



Appeal Decisions

Hearing Held on 12 March and 3 April 2019

Site visit made on 3 April 2019

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2020

Appeal A: APP/B1550/C/18/3198426

Black Barns, Church Road, Hockley, Essex SS5 6AE

- 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 Mrs Belinda Cripps against an enforcement notice issued by Rochford District Council.
 - The enforcement notice was issued on 14 February 2018.
 - The breach of planning control as alleged in the notice is:
'Without planning permission
 1. The change of use of the land (shown outlined in green on plan 2) from equestrian use to commercial B1(a) offices/B8 storage and distribution.
 2. The erection of a building (marked 'A' and hatched black on the attached plan 2) to provide 3 units with mezzanine floors for Use Class B1 (a) (offices) and Class B8 (storage and distribution).
 3. The laying of an area of tarmac hardstanding shown cross hatched blue and an area of gravel shown stippled blue on the attached plan 2.'
 - The requirements of the notice are:
 1. Cease the use of the land edged green on plan 2 for Use Class B1(a)/B8 Storage and Distribution.
 2. Cease the use of the building marked 'A' and hatched on plan 2 for Use Class B1(a) (offices)/Class B8 (storage and distribution)
 3. Demolish the building marked 'A' and hatched on plan 2 and remove the foundations.
 4. Remove the area of tarmac hardstanding shown cross hatched blue and an area of gravel shown stippled blue on the attached plan 2.
 5. Remove all materials and debris from the site as a result of carrying out steps 3 to 4
 6. Lay suitable topsoil and sow with grass seed.
 - The periods for compliance with the requirements is: 12 months.
Steps 1 and 2 period of compliance is 8 months;
Steps 3 and 4 period for compliance is 11 months; and
Steps 5 and 6 period for compliance is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/B1550/W/17/3191404

Black Barns, Church Road, Hockley, Essex SS5 6AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Belinda Cripps against the decision of Rochford District Council.
- The application Ref: 17/00614/FUL, dated 16 June 2017, was refused by notice dated 15 August 2017.

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- The development proposed is the retention of the Stables Building as constructed and for its use for a mix of Class B1 (office), B8 (storage) and equine/agricultural use to the previously approved Stables Building (App Ref: 12/00530/FUL) and for the retention of alterations and change of use of the Hay Barn (App Ref: 07/00490/FUL) for the existing mix of employment uses within use classes B1(a) and B8.
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Appeal C: APP/B1550/W/18/3205858

Black Barns, Church Road, Hockley, Essex SS5 6AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Belinda Cripps against Rochford District Council.
 - The application Ref: 17/01090/FUL was dated 1 November 2017.
 - The development proposed is retention of alterations and change of use of the Hay Barn (App Ref: 07/00490/FUL) for the existing mix of employment uses within use classes B1(a) and B8.
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by

- (a) Substituting the attached Plan A with the land outlined in red for Plan 1.
- (b) Deletion of the allegation in paragraph 3 and the substitution thereto of the following words:

Without planning permission:

- i) the material change of use of the land, edged red on Plan A, to a mixed use comprising:
 - A Use of manège for horse exercise, private and group horse riding lessons and equestrian clinics;
 - B The keeping of horses; and
 - C Office, storage and distribution uses.
- ii) the erection of a building (marked 'A' and hatched black on the plan 2) to provide 3 individual self-contained units with mezzanine floors.

and varied by

- i) deletion of the words 'Period of compliance with steps 1 and 2: 8 months from the date the Notice takes effect'; 'Period of compliance with steps 3 and 4: 11 months from the date the Notice takes effect' and 'Period of compliance with steps 5 and 6: 12 months from the date the Notice takes effect' in paragraph 5.
- ii) delete requirement '6.' in paragraph 5.
- iii) deletion of '12' and substitution thereto of '15' in paragraph 6.

Subject to these corrections and variations 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.

Appeal B

2. The appeal is dismissed insofar as it relates to the retention of the Stables Building as constructed and for its use for a mix of Class B1 (office), B8 (storage) and equine/agricultural use to the previously approved Stables Building (App Ref: 12/00530/FUL). The appeal is allowed insofar as it relates to the Hay Barn (units 4 and 5)(referred to as Building B in the decision) and planning permission is granted for the retention of alterations and change of use of the Hay Barn (App Ref: 07/00490/FUL) for the existing mix of employment uses within use classes B1(a) and B8 at Black Barns, Church Road, Hockley, Essex SS5 6AE in accordance with the terms of the application, Ref:17/00614/FUL, dated 16 June 2017, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the following conditions:

- 1) Deliveries shall be taken at or despatched from the site only between 06:00 and 21:00 on Mondays to Sundays in relation to the office and storage and/or distribution uses hereby permitted.
- 2) There shall be no parking of commercial vehicles outside the hours of 06:00 and 21:00 on Mondays to Sundays in relation to the office and storage and/or distribution uses hereby permitted.
- 3) Notwithstanding the provisions of the of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) (without or without modification) no development falling within the following Classes of the Order shall be carried out.

Schedule 2 Part 7 Classes F, G, H and J.

- 4) No storage ancillary to the uses of the Hay Barn (units 4 and 5) hereby permitted shall take place outside of the building.
- 5) Unless within 3 months of the date of this decision a scheme for the laying out of 6 parking spaces, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 9 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved parking scheme specified in this condition, that parking scheme shall thereafter be maintained and available for use by the occupiers and visitors to the Hay Barn (units 4 and 5).

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal C

3. The appeal is allowed and planning permission is granted for retention of alterations and change of use of the Hay Barn (App Ref: 07/00490/FUL) for the existing mix of employment uses within use classes B1(a) and B8 at Black Barns, Church Road, Hockley, Essex SS5 6AE in accordance with the terms of the application, Ref: 17/01090/FUL, dated 1 November 2017 and the plans submitted with it, subject to the following conditions:

1. Deliveries shall be taken at or despatched from the site only between 06:00 and 21:00 on Mondays to Sundays in relation to the office and storage and/or distribution uses hereby permitted.
2. There shall be no parking of commercial vehicles outside the hours of 06:00 and 21:00 on Mondays to Sundays in relation to the office and storage and/or distribution uses hereby permitted.
3. Notwithstanding the provisions of the of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) (without or without modification) no development falling within the following Classes of the Order shall be carried out.

Schedule 2 Part 7 Classes F, G, H and J.

4. No storage ancillary to the uses of the Hay Barn (units 4 and 5) hereby permitted shall take place outside of the building.
5. Unless within 3 months of the date of this decision a scheme for the laying out of 6 parking spaces, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 9 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved parking scheme specified in this condition, that parking scheme shall thereafter be maintained and available for use by the occupiers and visitors to the Hay Barn (units 4 and 5).

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Application for costs

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

Appeal A: The Notice

5. The red line on the plan attached to the Notice included all the paddock land. It was agreed at the Hearing that the red line should only include the access, parking, manège, buildings and immediate areas to those buildings. The parties drew up a revised Plan 1 (attached as Plan A to this decision) showing this revised, reduced area. I will correct the Notice by substituting this plan for the original Plan 1 attached to the Notice. This area relates to the manège, parking and buildings only. There would be no injustice or prejudice to either party in this correction.
6. Requirement 6 is to lay suitable topsoil and sow with grass seed. The term 'suitable' is not a precise term. The laying of topsoil and sowing with grass seed may well, on the evidence, be an improvement or enhancement to the land to that which previously existed. I will therefore vary the Notice to remove this requirement.
7. Allegations 1 and 2 refer to a mixed use comprising commercial Use Class B1(a) offices and Use Class B8 storage and distribution. The use classes referred to are those set out in the Town and Country Planning (Use Classes) Order 1987 (UCO). However, reference to use classes in the UCO is inappropriate when identifying a mixed use. A mixed use should be referred to within an allegation by setting out all the actual uses or the component elements of the mixed use. In addition, the area identified in Plan A of the Notice includes the manège, the building and the parking area. The parking of vehicles in the parking area is ancillary to the primary uses comprising the mixed use and therefore it is not necessary to refer to this ancillary use within the allegation. I will therefore correct the allegation to:

Allegation 1: Without planning permission, the material change of use of the land, edged red on Plan A, to a mixed use comprising:

- A Use of manège for horse exercise, private and group horse-riding lessons and equestrian clinics;
- B The keeping of horses; and
- C Office, storage and distribution uses.

Allegation 2: Without planning permission, the erection of a building (marked 'A' and hatched black on the attached plan) to provide 3 individual self-contained units with mezzanine floors.

Background

8. There have been several planning applications for development at the appeal site. The most relevant of these to the current appeals are:
 - Planning application reference 07/00490/FUL (the 2007 permission) which was described as 'Construct pitched roofed building to provide 12 no. stables, feed, tack, stores, mess and office for full livery, pitched roof hay barn, form access onto Church Road and parking area and construct horse exercise manège'. The manège and hay barn were constructed.

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- Planning application reference 12/00530/FUL was granted at appeal under reference APP/B1550/A/13/2195359 in July 2013 (the 2013 permission). The development was described as 'a redesigned stable block to replace existing stables approved under 07/00490/FUL'. Details were submitted pursuant to Conditions 3 (external surface materials) and 6 (details of slab levels) of this planning permission and they were approved in December 2013. The approved materials under condition 3 included doors to be timber framed and cross braced black stained.
9. A retrospective application (reference 17/00614/FUL) to 'Retain the approved stable building for use as Class B1 (office), B8 (storage) and Equine/Agricultural use and change of use of Hay Barn for Mix of Employment Uses under Classes B1(a) and B8' was submitted in June 2017. It was refused on 15 August 2017 and is the subject of Appeal B.
 10. The applicant at that time sought clarification from the Council in relation to the reason for refusal on application Ref: 17/00614/FUL. A subsequent application, relating only to the Hay Barn, was then submitted. The application was described as 'Retention of alterations and change of use of the Hay Barn (App Ref: 07/00490/FUL) for the existing mix of employment uses within classes B1(a) and B8'. This application was not determined by the Council and Appeal C is an appeal relating to the non-determination of that application.
 11. Planning permission was also granted in June 2014 for development described as '*form new gated entrance to approved livery stable development*'.
 12. The plans attached to the Notice identify the building the subject of Appeal A and the larger building in Appeal B as Building A. I will use this description in the consideration of the appeals. I will refer to the Hay Barn, the smaller building in Appeal B, and the only building in Appeal C, as Building B.
 13. Building A diverges from the plans approved under the 2013 planning permission. This is accepted by the appellant who has set out in her appendix 15 at paragraph 2.16 the differences between the approved scheme and what has been built on site. The areas where the appeal building is different from the Building A approved under the 2013 planning permission are:
 - The internal subdivision of the building does not accord with the approved plans references 737-01 Rev C, 737-02 Rev D and 737-03 Rev J. The building is divided into three units which I will refer to as Units 1, 2 and 3. Each unit has its own external door and a mezzanine. However, in Unit 3 the lower treads of the staircase have been removed, or were never fitted, so that there was no internal access to the mezzanine in that unit at the time of my site visit. There is no access to Unit 3 mezzanine from any other unit. Each unit includes two toilets and a kitchen area.
 - The stable openings have been fitted with a commercial type window which are stated by the appellant to have lower cills than stable windows. The approved plans are not clear in that the elevations show what appear to be shutters to those openings serving stables

which allow for the horse within the stable to put their head through the opening to the outside. On one of the approved elevation plans horses are shown with their head through the stable openings on the east and west elevations with what appear to be metal 'weaving' frames (U shaped inserts) within the openings and solid shutters. There is no note to indicate whether the floor plan indicates just the shutters on the opening with a 'weaving' fixture or a window. However, what is clear is the windows that have been fitted have a lower cill height and are commercial not stable windows. No materials for windows were approved pursuant to condition 3 of the 2013 permission.

- There are two personnel doors on the west elevations. The approved plans showed stable openings, appearing unglazed, in these locations.
- The central window above the western door has been constructed as an apex type window but was a smaller rectangular window on the approved plans.
- The central window on the east elevation is a two panel casement type and deeper than the three bay casement window on the approved plans.
- Two rooflights have been installed on the west roof face. No rooflights were shown on the approved plans.
- Main doors are roller shutter doors. Sliding doors were shown on the approved plans. The materials approved pursuant to condition 3 of the 2013 permission were for doors to be timber framed and cross braced black stained.

14. The appellant states that in July 2015 two stables were fitted in what is Unit 1 and an invoice for stables including swinging doors and partitions dated 23 July 2015 has been provided. The stables are stated to have been kept in this location until May 2016. Unit 2 is stated at that time to be used for storage of equipment relating to the manège and paddocks. The remainder of the building is said to have been unused at that time.

15. Building A was occupied at the time of the Notice being issued and my site visit as follows:

- Unit 1: the tenant of this unit provides services to both large and small businesses in the leisure industry. Providing party packs, personalised activity packs and general supplies to leisure centres, venues, restaurants and other organisations in the leisure industry. While the tenant states that most customers are in the UK they do supply across Europe. There are five full time employees, two part time employees and home workers.
- Unit 2 has two stables fitted which are created out of purpose-built panels to provide the walls and stable door. The panels are bolted to each other and did not appear to be fixed to the building. The floor within the stables is finished with rubber matting. The stables are not part of the structure of the building but more akin to a fitting within it.

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- Unit 3: the tenant runs a professional pharmacy business. The tenant supplies medicines and dispenses prescriptions to clients via mail order/internet. The tenant states it provides income for nine fully qualified and trained personnel.
16. Building B, the hay barn, is stated to have been constructed in Spring 2009 and completed Summer 2010 under the 2007 permission. It is said to have been used for hay and storage in relation to the manège and paddocks. In 2010 a wall and roller shutter door were installed. Further internal alterations were carried out in March 2016 comprising the insertion of a wall to subdivide the building into two units. I will refer to the units in Building B as Units 4 and 5. There is now a glazed window behind the roller shutter door to Unit 5. Unit 4 is used for storage and Unit 5 is used as an office. Building B is stated to have been converted to additional units in April/May 2016 resulting in hay and feed storage being relocated to Unit 2 at that time.

Appeal A on ground (b)

17. This ground of appeal is that those matters alleged in the notice have not occurred. The appellant has identified the issue as the lack of acknowledgement within the allegation of the equestrian use at the appeal site within the mixed use and the description of the erection of the building as a breach.
18. It is accepted that an equestrian use remains in addition to the other primary uses alleged. However, as previously set out it is considered that the Notice can be corrected to reflect this without causing injustice. In relation to the second element of the appellant's case, a building has clearly been erected. Whether or not that is a breach of planning control is a matter for the ground (c) appeal.
19. As such, as a matter of fact, what is alleged in the corrected allegation has occurred. The appeal on ground (b) therefore fails.

Appeal A on ground (c)

20. This ground of appeal is that those matters, if they occurred, did not constitute a breach of planning control. The appellant has identified the issue with respect to this ground of appeal as the erection of the building element of the allegation (Building A) which she considers is not a breach of planning control. The appellant considers that if the case is looked at holistically the allegation should relate to the breach of Condition 2 of the 2013 permission and the changes of use of Units 1 and 3.
21. It appears that works to initiate the development granted under the 2013 permission were carried out. However, it is possible to commence a development for the purpose of section 56 of the Act and thereby meet the deadline forming a condition of the planning permission and then to later deviate from the permitted works in a manner that later becomes an enforcement issue without retrospectively altering the fact that the commencement of the development had occurred for section 56 purposes.
22. I therefore must adduce whether or not what was constructed was in accordance with the 2013 planning permission or not.

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23. In *Sage v SSETR* [2003] UKHL 22 (*Sage*) it was stated that if a building operation is not carried out both externally and internally fully in accordance with the permission then the whole operation is unlawful. That is different from a case where the building has been completed and then altered or improved. When an application was made for planning permission for a single operation it was made in respect of the whole building operation; it required a fully detailed building of a certain character. It is a matter of judgement as to whether what has been built complies with the permission.
24. Moreover, the issue in *Sage* was in relation to the time limits within which enforcement action to remedy breaches of planning control must be brought. *Sage* concluded that the Notice had not been served after the end of the period of four years beginning with the date on which the building operations in that case were substantially completed. This was because, in that case, it was held that the building operations had not been substantially completed at the date of the Notice. These are different to the circumstances of the current case where there is no dispute about the substantial completion of the building the subject of the Notice.
25. However, what is clear is that the building that has been constructed did not comply with the planning permission granted under the 2013 permission. Internally and externally what was constructed was not in accordance with the approved plans. Windows, doors, types of doors, rooflights, toilets, kitchens and mezzanines were all part of the completed building but not part of the approved planning permission. Moreover, the internal layout was, and remains, significantly different from that which received planning permission. I therefore find, that the building that has been constructed is a building of a different character and materially different to that which received planning permission and thus the whole building is unauthorised.
26. For the reasons stated the appeal on ground (c) fails.

Appeal A on ground (a) Appeal B and Appeal C

Main issues

27. The main issues in all three cases are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and
- If the development is inappropriate whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the proposal.

Planning Policies

28. The development plan includes the Rochford District Council Core Strategy (adopted December 2011) (CS) and the Development Management Plan (adopted December 2014) (DMP). The most relevant policies are CS Policies CP1 and GB1 and DMP Policies DM11, DM12 and DM13.

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29. CS Policy CP1 promotes good high-quality design. CS Policy GB1 directs development away from the Green Belt as far as practicable, encourages the continuation of existing rural businesses if such activities do not significantly undermine the objectives or character of the Green Belt. DMP Policy DM11 supports existing lawfully established businesses in the Green Belt and sets out the criteria for allowing extensions, replacement of premises and changes of use to enable diversification. Any development permitted is required to be of a scale, design and siting such that the character of the countryside is not harmed, and nature conservation interests are protected. If the development results in a type or volume of generated traffic which has an adverse effect on the amenity of nearby residential occupiers, it would be resisted. DMP Policy DM12 supports rural diversification so long as it involves an appropriate form of rural activity. The policy sets out several matters that the proposed development should have regard to. DMP Policy DM13 supports the reuse or adaption of existing agricultural and rural buildings subject to meeting several criteria as set out in the policy.
30. Paragraph 83 of the Framework sets out that decisions should enable sustainable growth and expansion of all types of business in rural areas both through the conversion of existing buildings and well-designed new buildings. Paragraph 127 of the Framework requires development to be visually attractive, sympathetic to local character and have a high standard of amenity for existing and future users. Paragraph 170 of the Framework requires that planning policies and decisions should contribute to and enhance the national and local environment by recognising the intrinsic character and beauty of the countryside and amenity.
31. Paragraph 143 of the Framework sets out that inappropriate development in the Green Belt is harmful and should not be approved except in very special circumstances. Paragraph 145 states that the construction of new buildings should be regarded as inappropriate in the Green Belt unless they fall within one of the stated exceptions. Paragraph 146 identifies other forms of development which are not inappropriate within the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. In particular, it includes the reuse of buildings provided the buildings are of permanent and substantial construction.
32. Paragraph 213 of the Framework explains that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, the closer the policies in the plan to the policies in the Framework the greater the weight that may be given. CS Policies CP1 and GB1 and DMP Policies DM11, DM12 and DM13 are consistent with the Framework and, as such, I will give them full weight insofar as they are relevant to the appeal.

Whether the development alleged is inappropriate development?

Appeal A

33. The deemed planning application to be considered under ground (a) is the material change of use of the land and the erection of Building A as described in the corrected allegation. Section 177(1) of the Act states that

permission may be granted in respect of the whole or any part of the matters alleged.

Appeal A on ground (a) and Appeal B: Is the erection of Building A inappropriate development?

34. In relation to the appeal under ground (c) I have concluded that the building that has been constructed is a building of a different character to that which received planning permission and thus the whole building is unauthorised. The erection of the building did not accord with the 2013 permission and was unauthorised. It is in use for the keeping of horses, office, storage and distribution uses or as stated in Appeal B for use as Class B1 (office), B8 (storage) and Equine/Agricultural use. A building erected for such uses is not one of the exceptions for the erection of buildings within the Green Belt listed in paragraph 145 of the Framework. As such, the erection of the building is inappropriate development in the Green Belt which is, by definition harmful and should not be approved except in very special circumstances. This is contrary to CS Policies GB1 and GB2, DMP Policies DM11 and DM12 and the Framework.

Appeal B and Appeal C: Is the material change of use of Building B inappropriate development?

35. In relation to Building B, which is part of Appeal B, the Council do not dispute that the Hay Barn was erected under the 2007 permission. The evidence supports that the building was constructed in Spring 2009 and completed in Summer 2010. It has been used for hay and storage in relation to the equestrian use of the manège and paddocks.
36. In 2010 some alterations were carried out and further internal alterations were carried out in March 2016. The conversion of the building to Units 4 and 5 took place in April/May 2016 and the building was then used for commercial purposes. Hay and feed storage were then moved to Building A. As such, Building B was converted to provide two commercial units and these units (Units 4 and 5) are occupied.
37. In my view, the creation of the commercial units can be considered as the reuse of a building of permanent and substantial construction. The provision of ancillary facilities such as car parking associated with the commercial use is within the area that was intended to be utilised for car parking pursuant to the equestrian use granted under the 2007 permission. As such, I am satisfied that the reuse of Building B would preserve the openness of the Green Belt and does not conflict with the purposes of including land within it. Therefore, the reuse of the building is not inappropriate development in the Green Belt. This complies with CS Policy GB1, DMP Policies DM11, DM12 and DM13. I will consider the imposition of conditions in relation to this use below. I will, subject to considerations of conditions, grant planning permission for the material change of use of Building B in Appeal B as a split decision and allow Appeal C.

Is the mixed-use inappropriate development?

38. The material change of use of land is not inappropriate in the Green Belt provided it preserves its openness and does not conflict with the purposes of including land within it. The only use of the land for non-equestrian uses

is for purposes ancillary to the office, storage and distribution uses taking place in Buildings A and B the buildings. There is no open storage of materials or goods proposed or alleged on the land.

39. The parking ancillary to the office storage and distribution uses is within an area that was to be parking to serve the equestrian only developments granted under the 2007 permission under which Building B was erected. As such, this parking does not encroach into the countryside and parking associated with the reuse of Building B is not inappropriate development in the Green Belt.
40. However, Building A erected on the land harms openness and is thus inappropriate development for the reasons set out above. As such the material change of use of the land to include office storage and distribution ancillary uses to Building A is inappropriate because of this loss to openness.

Other considerations

Building A

41. The appellant considers that either the 2013 permission or the 2007 permission could be lawfully implemented. However, I am not satisfied that this is the case. While the evidence suggests that the 2013 permission appears to have been initiated, what was built materially deviated from this permission. Moreover, Building A initiated under the 2013 permission was an alternative to the stable building granted under the 2007 permission. This raises considerable doubts about whether either of those permissions remain extant or whether they are in fact spent. Such a determination is beyond the remit of this appeal. The appropriate route to consider the lawfulness or otherwise of those permissions would be through a certificate of lawfulness. If either the 2007 permission or the 2013 permission were capable of being lawfully implemented, then it is open to the appellant to do so and subsequently make an application for the re-use of the building. However, based on the evidence before me, I cannot be confident that a realistic fallback position exists as argued by the appellant. Accordingly, I give this proposition little weight.
42. The appellant has put forward options for amending the building in the document at appendix 15 of the appellant's bundle¹ which includes altering the building to accord with the approved plans of the 2013 planning permission; as a stable building. However, the deemed planning application in Appeal A relates to the erection of a building rather than the 'reuse of a building'. In my view, the alteration of that building and a proposal for an alternative use, different to that alleged, can not be considered to be part of the matters alleged. Furthermore, it would require an assessment of whether a building for that purpose is inappropriate development or not. It is not part of the matters alleged. In addition, Building A is an unauthorised building and so, its reuse cannot then be said to accord with the policies relating to the re-use of buildings in the Green Belt without first considering if the erection of the building at the outset was inappropriate development or not. In Appeal B it is the retention of Building A that is at issue. As such, the same considerations apply.

¹ Keith Wrath Statement and Schedule of Works.

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43. The appellant has also put forward the argument that there is insufficient employment land to provide suitable premises for the types of businesses within the appeal site. However, the Council have provided evidence in relation to employment land. It accepts that policies identified in the Core Strategy vision required certain employment uses to relocate and seven years in to the plan period, due to issues with land ownership and an unwillingness of some business owners to relocate, some sites will remain as employment uses and the Employment Land Study (2014) projection figures are out of date. The Economic Development Needs Assessment (2017) (EDNA) provides a more up to date assessment of employment land availability and provides an up to date strategic assessment of South Essex. The EDNA demonstrates that the forecast for warehousing (B8 Use) is a minus figure i.e. no additional warehouse space for B8 use is required.
44. While I understand that a number of redevelopments granted permission within the district have resulted in the loss of B1/B8 premises I am not satisfied on the evidence provided that it has been demonstrated that there is a requirement for windfall employment sites such as the appeal site. The EDNA does not support the granting of planning permission for Building A and its commercial uses. This does not weigh in favour of the development.
45. In relation to traffic movements, information provided in the Planning Contravention Notice response in 2017 states there are 76 vehicle movements by transit type courier vehicles per week in addition to employee traffic movements. While the appellant states that the traffic movements would be less than the equestrian business, I am not satisfied that there is substantiated evidence to this effect. The way in which any equestrian livery use is run would ultimately affect the numbers and types of vehicles attending the premises. The manège, and equestrian activities carried out on that part of the site, would mean that horse boxes and trailers would still attend the site. On the evidence available, I am not satisfied that there have been any benefits to the area in terms of the type of vehicles or numbers of traffic movements associated with the commercial use of Building A. Although I am not satisfied that traffic generation resulting from the commercial employment use of the building has resulted in a significant increase in traffic movements. This does not weigh in favour of the development.
46. The appellant considers that the provision of two stables within the building requires special consideration. While I acknowledge that there are two stables, these are now part of the mixed use of the building. Moreover, it is a small area of the building that is in use for equestrian purposes including storage. I give this only limited weight.

Appeal B and C: Conditions in relation to Building B

47. I have considered the need for conditions to be attached to the grant of planning permission in relation to Building B in the light of advice in the Planning Practice Guidance and the Framework. Conditions are required to limit the hours of deliveries and dispatch so as to ensure that the character of the area and living conditions of occupiers within the wider area are not unacceptably harmed by traffic servicing the units at unacceptable times. The parties have agreed the hours of deliveries/despatch to be 06:00 to

21:00 and I consider this would achieve what is required. I shall also require there to be no parking of commercial vehicles outside of these times and that there is no storage relating to non-equestrian uses outside of the building in the interests of the character and appearance of the area.

48. Units 4 and 5 generate a requirement for six parking spaces to be provided and maintained for the occupiers and visitors to these units. There is adequate room on the retained hard surface area around the building for these to be provided and I will require a plan to be submitted showing the six parking spaces and for those spaces to be maintained and available for use.
49. In order to safeguard the character and appearance of the building, and prevent additional floorspace within the Green Belt I will withdraw permitted development rights under Article 3, Schedule 2 Part 7 Classes F, G, H and J of the Town and Country Planning (General Permitted Development) (England) Order 2015 which relate to the extension or alteration of office buildings, erection, extension or alterations of warehouse buildings and provision of hard surfaces for office and warehouse uses.

Conclusion on Appeal A on ground (a)

50. Building A is inappropriate development which is by definition harmful to the Green Belt. The material change of use of the land for purposes ancillary to the uses of Building A are also therefore inappropriate development. The Framework states that inappropriate development should not be approved except in very special circumstances. The other considerations identified do not outweigh the harm I have identified. I therefore conclude that there are no considerations sufficient to outweigh the harm to the Green Belt. There are therefore no very special circumstances to justify Building A or the material change of use of the land. The development conflicts with CS Policies GB1 and GB2, DMP Policies DM11 and DM12 and the guidance in the Framework.

Conclusion on Appeal B

51. Building A is inappropriate development which is by definition harmful to the Green Belt. The material change of use of the land for purposes ancillary to the uses of Building A are also therefore inappropriate development. The Framework states that inappropriate development should not be approved except in very special circumstances. The other considerations identified do not outweigh the harm I have identified. I therefore conclude in relation to Building A that there are no considerations sufficient to outweigh the harm to the Green Belt. There are therefore no very special circumstances to justify Building A or the material change of use of the land. The development conflicts with CS Policies GB1 and GB2, DMP Policies DM11 and DM12 and the guidance in the Framework.
52. Building B is not inappropriate development in the Green Belt and the use of the land for parking ancillary to that use is also not inappropriate. Subject to the imposition of the conditions set out above I find that Building B complies with CS Policies GB1 and GB2 and DMP Policies DM11, DM12 and DM13.

-
53. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

Conclusion on Appeal C

54. Building B is not inappropriate development in the Green Belt and the use of the land for parking ancillary to that use is also not inappropriate. Subject to the imposition of the conditions set out above I find that Building B complies with CS Policies GB1 and GB2 and DMP Policies DM11, DM12 and DM13.
55. For the reasons given above I conclude that the appeal should be allowed and planning permission granted.

Appeal A on ground (f)

56. The purpose of the Notice is to remedy the breach of planning control because Building A is inappropriate development in the Green Belt and contrary to development plan policies and The Framework. A ground (f) appeal is made on the basis that the requirements of the notice are excessive to remedy the breach of planning control. In appealing on ground (f) the appellants must specify specific lesser steps which, in their view, would remedy the breach of planning control.
57. The appellant suggests that the notice could simply require Building A to be modified to comply with the terms of the 2013 planning permission. However, for the reasons previously set out, there is no certainty that the 2013 planning permission remains extant. It would therefore be necessary to re-consider the planning merits of that development which I can only do under ground (a) if it is part of the development alleged. I have already addressed this under ground (a). Accordingly, the requirement to demolish the building is not excessive to remedy the breach of planning control. The appeal on ground (f) fails.

Appeal A on ground (g)

58. This ground of appeal is that the period of compliance is too short. The period for compliance stated in paragraph 5 of the Notice is 12 months but there are other shorter staggered periods of compliance set out in paragraph 4 of the Notice. This is not particularly clear, and I have taken the staggered compliance periods set out in paragraph 5 as suggestions and the compliance period set out in paragraph 6 as 12 months. The overall compliance period is therefore 12 months.
59. The appellant is seeking an extension to the overall compliance period to 15 months. The request for additional compliance time relates to the difficulty of the businesses in finding suitable premises to relocate to.
60. The appellant and the tenants in Building A made clear that they consider that there was a shortage of available and appropriate premises to relocate to. While I am satisfied that there is no demonstrated shortfall in warehousing premises identified within the district, I do consider it is reasonable to allow adequate time for the existing businesses to look for alternative premises.

61. In my view, a period of up to 12 months to look for alternative premises would be likely to support the businesses affected in continuing to thrive. The other remaining requirements would be capable of being carried out in a three month period once the uses had ceased. In my view, an overall compliance period of 15 months would be reasonable. I will therefore vary the requirements to have one compliance period of 15 months. The appeal on ground (g) succeeds to this extent.

