



Appeal Decision

Site visit made on 6 July 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 11 September 2017

Appeal Ref: APP/Z1510/C/16/3165174

Land at Hill Farm (Rosewood) Mill Road Great Bardfield Essex CM7 4QQ

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Alan Jackman against an enforcement notice issued by Braintree District Council.
- The date on which the notice was issued is not stated.
- The breach of planning control as alleged in the notice is: Without planning permission, a material change of use of land from agriculture to petting farm, including operational development of the erection of 4 zip wire constructions, erection of a shower/toilet building, stationing of a mobile home for residential accommodation including the installation of a raised platform, alteration of land levels around the bases of protected trees and installation of children's play equipment on land considered to be outside the residential curtilage of Hill Farm.
- The requirements of the notice are:
 - a. Cease the use of the land as a Petting Farm.
 - b. Remove the 4 Zip Wire constructions in their entirety including all fittings attached to the protected trees, reinstate the land levels around the structures to the previous levels before construction and remove all resultant materials from the land. Structures marked 'A' – 'D' in the approximate locations shown on the plan ENF/NSR 1 and show in photograph items 1 – 4.
 - c. Carefully and diligently remove all raised soil levels from around the trunks of each of the protected trees and their immediate rooting zone, so as to reinstate to previous pre-existing levels prior to the disturbance caused by the new development. All trees affected in the marked areas hatched green on plan ENF/NSR 1.
 - d. Remove the toilet/bathroom building marked 'B1' on the plan ENF/NSR 1 and shown in photograph item 5, and remove all associated hardstanding. Remove all resultant materials from the land.
 - e. Cease the residential use of the mobile home.
 - f. Remove the mobile home marked 'MH' on plan ENF/NSR 1 and shown in photograph item 6 from the land, dismantle the raised platform area, and remove from the land all resultant material.
 - g. Remove the children's play equipment used in association with the Petting Farm from the area hatched orange on plan ENF/NSR 1 and shown in photograph item 7 and remove all resultant material from the land.
- The periods for compliance with the requirements are:
 - a) 1 month
 - b) 6 months
 - c) 6 months
 - d) 6 months
 - e) 1 month
 - f) 6 months
 - g) 6 months

- The appeal is proceeding on the grounds set out in s174(2)(a) and (b) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected, in section 6, by insertion of "Dated this 22 day of July 2016" as the date upon which the notice was issued.

The appeal is allowed insofar as it relates to the erection of a shower/toilet building and planning permission is granted on the application deemed to have been made under s177(5) of the Act for the erection of a shower/toilet building.

The appeal is dismissed and the enforcement notice is upheld, as corrected, insofar as it relates to a material change of use of land from agriculture to petting farm, including operational development of the erection of 4 zip wire constructions, stationing of a mobile home for residential accommodation including the installation of a raised platform, alteration of land levels around the bases of protected trees and installation of children's play equipment; and planning permission is refused in respect of a material change of use of land from agriculture to petting farm, including operational development of the erection of 4 zip wire constructions, stationing of a mobile home for residential accommodation including the installation of a raised platform, alteration of land levels around the bases of protected trees and installation of children's play equipment on the application deemed to have been made under s177(5) of the Act .

Matter concerning the enforcement notice

2. Before I proceed to consider the appeal I must ensure the notice is in good order. The notice is undated although the Council has confirmed that it was issued on 22 July 2016.
3. It is important that the notice includes its date of issue as this is the date at which the notice is placed on the Council's enforcement register and becomes a matter of public record. It is also the date at which the accruing time period within which enforcement action can be taken is stopped.
4. The date of effect of the notice is stated. Together with its accompanying letter and documents, the notice was sufficiently clear as to the period for lodging an appeal. The appellant was able to make a valid appeal within the correct timescale. I am satisfied, therefore, that no injustice would arise to either of the main parties in me correcting the notice to add the date of issue. I shall make this correction under the available powers of s176(1)(a) of the Act.

Other preliminary matters

5. Since the notice was issued the mobile home with raised platform has been removed. No planning permission for the mobile home is being sought. Additionally, the four zip wire constructions have been removed. I shall, nevertheless, cover these matters in my decision as they were included in the allegation. The deemed application takes its terms from the allegation.

6. Reference has been made to the emerging Draft Local Plan 2016 to which (I am told) the Council has afforded some limited weight. However, no extracts have been supplied and it has not been explained how any of the draft policies relate to the appeal development. I shall, therefore, focus upon the policies of the current statutory development plan and national planning policy in my consideration of the appeal on ground (a) and the deemed application.

The appeal on ground (b)

7. An appeal on ground (b) is that the matter alleged has not occurred as a matter of fact. It is argued that the play equipment is permitted development. Such an argument is usually considered under ground (c), that being that the matter alleged does not amount to a breach of planning control. I shall consider the matter under the heading "The implied appeal on ground (c)".
8. As a matter of fact children's play equipment, which I saw at my site visit and which is evidenced in photographs, has been installed. The facts on this particular matter are not disputed by the appellant.
9. A further matter to be considered under ground (b) is whether there was any alteration of land levels around the bases of protected trees. The appellant says that no such alterations have taken place. However, there are photographs taken by the Council in April 2016 which appear to show the piling of soil in the vicinity of the trees. Photographs taken by an interested party in spring 2016 also show piles of soil.
10. Whilst the photographs are only a snapshot, and the piling of soil may have been part of more protracted works for the smoothing out and restoration of the wider land, they are nevertheless a persuasive record that land levels around the trees were altered at that particular time, as alleged in the notice, on balance of probability.
11. For all the above reasons, the appeal on ground (b) fails.

The implied appeal on ground (c)

12. This ground of appeal concerns whether the play equipment is permitted development. Class E to Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015¹ [hereafter "the GPDO"] provides for the erection of buildings and structures within the curtilage of a dwellinghouse, which are incidental to the enjoyment of a dwellinghouse, as "permitted development" subject to a number of limitations.
13. There is no analysis against the GPDO limitations. I cannot be sure that the height limitations, for example, are met. Also, the GPDO excludes development which involves a "raised platform". No evidence on this point has been given although the play equipment does appear to include a raised platform.
14. It is argued that the play equipment is within the "curtilage" of the dwellinghouse. There is no clear physical demarcation (for example a fence or wall) which separates the dwelling from the wider land. However, I would

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 replaced the Town and Country Planning (General Permitted Development) Order 1995 (as amended). I have not been told exactly when the play equipment was erected so cannot be sure that the 2015 version was in force at the time. However, there are no material differences between the two versions insofar as the issues for the ground (c) appeal are concerned.

regard its curtilage to be the small area around it, which serves the purpose of the dwelling and nothing else and which has an intimate association with it. When taking into account the distance of the play equipment from the dwelling, and the fact that it is located within an area accessible to visiting members of the public, I do not consider the play equipment to be positioned within the dwelling curtilage as a matter of fact and degree.

15. Additionally, the erection of play equipment to be used by children of the visiting public, as well as by the appellant's grandchildren, would not be development wholly "incidental to the enjoyment of the dwellinghouse".
16. For all these reasons, I do not consider that the claim for "permitted development" is adequately substantiated. The implied appeal on ground (c) fails.

The appeal on ground (a) and the deemed application

Planning policies

17. The development plan comprises the Braintree District Local Plan Review [hereafter "the LP"] and the Braintree District Council Local Development Framework Core Strategy [hereafter "the CS"].
18. I have been referred to a number of policies. Of particular relevance to this appeal are LP policies RLP 87 which seeks to conserve the traditional landscape and nature conservation character of Protected Lanes, RLP 144 which seeks to limit the use of static caravans to holiday use and RLP 145 which encourages the provision of additional tourist attractions subject to there being no damage to the character and appearance of the locality, no significant impact on local amenities and the site being safely accessible by a choice of means of transport. LP policies RLP 90 and RLP 92, taken together, seek a high standard of layout and design which (amongst other things) reflects local distinctiveness, provides for accessible development and does not result in undue or unacceptable impact upon the amenity of nearby residential properties.
19. CS policies CS5 and CS8, taken together, seek to protect and enhance the locally distinctive character of the landscape and the amenity of the countryside by strictly controlling uses to those appropriate to the countryside.
20. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.²
21. The National Planning Policy Framework [hereafter "the Framework"] sets out the Government's planning policies for England and how it expects these to be applied at local level. The core planning principles, set out at paragraph 17, include always seeking to secure high quality design and a good standard of amenity for all existing and future occupants, recognising the intrinsic character and beauty of the countryside and conserving and enhancing the natural environment. Paragraph 28 supports enterprise in rural areas including sustainable rural tourism and leisure developments that benefit business in rural areas, communities and visitors, and which respect the character of the countryside. Paragraph 55 says that new isolated homes in the countryside

² S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

should be avoided. National policies as expressed in the Framework are material considerations for the appeal.

22. Whilst the development plan policies referred to above pre-date the Framework, they are in general conformity with it and are, therefore, capable of carrying substantial weight in the decision.

Main issue

23. Having regard to the planning policies and submissions made by the parties I consider the main issue in the appeal to be the effect upon the interests of conserving the traditional landscape and nature conservation character of the district's protected lanes and the locally distinctive character of the landscape generally.
24. I shall consider each element of the deemed application in turn focussing upon this main issue.

Material change of use to petting farm

25. The site is within a generally open landscape of gently undulating fields of crop and meadow, interspersed with hedgerows and trees, falling to the river valley to the north. The site is most visible when approaching from the west whereas, from the east, the approach is more heavily wooded and the site is screened to an extent. It is crossed in its most northerly part by a public footpath which runs alongside the river.
26. The landscape is distinctive, retaining features from its history including the cluster of cottages around Waltham Cross to the east and the Old Mill some distance to the west. Mill Road is one of a number of historic lanes within the district, having the LP status as a "protected lane" because of its historic, landscape and biodiversity significance. It crosses the open landscape and then sinks between banks and trees as it approaches Waltham Cross these features being indicative of its age.
27. Whilst the enforcement notice alleges a change of use from agriculture (which may well have been the use of the land at some time in the past), according to the appellant the land had historically been used for sand extraction leaving behind unnatural land formations; and, when the sand extraction had finished, it was then used as a motocross circuit. I have no doubt, from the photographic and other evidence, that the land and buildings were in a poor condition when the appellant bought the property in 2008 which did not contribute positively to the character and appearance of the landscape at that time.
28. The change of use of the land to a petting farm has slowly evolved. Over time the appellant had undertaken considerable works to restore the land to meadowland. The appellant then began to take in, largely, rescue animals which grazed and/or were kept on the land and cared for as a hobby. Not all of the animals were, strictly speaking, livestock³ (wallabies for example). Thus, the use was not wholly agricultural. However, it was a use appropriate to the countryside nevertheless and one which had enhanced the character and

³ In the definition of agriculture given at s336(1) of the Act "livestock" includes any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land. "Agriculture" also includes (amongst other things) the use of land as grazing land and meadow land.

appearance of the landscape. I cannot see that there would, at that stage, have been conflict with any of the cited policy objectives. Additionally, the effects of the use on the landscape would have been positive.

29. The appellant then began to receive requests from individuals and organisations wishing to visit the farm to see the animals. These visits were pre-arranged and included groups from local hospices, Grapevine (a local based support group) and other disadvantaged groups.
30. Whilst this level of activity would have resulted in a little extra traffic using Mill Road, policy RLP 87 and Braintree Protected Lanes Assessment 2013 do not discourage the use of protected lanes per se. The latter recognises that, by using the protected lanes, people can enrich their daily lives by accessing cherished historic landmarks and landscapes, and that such access encourages recreation within the countryside and promotes well-being. It is unlikely that these visits would have resulted in a "material" increase in the amount of traffic using the lane, that being the point at which the policy seeks to resist developments.
31. Additionally, the use had a valuable social purpose in providing access for disadvantaged groups to this countryside location, enabling these people to gain enjoyment from the countryside surroundings and to interact with the animals which were kept on the land. Even at this stage in its evolution, I consider the use would not have conflicted with the development plan policies or those of the Framework when taken as a whole.
32. The tipping point arose when the farm became generally open to visiting members of the public. Even then (when setting aside the operational developments), I cannot see from the evidence that the use, in itself, gave rise to negative effects upon the landscape except there was a detectable increase in the level of traffic using the protected lane.
33. The site is quite remote, being located some distance from major transport routes and infrastructure. Whilst there are some other transport choices (walking and cycling for example), in such a location it is highly probable that most visits made by the visiting public will be by car or other private motorised transport.
34. A use which attracts visits from the public at large, in circumstances where many of those visits will be by private motorised transport, could well give rise to a situation where the amount of traffic using Mill Road and the other protected lanes in the vicinity would be materially increased such that it would fail to accord with policy RLP 87.
35. This negative effect of the use could be limited, to an extent, by a condition limiting the hours, days of the week and months of use. However, the number of vehicles arriving during any particular opening time would largely be a matter outside of the appellant's control. Whilst a condition could limit the number of on-site spaces to (say) twenty, this would not prevent more than twenty vehicles arriving. Such an increase in the number of vehicles could lead to obstruction and congestion problems in the narrow protected lane with the possibility of vehicles attempting to park outside of the site and along the lane, for example, causing visual harm and damage to its verges and hedges and detracting from its generally passive and tranquil ambiance.

