



Appeal Decision

Site visit made on 28 October 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2020

Appeal Ref: APP/K0425/C/19/3225675

Land at OS Parcel 4338 (also known as land adjacent Shana Riding Stables), Main Road, Walters Ash, Buckinghamshire HP14 4UZ

- 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 Michael Bryant against an enforcement notice issued by Wycombe District Council.
 - The enforcement notice was issued on 5 February 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, a material change of use of the Land from agricultural use, to a mixed use comprising of agricultural use and use for the parking and storage of vehicles; and the laying of hardstanding (in the area shown outlined in blue on the attached plan) and the creation of earth bunds (in the area shown outlined in green on the attached plan) to facilitate this unauthorised material change of use of the Land.
 - The requirements of the notice are: 1. Cease the use of the Land (shown outlined in red on the attached plan) for parking and storing vehicles; and 2. Remove the hardstanding (in the area shown outlined in blue on the attached plan) from the Land (shown outlined in red on the attached plan); and 3. Seed the area shown outlined in blue on the attached plan with grass seed.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

Procedural Matters

2. Since the issue of the enforcement notice the Council has adopted the Wycombe District Local Plan (the LP) which has replaced the previous development plans for the area. As the enforcement notice also cited relevant emerging policies from the LP, no new matters are raised and so I have determined the appeal solely in relation to this development plan.
3. The enforcement notice identifies breaches of planning control in respect of a material change of use to a mixed use comprising of agricultural use and for the parking and storage of vehicles, as well as the laying of a hardstanding and creation of earth bunds. There is however no requirement to remove the earth bunds. The Council has confirmed in its Statement that the bunds are not being enforced against, in respect of seeking their removal, and highlights the

provisions of Section 173(11) of the Act to this effect. I have therefore determined the appeal on this basis.

4. One of the points raised by the appellant under the ground (b) appeal is better suited to a ground (c) appeal, namely that there has not been a breach of planning control. I have therefore considered this accordingly and do not consider that injustice to the parties arises from doing so.

The ground (b) appeal

5. The site adjoins and is accessed via commercial premises. It relates to a parcel of land approximately 0.7 hectares set predominantly to grass. Part of this site has been subdivided by means of fencing and a hardstanding laid to facilitate the parking and storage of vehicles.
6. The appellant asserts that the established use of the site is for equine recreational purposes and so any change of use does not involve that of agriculture, as alleged by the enforcement notice. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact.
7. Whilst it can be helpful, it is not necessary to specify the previous use of land in the allegation, particularly, as is the case here, that use is in dispute. I shall therefore correct the enforcement notice to omit reference to a previous use of land.
8. It is then necessary to consider what mixed use is now occurring. The Council states that aside from planning permission being granted, historically, for a ménage, it has no further evidence concerning the lawful use of the appeal site. The appellant highlights the Council made reference to an equestrian use in a previous planning appeal statement. The appellant has also provided photographs which indicate some form of equestrian use, albeit these may only represent a snapshot in time.
9. I am aware the adjoining site was historically occupied by a riding school and livery and that the appeal site appeared to be used in connection with this. Planning permission was however granted¹ for a change of use in 2014, which did not include the appeal site. The appeal site, therefore, may well have been in an equestrian use at some point. However, the separate planning permission granted at the neighbouring stables, which thus did not include the appeal site, casts considerable doubt in my mind that an equestrian use at the appeal site continued. I have very little evidence before me concerning the appeal site itself and at the time of my site visit it had the appearance of an open field.
10. I am therefore not satisfied, on the balance of probabilities, that the appellant has demonstrated that the breach of planning control alleged in the enforcement notice has not occurred as matter of fact. Consequently, the appeal on ground (b) succeeds only in so far as it relates to omitting reference to agriculture as the previous use of land.

¹ Council Ref 12/07953/FUL

The ground (c) appeal

11. Whilst I accept that the area of land where parking takes place represents only a small portion of the land affected, stated by the appellant as being less than 5%, I have not been persuaded on the evidence before me why the unauthorised use is not a material one, or why the parking of vehicles is otherwise ancillary to what the appellant considers to be the established use of the site. The area of land where parking takes place is not negligible and at the time of my site visit accommodated a number of vehicles as well as a trailer/large piece of equipment.
12. Consequently, I am not satisfied on the balance of probabilities that the appellant has demonstrated that there has not been a breach of planning control. The appeal on ground (c) accordingly fails.

The ground (a) appeal

Main Issues

13. The main issues are:
 - Whether or not the development is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - The effect of the developments on the landscape and scenic beauty of the Chilterns Area of Outstanding Natural Beauty (the AONB);
 - Whether or not the development creates an unacceptable increased risk of flooding at the site; and
 - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development in the Green Belt

14. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 133 of the Framework states that the Government attaches great importance to Green Belts. The essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development.
15. Policy DM42 of the LP post-dates the Framework and identifies that in order to manage development in the Green Belt planning permission will only be granted for that classified as not inappropriate by the Framework. It states that all other development is inappropriate.
16. Paragraph 145 of the Framework is concerned with buildings and lists exceptions to inappropriate development in this respect. Paragraph 146 of the Framework states that certain other forms of development are also not

inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

17. Whilst I accept that there have been limited forms of development at the site in the areas where the parking and storage of vehicles now takes place, namely a concrete raised platform and water jump, these have since been removed. The evidence from the Council, in the form of an aerial photograph taken within 12 months of its Statement, is that more recently the site where the parking and storage use now takes place, as well as the wider land affected, had the appearance of an open field.
18. The introduction of the parking and storage of vehicles, which is facilitated by the hardstanding, represents both an encroachment and visual incursion into this area of open land. Whilst views are restricted from the road by mature hedges and trees, and a planning condition could limit the actual area used for parking and storage still further, the change of use nevertheless has an effect on reducing openness, and thus it is not preserved. It therefore contravenes the purposes for which the Green Belt serves and the purposes of including land within it.
19. I conclude the development is inappropriate development that is, by definition, harmful and therefore contrary to national and local policy to protect the Green Belt. This is a matter to which I attach substantial weight.

