Appeal Site. According, the residential use is contrary to the NPPF.
59. Apart from the need to be on the Appeal Site to provide care for the horses there were no other considerations raised by the Appellants.

Overall Conclusions on Ground (a) – Appeal B

60. I have explained that the breaches of planning control identified in the Enforcement Notice are all inappropriate development in the Green Belt. In addition, they all harm the openness of the Green Belt and the character and appearance of the Appeal Site and the surrounding area. The harm to the Green Belt is more than substantial. I do not consider that there are 'other considerations' in this case that amount to very special circumstances.

Human Rights

61. Dismissal of this appeal will require the occupiers of the Appeal Site to vacate it. I have explained that the Appeal Site has to be regarded as their home. I recognise that this would represent an interference with their private and family life and their home. I asked Ethan Gaskin and Neesha Cooper what they would do if they had to leave the Appeal Site. I was informed that they would seek housing help from the Council.

62. However, the harms which are caused by the breaches of planning control identified in the Enforcement Notice (which have been fully explained above) are more than substantial. I consider that the compliance period provided for in the Enforcement Notice will allow the occupiers of the Appeal Site to enter into meaningful discussions with the local housing authority to find alternative housing for them and their children. If it transpires that the compliance period needs to be extended so as to secure such alternative accommodation for the family Ethan Gaskin and Neesha Cooper should keep the Council's Planning Department aware of this as they have powers to extend the period for compliance.
63. The protection of the Green Belt and the countryside and the public interest in achieving this cannot be achieved by means which are less interfering of the human rights of the occupiers of the Appeal Site. They are proportionate and necessary in the circumstances and would not result in a violation of their rights or the rights of their family under Article 8 of the European Convention on Human Rights as incorporated by the Human Rights Act 1998.
64. I have also had regard to the human rights set out in Article 1 of the First Protocol. There is no evidence before me to indicate that there has been a breach of these human rights.

The Rights of the Child

65. I am aware of the obligations under the United Nations Convention on the Rights of the Child including Article 3. The needs of the children living on the Appeal Site have been my primary consideration. Further, I must have regard to safeguarding and promoting the welfare and well-being of those children. I have no doubts that the welfare needs of the children will be fully met by Ethan Gaskin and Neesha Cooper who, for the reasons explained above, should be able to secure alternative appropriate accommodation within the period provided for compliance with the Enforcement Notice. I am aware that Ethan Gaskin and Neesha Cooper want the children living with them to either continue their education or to start that education when they reach an appropriate age and I consider that they will be able to achieve this when alternative residential accommodation has been secured.

Overall Conclusion – Appeal B

66. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice and refuse to grant planning permission on the deemed application.

Decision – Appeal B

67. The appeal is dismissed and the Enforcement Notice is upheld. Planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act.

Decision – Appeals A & C

68. These appeals have lapsed.

Tim Belcher - Inspector

APPEARANCES

FOR THE APPELLANTS

John Steedman FRTPI	Steedman Planning
Gary Holmes	Appellant
Ethan Gaskin	Appellant & Occupier of the Appeal Site
Neesha Cooper	Appellant & Occupier of the Appeal Site
James Filer	Filer Williamson Limited

FOR ASHFIELD DISTRICT COUNCIL

Robbie Steel	Planning Officer
Mick Morley MRTPI	Head of Development Control

DOCUMENTS

- Document 1 – Landmark Historical Map of the Appeal Site.
- Document 2 – “Policy Referred to During the Appeal”.

PHOTOGRAPH

1. Photograph of part of fence previously adjacent to Selston Road.