36. I acknowledge that the use, presently, operates on a modest scale. By restricting the visitor facilities and additional attractions this, in turn, will have a limiting effect upon the numbers of visitors and lengths of stay. However, it is still quite possible that, over time, the venue will increase in popularity with the visiting public and that the degree and nature of the use could alter as a result. If permission was to be granted it would be for a "petting farm" in a generic sense. Within the scope of the permission intensification, to a point, could occur which could not be satisfactorily controlled by conditions. Such intensification would add to the negative impacts arising from the increased use by visitors of the protected lanes.
37. I acknowledge the charitable nature of the use both in terms of it providing a home for rescue animals and because it facilitates visits by disadvantaged groups. The keeping of the animals on land is, in itself, an acceptable countryside activity which the income from the visiting public goes some way to sustain. The Council's policies, generally, are supportive of rural enterprise and additional visitor attractions subject to there being no harmful effects. These are all positive factors which weigh in favour of the development in the overall planning balance.
38. However, the protected lanes of the district are of particular historic, landscape and biodiversity significance and of such value that a specific LP policy seeks their protection. Development which is likely to result in a material increase in traffic upon these lanes will give rise to harmful effects and should be resisted in the interests of conserving the lanes as is set out in policy RLP 87.
39. This is a consideration to which I afford the greatest weight in the decision and which is not outweighed by the other considerations. Therefore, I do not consider the use as it has now evolved to be acceptable in these overall circumstances.

Zip wire constructions

40. By the time of my site visit the zip wire constructions had been removed. My assessment is made from the photographic evidence and from what I saw at my visit when their (former) locations were pointed out.
41. Whilst constructed in timber and of a simple form, the zip wire structures, nevertheless, appeared incongruous and out of character with the open, farmed landscape. Although barely visible in more distant views the constructions would have been clearly seen from within the site itself and from neighbouring land. Thus they would have given rise to a degree of visual harm to the landscape, contrary to LP policies RLP 90 and RLP 145, and CS policies CS 5 and CS 8. There were no other considerations of sufficient weight to justify the constructions.

Shower/toilet building

42. The shower/toilet building replaces a former shed which was in a poor and unkempt condition. It utilises the concrete base of that former building⁴.
43. The building is of modest scale, constructed in timber with a gently sloping single pitch roof. It has the appearance of a rural building reflecting, in its

⁴ The appellant has provided photographs which show the former shed and the concrete base.

design, the refurbished barn (not covered by the enforcement notice) located a little to the north.

44. It is seen against the boundary fence and backdrop of trees and greenery and in the context of other utilitarian rural buildings. Notwithstanding my findings in respect of the wider use, a building of this nature could continue to serve a useful purpose. To my mind its effect upon the landscape character of the area is neutral and I do not consider it to offend the cited policies of the development plan.

Mobile home with raised platform

45. The mobile home, with its raised platform, does not appear to have been part of the petting farm use specifically. It was occupied by the appellant's son for a while and then by another person.
46. By the time of my site visit the mobile home and its platform had been removed. In its position, close to the farm buildings and adjacent to the southern boundary, it would not have been particularly visible in more distant views. It would, however, have been clearly seen from within the site itself where it would have appeared as an incongruous feature in the rural scene. To that extent it caused harm to the character and appearance of the landscape.
47. The Council's policies seek to locate new housing development to within the town development boundaries and village envelopes and to limit the use of static caravans to uses connected to tourism. The caravan would have represented an isolated additional residence in the countryside with insufficient reason to justify its retention and outweigh the landscape harm. It would, thus, have been contrary to LP policies RLP 90 and RLP 144, and CS policies CS 5 and CS 8.

Alterations of land levels around trees

48. The alteration of land levels around the base of protected trees, in the view of the Council's Landscape Officer, could have compromised the health and life of the trees by way of suffocation to the roots. There is no contrary view put forward. This operation, when carried out, would have failed to protect the natural environment from harmful effects and could, potentially, have resulted in damage to or loss of these protected trees which, in turn, would have caused harm to the locally distinctive character of the landscape. Thus the development would not have accorded with policy CS8.

Children's play equipment

49. There are a few items of children's' play equipment (swings, slide, zip wire for example) positioned beyond the rear of the dwelling to the front of the shower/toilet building. Whilst each item (in itself) is of modest scale, collectively the items are of domestic and urban character and appearance positioned on land which is outside of the curtilage of the dwellinghouse. Whilst barely seen in longer distance views, the children's play area nonetheless has a limited negative visual effect upon the landscape when viewed from within the site itself. It is, to that extent, contrary to the cited policies of the development plan.

50. I acknowledge that the play equipment, as well as being used by the visiting public, is also used by the appellant's grandchildren when visiting. A householder should reasonably be able to install some outdoor play equipment for use by family members although there are limited options, in this case, for such items to be sited closer to the dwelling without compromising the open, and more visually prominent, garden to the front of the dwelling. Whilst these circumstances may provide some justification for its positioning I must also have regard to its extent and visual effects. When weighing all considerations in the balance I cannot see that there is sufficient justification for the retention of the play equipment in its totality in this location.

Other matters

51. I acknowledge that there is a considerable level of local support for the development, and that a number of those supporting the appeal (many of whom reside over quite a dispersed area) consider the use to be of benefit to the local community and are not aware of any traffic issues. I have taken these matters into account although they do not weigh sufficiently to alter the conclusions I have reached on the main issue.

52. Concerns have been expressed about loss of privacy and noise arising from the use of the zip wires and other activities on the land. One of the zip wire constructions was in close proximity to the boundary with Chiefs Farm albeit some distance from any residential properties. People using it would have been able to see into neighbouring land from a raised vantage point. Also some noise arising from the use (from tractors/trailers etc) would have been detectable from neighbouring land. However, I do not find conflict with policy RLP 90 which concerns "undue" impacts upon "residential properties" rather than land in its widest sense. These matters, whilst I have considered them, have not been decisive issues in my decision on this appeal.

Consideration of conditions

53. I have considered the conditions which have been suggested by the Council, including those relating to landscaping, drainage, lighting and enclosures. In respect of the matters where I have identified harm, I do not find that the harm could be satisfactorily overcome by the imposition of conditions.

54. In respect of the shower/toilet building, which already sits well within its setting and where I have found no harm, I do not consider any planning conditions to be necessary.

Conclusions on ground (a) and the deemed application

55. I find on ground (a) that, in respect of the erection of the shower/toilet building, there is no harm to the interests of conserving the locally distinctive character of the landscape. I conclude that the appeal should succeed in respect of that matter and that permission should be granted. However, in respect of all of the other matters alleged in the notice I find harm to the interests of conserving the district's protected lanes and/or landscape character which is not outweighed by other considerations, and I conclude that the appeal should fail. The deemed application will be refused in respect of these other matters.

Further matter

56. It appears that some of the soil which was deposited in the vicinity of the protected trees has been removed or levelled out and compacted across the wider land. Due to the passage of time the Council considers that further works to remove the remaining soil around the trees may cause damage to the trees. It requests that requirement "c" of the notice is removed.
57. The consequence of removing requirement "c" would be that the notice would then, in effect, grant permission for the full extent of the raised land levels as alleged in section 3 of the notice⁵. That would be unsatisfactory as there were sound reasons for requiring the soil removal at the time the notice was issued, and some soil has been removed already (or has been spread out and compacted across the wider land) towards complying with the requirement.
58. The Council can, of course, exercise its discretion as to whether it seeks any further works under requirement "c" and has powers itself to vary the requirements of the notice, to make it less onerous, if it sees fit. However, for the reasons explained, removal in entirety of requirement "c" would not, to my mind, provide for an acceptable notice. I shall, therefore, leave the notice unvaried.

Conclusion

59. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with correction and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I shall grant by virtue of s180 of the Act⁶.

Susan Wraith

Inspector

⁵ S173(11) of the Act states that where an enforcement notice in respect of any breach of planning control could have required any building or works to be removed but does not do so and all the requirements of the notice have been complied with then, so far as it did not so require, planning permission shall be treated as having been granted.

⁶ S180 of the Act states that where, after the service of a copy of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.