Landscape and scenic beauty

20. The wider context of the Chilterns AONB in this area is set by a range of buildings at the adjoining commercial premises, together with areas of open storage and car parking, with residential development beyond. Whilst I again note the previous concrete raised platform and water jump, I have not been persuaded that the use of the site, or even part of it, for parking and storage purposes is particularly representative or characteristic of this part of the AONB. In my view it does not represent a modest change as it does have a materially different impact.
21. This is because the parking of vehicles introduces a piecemeal and urbanising feature into what otherwise appears as open countryside to the west, which the site forms a part. Given this incursion, additional landscaping, which could be controlled by planning conditions, would not adequately ameliorate the impact of the use.
22. The use of the site for the parking and storage of vehicles and the hardstanding that has facilitated the use therefore does not conserve the landscape and scenic beauty of the AONB. Indeed, it represents an undesirable encroachment into the surrounding countryside which does not improve the character of the area.
23. I conclude that the developments are harmful to the landscape and scenic beauty of the Chilterns AONB and so fail to accord with Policies DM30 and DM35 of the LP. These policies, amongst other things, require development to conserve and where possible enhance the natural beauty of the Chilterns AONB and improve the character of the area. For the same reasons it fails to accord with the conserving and enhancing the natural environment objectives of the Framework. This is a matter to which I attach moderate weight.

Flooding

24. Whilst I appreciate that new development should not increase flood risk at the site or elsewhere, I have been provided with very little evidence to substantiate any possible effects. The site is not in a fluvial flood zone, nor an area at risk of surface water flooding according to evidence obtained by the appellant from the Environment Agency.
25. I have therefore not been persuaded that there are any substantive flooding or drainage constraints or otherwise why planning conditions could not secure appropriate surface water drainage measures.
26. I conclude that the development does not create an unacceptable increased risk of flooding at the site and so accords with Policies CP12 and DM39 of the LP. These policies, amongst other things, require development to include the use of sustainable drainage systems and otherwise directs development to areas at least risk of flooding. For the same reasons it accords with the flood risk objectives of the Framework. This is a matter to which I attach limited weight.

Other considerations

27. I appreciate the developments enforced against do not give rise to other planning harms, however, such absence is not a positive factor and so attracts neutral weight. I have also not been made aware of any substantial business or other economic benefits arising from the developments enforced against.

The Green Belt balance

28. I have concluded the unauthorised use and hardstanding are inappropriate development that would conflict with national and local policy to protect the Green Belt. I have also found harm to the landscape and scenic beauty of the AONB. These are matters which cause substantial and moderate harms respectively.
29. There are no other considerations in favour of the development, despite the absence of flood risk, that clearly outweigh the presumption against inappropriate development in the Green Belt and the substantial weight that the Framework requires to be attached to such harm. The very special circumstances necessary to justify the retention of the unauthorised use and hardstanding do not, therefore, exist.

Conclusion

30. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) fails.

The ground (f) appeal

31. The purpose of the enforcement notice is to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives to achieve this.
32. The appellant has provided photographic evidence dated 2010 and 2013 respectively, showing a raised platform, constructed of concrete, as well as a

water jump, which are situated in part of the area that is now set to a hardstanding. The Council has provided photographic evidence to indicate that those features more recently were no longer present, with the area having a similar appearance to that of the surrounding grassed field.

33. I have no evidence from the appellant to suggest they still remained prior to the breach occurring. The Council's evidence indicates they may have been removed some time before the hardstanding that has been enforced against was laid. These features are also not a hardstanding, but a raised platform and small water body, in only part of the site that is now set to a hardstanding, and so are materially different.
34. I am therefore not satisfied on the evidence before me that lesser steps, that would allow the retention of an area of hard surfacing equivalent or comparable to the scale of former features on this part of the site, would remedy the breach of planning control, or otherwise fully remedy any injury to amenity.
35. The removal of the hardstanding and seeding with grass therefore do not amount to excessive steps and the appeal on ground (f) accordingly fails.

The ground (g) appeal

36. The appellant considers that a period of some 9 months is necessary to comply with the requirements of the enforcement notice given the nature of the works. I however have little evidence that expands on this point, particularly as the requirements of the enforcement notice appear to be reasonably straightforward. I am therefore not convinced as to why an additional period of 3 months is required for specialist professional input and machinery and the sowing of grass seed. The appeal on ground (g) therefore fails.

Conclusion

37. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Formal Decision

38. It is directed that the enforcement notice be corrected by:

- deletion in section 3 of the words '*of the Land from agricultural use,*'

39. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR