
Appeal Decisions

Hearing held on 21 June 2017

Site visit made on 21 June 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 06 July 2017

Appeal A: APP/Q3630/C/16/3156683

Land between St Ann's Road and the A320 Staines Road in Chertsey which is comprised of land known as Stable Yard, St Ann's Road, KT16 9EH and land which forms part of the highway

- 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 appeal is made by Mr Ned Cash against an enforcement notice issued by Runnymede Borough Council.
- The enforcement notice, numbered RU.16/1644, was issued on 13 July 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised material change of use of the land comprising:
 - (1) The keeping of horses on the land edged red on the attached Plan¹;
 - (2) Use of the building marked A on the attached Plan as a stable for the keeping of horses;
 - (3) Use of the buildings marked B1 and B2 on the attached Plan for the storage of tack and feed;
 - (4) Use of that part of the land edged with a broken black line and marked K on the attached Plan as a paddock area;
 - (5) Use of the land for the storage of vehicles including but not limited to those areas marked L and N on the attached Plan and;
 - (6) Use of the land in the areas marked D1, D2 and E on the attached Plan for storage including but not limited to storage of containers and/or structures.
- The requirements of the notice are:
 - (1) Cease the use of the land for the keeping of horses;
 - (2) Cease the use of the building marked A on the attached Plan for use as a Stable;
 - (3) Cease the use of the buildings marked B1 and B2 on the attached Plan for storage of Tack and Feed;
 - (4) Cease the use of the land as a paddock including but not limited to that part of the land edged with a broken black line and marked K on the attached plan;
 - (5) Cease use of the Land including but not limited to those areas marked L and N on the attached plan for the storage of vehicles; and
 - (6) Cease use of the Land in but not limited to the areas marked D1, D2 and E on the attached Plan for storage including but not limited to the storage of containers.
- The period for compliance with the requirements is 2 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed in part, subject to the enforcement notice being corrected and varied in the terms set out below in the Decision.

¹ I.e. the plan attached to the notice.

Appeal B: APP/Q3630/C/16/3156687

Land between St Ann's Road and the A320 Staines Road in Chertsey which is comprised of land known as Stable Yard, St Ann's Road, KT16 9EH and land which forms part of the highway

- 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 appeal is made by Mr Ned Cash against an enforcement notice issued by Runnymede Borough Council.
- The enforcement notice, numbered RU.16/1643, was issued on 13 July 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised operational development of the Land comprising:
 - (1) The erection of wooden outbuildings in the approximate locations shown marked B1 and B2 on the attached Plan²;
 - (2) The erection of a wooden outbuilding in the approximate location shown marked F on the attached Plan;
 - (3) The erection of a small brick-built structure in the approximate location marked G on the attached Plan; and
 - (4) The depositing and storage of rubble and other material on the Land including but not limited to that part of the Land marked M on the attached Plan.
- The requirements of the notice are:
 - (1) Demolish and permanently remove entirely from the Land the wooden outbuildings marked B1 and B2 on the attached Plan;
 - (2) Demolish and permanently remove entirely from the Land the wooden outbuildings marked F on the attached Plan;
 - (3) Demolish and remove entirely from the Land the small brick built structure marked G on the attached Plan;
 - (4) Remove entirely from the Land all the imported materials and/or rubble including all that within the approximate area marked M on the attached Plan.
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed in part, subject to the enforcement notice being corrected and varied in the terms set out below in the Decision.

Background

1. As set out in the Statement of Common Ground, requirements 5 and 6 of the notice the subject of appeal A (the change of use notice) and requirements 2 and 3 of the notice the subject of appeal B (the operational development notice) have been met.
2. When the change of use notice was served, the use complained of was taking place within the entire area edged red on the notice plan. That area included some residual highway land and indeed the notice was also served on Highways England Company Limited. However, the boundary fencing has now been adjusted to exclude that highway land and the appellant is only seeking planning permission for the change of use of the land shown edged, hatched and cross-hatched black on the plan submitted as hearing document 7 and now attached to this decision and marked 'Plan A'.

² I.e. the plan attached to the notice.

APPEAL A

Ground (c)

3. The issue on this ground is whether the appellant has proved on the balance of probability that the use, as a paddock, of the land edged with a broken black line and marked K on the notice plan does not constitute a breach of planning control.
4. Use of land “as a paddock” could involve nothing more than its use for grazing, which would be an agricultural use. However, the Council explained that the term paddock in part 4 of the allegation was intended to describe an unauthorised equestrian use and must be considered in the wider context of being in connection with the use of the overall site for the keeping of horses.
5. The parties agreed that all of the activities referred to in the notice were taking place within a single planning unit and I see no reason to disagree. Accordingly, the notice is concerned with a mixed use of that planning unit, comprising the activities detailed in parts 1 – 6 of the allegation. However, given that the allegation in part 1, namely the use for the keeping of horses, is carried out across the whole planning unit, and use as a paddock area is intended to relate to that use for the keeping of horses, it does not need to be separately identified. It is not a separate primary use within the mix.
6. Similarly, parts 2 and 3 of the allegation, concerning use of the building marked A³ on the notice plan as a stable, and use of the buildings marked B1 and B2 for the storage of tack and feed, are all just part and parcel of the use of the site for the keeping of horses. I appreciate that the Council had included these details in an effort to be helpful, but it accepted during the hearing that they are all just descriptive elements of the use for the keeping of horses covered in part 1 of the allegation. The Council confirmed that it would have no objection to the allegation being corrected to simply refer to the keeping of horses. It also agreed that requirement 1, to cease the use for that purpose, was sufficient without the specific requirements 2, 3 and 4.
7. I conclude that the use, as a paddock, of the land edged with a broken black line and marked K on the notice plan does not constitute a separate breach of planning control, but it is just part of the use of the land for the keeping of horses. The same is true of the use of buildings A, B1 and B2. Being satisfied that no injustice will result, I am content that the allegation can be corrected and the requirements varied so that they relate simply to the mixed use for the keeping of horses and the storage of vehicles and other items.

Ground (a)/the deemed application for planning permission

8. Having regard to my conclusions on ground (c), the deemed application for planning permission could relate to: a change of use of the land to a mixed use for the keeping of horses; the storage of vehicles including but not limited to those areas marked L and N on the notice plan; and the use of the land in the areas marked D1, D2 and E on that plan for storage including but not limited to storage of containers and/or structures. However, on the understanding that there would be nothing to prevent the parking of vehicles connected with the

³ The Council accepts that building A was substantially completed more than 4 years before the operational development notice was issued and is therefore immune from enforcement action. However, it does not accept that its use for the keeping of horses is lawful.

use (a point to which I shall return), the appellant is only seeking planning permission for the use of the land⁴ for the keeping of two horses and indeed he has complied with requirements 5 and 6. Subject to consideration of the merits, I can grant planning permission for part of the matters stated in the enforcement notice as constituting the breach in relation to part of the land to which the notice relates.⁵

Main Issues

9. The main issues are:

- whether the change of use to use for the keeping of horses constitutes inappropriate development in the Green Belt (GB), having regard to relevant development plan policies and the National Planning Policy Framework (the Framework);
- the effect of the use for the keeping of horses on the openness of the GB and any conflict with the purposes of including land within it;
- the effect of the use for the keeping of horses on the character and appearance of the area and on neighbours' living conditions, with particular regard to smells, noise, lighting and dust;
- whether the development amounts to intentional unauthorised development in the GB, having regard to the Written Ministerial Statement (WMS) of 17 December 2015 and, if so, what weight should attach to this; and
- if the development constitutes inappropriate development in the GB, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the development?

Reasons

Inappropriate development

10. The appeal site lies within the GB, which extends to the south side of St Ann's Road. It also lies within the "landscape problem area" referred to in saved Policy NE10 and Appendix F of the Runnymede Borough Local Plan Second Alteration (LP), adopted 2001. Saved LP Policy GB1 states that there will be a strong presumption against development that would conflict with the purposes of the GB or adversely affect its open character. Saved LP Policy GB5 provides that outdoor sport and outdoor recreation uses, which utilise landscape problem areas and provide for its restoration will be encouraged.
11. The Council accepted during the hearing that, prior to the commencement of the current use, the appeal site was overgrown, semi-derelict and subject to fly-tipping.⁶ It agreed that, leaving aside the separate issue of the impact of any unlawful buildings, the use for the keeping of horses improves the area and reduces the potential for fly-tipping without any reduction in openness or conflict with the purposes of including land within the GB. Accordingly, the Council accepted that the change of use accords with LP Policies GB5 and NE10 and does not conflict with GB1.

⁴ I.e. that part of the land now edged, hatched and cross-hatched black on a new plan (hearing document 7).

⁵ Section 177(1)(a) of the 1990 Act.

⁶ This is confirmed by neighbours. (See hearing document 1).

12. Although these policies do not use the expression “inappropriate development”, under LP Policies GB1 and GB5, the use of this land for the keeping of horses could be considered ‘appropriate.’ Paragraph 81 of the Framework also requires local planning authorities to plan positively to enhance the beneficial use of the GB, to provide opportunities for outdoor sport and recreation and to improve damaged or derelict land. Nevertheless, the Courts⁷ have confirmed that, for the purposes on the Framework, paragraphs 89 and 90 provide closed lists of development which would not be inappropriate. The change of use for which planning permission is sought does not fall within either of those lists and, to this extent there is a conflict between the LP policies and the Framework.
13. The LP policies remain part of the development plan, and applications must be determined in accordance with that plan, unless material considerations indicate otherwise. However, the Framework provides a detailed structure within which to determine the question of whether, as a starting point, development is inappropriate in the GB or not. On this point, whilst the LP policies still carry weight, I give greater weight to the Framework and conclude on this issue that the change of use to use for the keeping of horses constitutes inappropriate development in the GB.
14. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances. Paragraph 88 indicates that substantial weight should be given to any harm to the GB and very special circumstances will not exist unless the potential harm to the GB by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
15. The appellant draws my attention to *Suffolk Coastal DC (Appellant) v Hopkins Homes Ltd and anor (Respondents)* *Richborough Estates Partnership LLP and anor (Respondents) v Cheshire East BC (Appellant)* [2017] UKSC 37⁸, *SSCLG v West Berkshire DC and Reading BC* [2016] EWCA Civ 441⁹ and *Europa Oil and Gas Ltd v SSCLG* [2013] EWHC 2643 (Admin)¹⁰. I accept that the Framework does not have the force of law; it is just a material consideration and it remains for me to attribute weight to all relevant considerations. However, the Framework is an important material consideration and I heard nothing to persuade me that I should not attribute substantial weight to the harm by reason of inappropriateness in this case. That said, the LP policies, and indeed paragraph 81 of the Framework, remain relevant to my consideration of whether very special circumstances exist. This approach is consistent with paragraph 28 of the judgement in *Fordent Holdings*.

Openness and the purposes of including land within the GB

16. As indicated above, the Council did not contend that the change to use for the keeping of horses had any impact on the openness of the GB and it was content that it did not conflict with the purposes of including land within it. In this regard, whilst the GB purposes include safeguarding the countryside from encroachment, the Council acknowledged that the appeal site could not be properly characterised as countryside anyway.

⁷ *Fordent Holdings v SSCLG* [2013] EWHC 2844 (Admin). (See appendix 14 of the appellant’s statement of case).

⁸ The appellant’s statement of case, appendix 18.

⁹ Ibid, appendix 19.

¹⁰ Hearing document 3.

17. There could be some horse related paraphernalia on site in the open air, but provided this is restricted to the north-eastern part of the site, near the hardstanding and lawful stables, it would not materially detract from openness. This can be controlled by condition and I conclude that there is no additional harm in terms of the impact on openness or conflict with GB purposes.

Character and appearance and neighbours' living conditions

18. The site is sandwiched between the elevated A320 Staines Road dual carriageway to the north and St Ann's Road to the south. There are trees along the northern site boundary. St Ann's Road is characterised mainly by 2-storey terraced housing set behind reasonably generous front gardens on the south side of the road. However, there is a substantial 2-storey office/commercial building on the corner of St Ann's Road and Twynersh Avenue, opposite the south-western end of the appeal site. The Council described the site as residual highway amenity land and accepted that, whilst aerial photographs would have shown it as relatively green in 2009, it was unkempt and subject to dumping. The occupiers of Twynersh Lodge, St Ann's Road say that the site was previously a "big eyesore to the local residents and a health hazard."
19. In these circumstances, the use of the land for the keeping of horses is not detrimental to the character and appearance of the area. This was accepted by the Council. Indeed, I am satisfied that, having regard to its former condition and its location within a designated landscape problem area, an active beneficial use of the land enhances the character and appearance of the area, in accordance with LP Policies GB5 and NE10 and paragraph 81 of the Framework.
20. In terms of neighbours' living conditions, the Council's Environmental Protection Officer's concerns were highlighted in the report which recommended enforcement action.¹¹ However, there is currently no lighting on the site and the Council accepted during the hearing that this could be adequately controlled by condition. Similarly, whilst smells from animal waste could affect neighbouring residents, and two identical anonymous letters of objection refer to this factor, the site is not immediately adjacent to dwellings. In the absence of more specific and compelling evidence of a significant problem, I am satisfied that this issue can also be addressed through an appropriate scheme for the storage and removal of waste, which could be secured by condition, along with a restriction on the number of horses to two. This could also minimise flies referred to in the anonymous objections.
21. There is no indication that the use of the site would affect neighbours through noise and dust, but the officer's report suggests that the site may previously have acted as a buffer to the A320, reducing those factors. That may have been the case when there was more vegetation on the site, but I am not aware that there was anything to prevent that being removed and cessation of the keeping of horses on the land would not restore it.
22. I am not persuaded that the use of the land causes any harm to neighbours' living conditions which cannot be reduced to an acceptable minimum through the imposition of conditions. In this regard, there is no conflict with saved LP Policy BE21.

¹¹ Appendix 5 of the appellant's statement of case, at paragraph 3.4.3 of the report.

23. I note that Policy BE21 also requires regard to be had to any adverse impact on the environmental character or landscape of the area, including the possible over-use and deterioration of the site or adjoining land. My attention is drawn to the British Horse Society Advice on Pasture Management, which suggests that the minimum land requirement for permanent grazing is 1 – 1.5 ha per horse. This is a guide however and the advice recognises that it is subject to numerous factors. Whilst this site is nowhere near the recommended minimum size, it is not used for permanent grazing. Feed is brought to the site and the horses are also taken to a nearby farm in Chertsey to graze and exercise. In these circumstances, the use need not be an over-use of the site and the Council has accepted that it has led to its enhancement. I find no conflict with Policy BE21 in this regard and the Council acknowledged that there are other controls on animal welfare.

Intentional unauthorised development

24. I drew the parties' attention to the WMS of 17 December 2015. This makes intentional unauthorised development a material consideration. However, the Council expressed the view that the new use evolved over time and it accepted the appellant's point that it is not always clear when the use of land for horses involves development and when it does not. I am satisfied that this was not intentional unauthorised development and that the WMS does not weigh against this appeal.

Very special circumstances and overall conclusion

25. Whilst I found no additional harm, I have concluded that the change of use is inappropriate development in the GB, in terms of the Framework. This policy harm carries substantial weight but, as indicated, this development accords with LP Policies GB5 and NE10, because it is an outdoor recreation use, which utilises a landscape problem area. Notwithstanding the difference between the development plan and the Framework, in terms of how inappropriate development is defined, the support for this development from LP Policies GB5 and NE10 is a consideration which carries substantial weight in this case. I find that the change of use accords with the development plan as a whole. Furthermore, having regard to the previous state of the land, the change of use has positively enhanced the character and appearance of the area and paragraph 81 of the Framework itself encourages beneficial use of the GB to enhance visual amenity and improve damaged and derelict land.

26. Finally, the appellant's evidence was that 79% of the land in the Borough is located in the GB and that, whilst there may be parks in urban areas, there is no countryside in the Borough that is not located within the GB. The Council did not dispute this and accepted that any use for the keeping of horses is likely to have to locate in the GB. The appellant described this factor as being of moderate weight. The Council did not disagree and, in any event, when it is added to the other considerations referred to, I am satisfied that the substantial harm by reason of inappropriateness is clearly outweighed and that the development is justified by very special circumstances. Accordingly planning permission should be granted subject to conditions.

Conditions

27. I have already indicated that conditions should be imposed to: limit the number of horses kept on the land to no more than 2; ensure a proper scheme is in

place for the storage and removal of waste; control external lighting on the site; and restrict the storage of horse related paraphernalia to the north-eastern end of the site. These conditions are necessary and reasonable to safeguard neighbours' living conditions and to preserve the character and appearance of the area and the openness of the GB. Given that the use has already commenced, the condition concerning the waste storage and removal scheme will need to provide for the cessation of the use if such a scheme is not approved or implemented. I will not include the Council's suggested provision that the number of horses may exceed two if the Council gives its written agreement, as this should require formal variation of the condition, subject to proper consultation.

28. It is also necessary to prevent the use of the site for commercial equestrian purposes as, even with the number of horses limited to two, this could result in increased activity, to the detriment of neighbours' living conditions. It is not necessary to impose a condition preventing residential use of the site, as that would clearly require planning permission anyway.
29. One of the Council's suggested conditions would prevent vehicles in excess of 3.5 tonnes being stationed, parked or stored on the site unless they are being used for the transportation of horses. This is necessary in the interests of visual amenity, save that there is no need to refer to storage. Indeed, I see no need to mention stationing, as it is not clear what this would mean beyond parking but short of storage. Permission to use the land for the keeping of horses would not allow the storage, as opposed to the parking of vehicles in any event. I drew the parties' attention to *Crawley Borough Council v Hickmet Ltd [1998] JPL 210*, in which it was held that there is a clear distinction in planning law between vehicle parking and storage. Storage connotes taking a vehicle off the road while it is not in current use, whereas parking is an incident of use.

Ground (f)

30. The appellant originally contended that requirements 4 and 5 of the notice concerning the use as a paddock and the storage of vehicles were excessive. However, I have already concluded that requirement 4 should be deleted as a consequence of correcting the allegation under ground (c) and I expressed that view during the hearing. In those circumstances, and on the basis that, having regard to *Hickmet*, requirement 5 of the notice would not prevent the parking of vehicles in connection with the use of the land for the keeping of horses, the appellant withdrew ground (f).

APPEAL B

Ground (b)

31. The issues on this ground are whether the appellant has proved on the balance of probability that: (a) the depositing and storage of rubble and other material has not occurred as a matter of fact; and (b) that the structure described in the notice as the "wooden outbuilding" marked F on the plan was not a building.
32. The appellant's contention was that the depositing and storage of rubble would be a use of land. The Council accepted that the wording of part 4 of the allegation could have been clearer, but a new hard surface has been constructed and it is appropriate to address that through this operational development notice. The appellant suggested that the allegation be corrected,

so that it refers to the laying of hard core within the area marked M on the notice plan. The Council did not take issue with that. It also accepted that, given its history as residual highway amenity land, there are likely to be other areas of hardstanding, just under the surface soil covering, in various parts of the site. It is therefore appropriate to limit the allegation to the area marked M. I will correct the allegation, and make a consequent variation to the requirements, being satisfied that no injustice will result.

33. Turning to the "wooden outbuilding" marked F on the notice plan, the fact that it has been removed makes it a little difficult to assess whether its erection constituted a building operation and thus development. However, I do have the benefit of some photographs.¹² As discussed at the hearing, under section 336(1) of the 1990 Act, a "building" includes "any structure or erection" and the courts have ruled that, in determining whether something is a building, regard must be had to its size, permanence and degree of physical attachment, but no single factor is decisive." (See *Barvis v Secretary of State for the Environment and Another* [1971] 22 P & CR 710 and *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and another* (No 2) [2000] 2 PLR 102).
34. The "wooden outbuilding" was clearly a structure and I can see from the submitted photographs that it was open-fronted and had a flat or shallow mono-pitched roof. I am told that it measured 3.8m x 2.2m deep.
35. During the hearing, Mr Cash said that the structure had been put on the land by the previous owner, but it had been moved within the site. However, there was some dispute over this, as the Council said that, whilst it was on site on 18 December 2015, the structure was definitely not there on 29 January 2015. This part of Mr Cash's evidence was somewhat confusing but, in any event, he said the structure was not brought onto, or moved within the site, in one piece; it was constructed on site from its component parts. When it was removed, the plywood sheets were taken off the back and 10 – 15 sheets were taken from the roof. Mr Cash said that 6 people were then able to lift the timber frame onto the back of a waggon. In any event, this structure was not akin to a mobile field shelter or chicken ark, which could just be dragged around the site in one piece.
36. On the evidence before me, the structure was not attached to the ground, but its own weight was sufficient to keep it in place. Although there were lights in it, these were simply plugged into a socket at the meter box in the adjacent structure 'G', which has also been removed. One of the Council's photographs¹³ shows a post fixed to the inside wall of the structure and there appears to have been a tap mounted on that. However, Mr Cash said that this was not connected to a pipe underground; a hose could simply be run along the surface of the ground and then connected to the tap. I have no reason to doubt that.
37. Notwithstanding the lack of fixed connections to services, the structure was located next to the brick structure housing the meter box. The Council also drew attention to a door at the rear of the structure, which led to land outside the site. These factors do suggest an intention to keep the structure in that location in the long term. In any event, the Council first saw it in the location

¹² For example, the photograph at the bottom right of page 1 of the photographs dated 17 March 2016 and included at appendix D of the Council's appeal statement.

¹³ Appendix D, 7 March 2016, page 2, top left.

indicated on the notice plan in December 2015. It was still there in March 2016 and the Council did not note its removal until 4 November 2016. At the hearing, Mr Cash said this structure had been removed about a year ago, which would suggest that it was in position from at least December 2015 to June 2016, so that it had acquired a degree of permanence, having regard to *Skerritts*.

38. In all the circumstances, notwithstanding its lack of physical connection to the ground or services, the “wooden outbuilding” marked F was of a size and nature to be constructed on site and it had a degree of permanence. Taking all the relevant factors in the round, I conclude as a matter of fact and degree that it probably was a building and the appellant has not discharged the burden on him. In this regard, his appeal on ground (b) fails. In so far as it succeeds in relation to the depositing and storage of rubble and other material, the notice will be corrected.

Ground (a)/the deemed application for planning permission

Main Issues

39. Having regard to the correction to the notice, so that it refers to the laying of hard core, the appellant only seeks planning permission for that and for the erection of the wooden outbuildings B1 and B2. Whilst the reasons for issuing the notice included impact on the visual amenities of the GB, the Council did not suggest in its statement, or at the hearing, that the operational development the subject of this appeal is harmful to the character and appearance of the area. Indeed, I have already discussed the former state of the site and the appellant’s improvements to it, when considering appeal A.
40. The main issues are:
- whether erection of the wooden outbuildings B1 and B2 and laying of hard core in the part of the land marked M on the notice plan constitute inappropriate development in the GB, having regard to relevant development plan policies and the Framework;
 - whether the development would increase the risk of flooding elsewhere;
 - whether the development amounts to intentional unauthorised development in the GB, having regard to the WMS of 17 December 2015 and, if so, what weight should attach to this; and
 - if the development constitutes inappropriate development in the GB, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the development?

Reasons

Inappropriate development

41. Saved LP Policy GB5 indicates that “essential facilities” for outdoor sport and recreation, which preserve the openness of the GB, will be permitted. Paragraph 89 of The Framework provides that, subject to specified exceptions, the construction of new buildings is inappropriate in the GB. The only relevant exception is that in the second bullet point for the provision of “appropriate facilities” for outdoor sport and recreation, so long as it preserves the openness

of the GB and does not conflict with the purposes of including land within it. On the face of things the LP requirement for facilities to be essential is more stringent than the Framework requirement for them to be appropriate. However, Policy GB5 goes on to say that "essential facilities should be genuinely required for the use of the land". That suggests that, if they are genuinely required, they can be considered essential.

42. Clearly, this matter falls to be assessed against the background of my decision to grant planning permission for the keeping of horses. The appellant argues that buildings B1 and B2 are needed to keep feed dry and to store tack. He normally takes delivery of 20 – 30 square bales of hay and straw every 6 months and other feed is delivered in bags and stored in bins. If the word "essential" were strictly interpreted, it could be said that feed could be brought to the site on a daily basis, and storage on site is not vital. However, the Council accepted that, in principle, a building could be appropriate. In terms of Policy GB5, I am satisfied that a building is genuinely required for the dry storage of feed in connection with the use of the land. In principle, such a facility is "appropriate", in terms of the second bullet point of paragraph 89 of the Framework and "essential" in terms of LP Policy GB5.
43. However, the Council points out that, though building B2 is smaller than B1, taken together, they are larger than the lawful stable building marked A on the notice plan. At the time of my visit, there was no feed stored in either B1 or B2. Mr Cash said this was because a delivery was due. In any event, whilst B2 was completely empty and ready for a delivery, building B1 had a settee, two chairs and a washing machine in it and Mr Cash said that those items are always in building B2. It seems that its primary purpose is as a rest area and it provides little or no useful space for the storage of feed or tack. Whilst it may be cheaper and more convenient to have large quantities delivered infrequently, the appellant accepted that smaller quantities could be taken. In all the circumstances, one building would be an essential/appropriate facility for outdoor sport or outdoor recreation on this site, but not two.
44. However, under the Framework and Policy GB5, openness must be preserved for such a building to be not inappropriate. Any building must impact on openness to some degree. Both buildings B1 and B2 are sited adjacent to but set back from the boundary with St Ann's Road. Their asymmetric dual-pitched roofs are a little higher than the mono-pitched roof of the stables and are visible over the boundary fence. However, the appellant drew my attention to the following passage of the judgement of Ouseley J in *Europa Oil and Gas Ltd v SSCLG* [2013] EWHC 2643 (Admin)¹⁴:

"Secondly, as Green Belt policies NPPF 89 and 90 demonstrate, considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of the building or structures but include their purpose. The same building, as I have said, or two materially similar buildings; one a house and the other a sports pavilion, are treated differently in terms of actual or potential appropriateness. The Green Belt may not be harmed necessarily by one but is harmed necessarily by another. The one it is harmed by because of its effect on openness, and the other it is not harmed by because of its effect on

¹⁴ Hearing document 3, at paragraph 66.

openness. These concepts are to be applied, in the light of the nature of the particular type of development.”

45. Though a little larger than B2, building B1 is located closer to the stable building and further under the canopy of the mature oak in the north-eastern corner of the site. Indeed that tree prevents the building being sited any closer to the stable. Considered in this context, as a single, modest, open fronted timber building, used for the storage of feed and tack and located close to a stable building on a site used for the keeping of two horses, building B1 preserves the openness of the GB. However, two such buildings would be disproportionate and B2 fails to preserve openness, unduly extending development along the St Ann's Road frontage.
46. Paragraph 89 of the Framework adds a further requirement that the provision of that facility should not conflict with the purposes of including land in the GB. The only purposes to which the Council referred were safeguarding the countryside from encroachment and checking the unrestricted sprawl of large built-up areas. However, as discussed under appeal A, the site cannot be properly characterised as countryside. Furthermore, this single, modest timber building, sited close to an existing lawful stable building and under the canopy of a mature oak cannot be said to contribute to unrestricted sprawl.
47. I turn now to the laying of the hard core in the area marked M on the notice plan. As indicated, the Council accepted that there are likely to be other areas of hardstanding on various parts of the site. However, the newly created hard surface in the area marked M enables horse boxes to come onto the site, and it facilitates the delivery of hay and the storage of muck in a mobile unit. Given the relatively modest area, I am satisfied that this is an essential/appropriate facility for outdoor recreation in terms of LP Policy GB5 and paragraph 89 of the Framework. Given the likely existence of other areas of hardstanding on the site, and the scope for reducing the level of the hard core, the Council has no concerns about its impact on the openness of the GB or on the purposes of including land within the GB. I shall return to the question of level reduction in the context of flood risk.
48. I conclude on this issue that neither the erection of building B1 nor the laying of hard core in the part of the land marked M on the notice plan constitutes inappropriate development in the GB. However, the erection of outbuilding B2 is inappropriate development.

Flooding

49. Whilst it was necessary to consider whether the laying of hard core was inappropriate development in the GB, the Council's principal objection to this development was that it has raised the level of the land and the site lies within the high risk Flood Zone 3a and Zone 2. The concern is that this will restrict water flows and increase flooding to adjacent properties, contrary to saved LP Policy SV2.
50. However, in the course of the appeal, the appellant submitted a flood risk assessment (FRA), which included recommendations for compensatory measures to reduce the risk of flooding. Having regard to the FRA, the Council is satisfied that the level of hard core within the area marked M on the notice plan can be reduced to match that of the adjoining land. This can be secured

by condition and, on that basis, I conclude that the development will not increase the risk of flooding elsewhere.

Intentional unauthorised development

51. Whilst I also drew attention to the Written Ministerial Statement (WMS) of 17 December 2015 in the context of this appeal, both parties agreed that it did not add any material weight against this development and I see no reason to take a different view.

Very special circumstances and overall conclusion

52. Only building B2 needs to be justified by very special circumstances, as that is the only inappropriate development. However, the appellant acknowledged during the hearing that, if any of the operational development were found to be inappropriate development, he could not demonstrate very special circumstances.
53. Having concluded that building B1 and the laying of hard core do not constitute inappropriate development in the GB and having identified no other harm, I am satisfied that they accord with the development plan as a whole and planning permission should be granted for these, subject to a condition. On the other hand, the erection of building B2 does constitute inappropriate development and I attach substantial weight to that harm. It is contrary to saved LP Policies B1 and GB5 and the Framework. In the absence of very special circumstances to justify that development, I am satisfied that planning permission should be refused. Accordingly, ground (a) succeeds in part only.

Conditions

54. A range of conditions attached to the planning permission granted on appeal A apply to the site as a whole and it is not necessary to repeat them on the permission for building B1 and the laying of hard core. However, as indicated, to safeguard adjacent properties from an increased risk of flooding and to ensure compliance with saved LP Policy SV2, it is necessary to require the level of the hard core within area M to be reduced to match that of the surrounding land. It was accepted that a 3 month compliance period would be reasonable, as per the enforcement notice.

Ground (f)

55. The appellant contended that requirement 5.4 of the notice, concerning the removal of rubble from the entire red line area, is excessive. I have already concluded on ground (b) that the allegation should be corrected to refer only to area M and that this necessitates a consequent variation of the requirement. However, by virtue of section 180 of the 1990 Act, the planning permission granted on the deemed application overrides the notice to the extent that its requirements are inconsistent with that permission.

Decisions

Appeal A: APP/Q3630/C/16/3156683

56. It is directed that the enforcement notice be:

- (a) corrected by the deletion of the allegation in section 3 and the substitution of:

“Without planning permission, the material change of use of the Land to a mixed use comprising:

 - 3.1 the keeping of horses;
 - 3.2 use of the Land for the storage of vehicles including but not limited to those areas marked L and N on the attached Plan; and
 - 3.3 use of the Land in the areas marked D1, D2 and E on the attached Plan for storage including but not limited to storage of containers and/or structures.”; and
- (b) varied in section 5 by deleting requirements 5.2, 5.3 and 5.4 and re-numbering requirements 5.5 and 5.6 as 5.2 and 5.3 respectively.

Subject to these corrections the enforcement notice is upheld, but planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for part of the development already carried out, namely the use for the keeping of horses of the land between St Ann’s Road and the A320 Staines Road, Chertsey, KT16 9EH shown edged, hatched and cross-hatched black on the plan marked ‘Plan A’ and attached to this decision, subject to the following conditions:

- 1) The use hereby permitted shall not include any commercial use and no more than two horses shall be kept on the site at any one time.
- 2) No external lighting shall be installed at the site except in accordance with details which have been first submitted to and approved in writing by the local planning authority.
- 3) There shall be no ancillary storage of materials, including tack, hay, jumps and feed outside the area shown cross-hatched black on the plan marked ‘Plan A’ and attached to this decision.
- 4) No vehicles in excess of 3.5 tonnes shall be parked on the site unless being used for the transportation of horses.
- 5) The use hereby permitted shall cease within two months of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within two months of the date of this decision a scheme for the storage and removal of waste shall have been submitted for the written approval of the local planning authority, which scheme shall include a timetable for its implementation;
 - ii) within ten months of the date of this decision that scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, 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; and
- iv) the approved scheme shall have been implemented in accordance with the approved timetable and thereafter waste shall be stored and removed in accordance with the approved scheme.

Appeal B: APP/Q3630/C/16/3156687

57. It is directed that the enforcement notice be:

- (a) corrected, by deleting requirement 3.4 and substituting: "3.4 The laying of hard core on that part of the Land marked M on the attached Plan"; and
- (b) varied in requirement 5.4, by deleting the words "including all that" and substituting the word "from".

Subject to these corrections the enforcement notice is upheld, but planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for part of the development already carried out on land between St Ann's Road and the A320 Staines Road, Chertsey, KT16 9EH, namely the erection of the wooden outbuilding in the approximate location shown marked B1 on the plan attached to the enforcement notice and the laying of hard core in the area marked M on that plan, subject to the following condition:

- 1) Within three months of the date of this decision, the level of hard core in the area marked M on the plan attached to the enforcement notice shall be reduced to match the level of the immediately surrounding land and the resulting material shall be removed from the site.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green BA, of Green Planning Studio
Mr Ned Cash

FOR THE LOCAL PLANNING AUTHORITY:

Mike Ferguson, Planning Enforcement Officer, Runnymede Borough Council
Justin Williams, Senior Planning Officer, Runnymede Borough Council

DOCUMENTS SUBMITTED DURING THE HEARING

- 1 Letter from Mr and Mrs D T Davies of Twynersh Lodge, St Ann's Rd, Chertsey
- 2 Erratum to the appellant's hearing statement
- 3 *Europa Oil and Gas Ltd v SSCLG* [2013] EWHC 2643 (Admin)
- 4 Statement of Common Ground
- 5 Signed statement of Ned Cash
- 6 The list of persons to whom the notice of hearing was sent
- 7 Plan identifying the area in respect of which the change of use permission is sought and the area to which the storage of ancillary materials is proposed to be restricted¹⁵

¹⁵ This was submitted on 23 June 2017, after the close of the hearing, at my request.

Plan

This is the 'Plan A' referred to in my decision dated: 06 July 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

Land between St Ann's Road and the A320 Staines Road in Chertsey, KT16 9EH

Reference: APP/Q3630/C/16/3156683

Scale: DO NOT SCALE