Conclusions

Appeal A

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

Appeal B

63. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

Appeal C

64. For the reasons given above I conclude that the appeal should be allowed.

Hilda Higenbottam

Inspector



Plan A

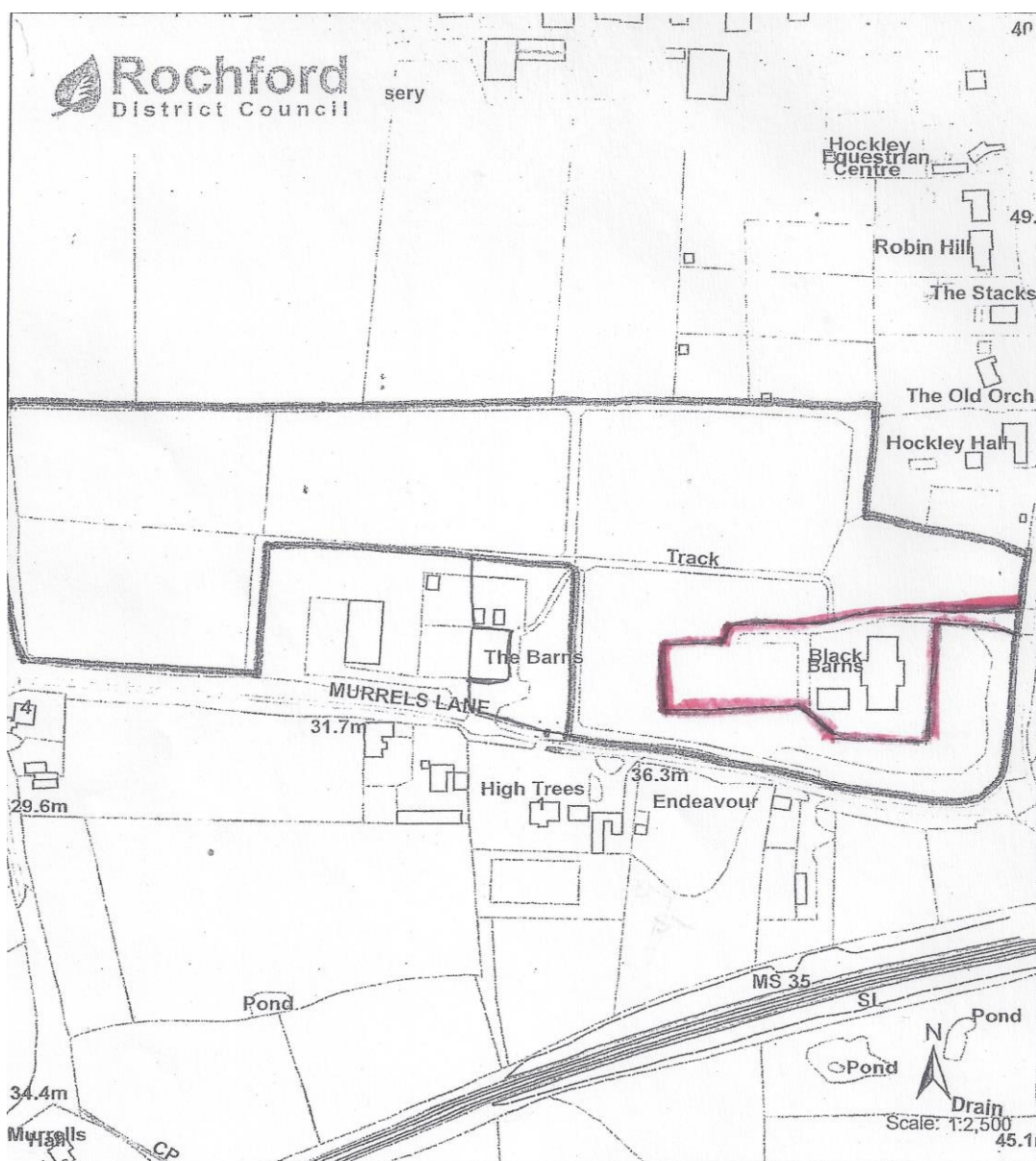
This is the plan referred to in the decision on Appeal A dated: 10 March 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at: Black Barns Church Road, Hockley, Essex SS5 6AE

Reference: APP/B1550/C/18/3198426

Scale: nts



APPEARANCES

FOR THE APPELLANT:

Mr Lowe QC	Instructed by Ms K Kerrigan of Boyers
Ms Kate Kerrigan MRTPI BA	Associate Director Boyer on behalf of the
Hons BSc	appellant
Mr Ray Ricks MRTPI	Consultant to Boyer on behalf of the appellant
Mr Paveley BSc (Hons)	Equine Coach Level 5 BHS consultant on behalf
	of the appellant
Mrs Cripps	Appellant
Mr Cripps	Husband of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Miss Y Dunn MSc Licentiate	Team Leader Planning Enforcement Manager
Member RTPi	Rochford District Council
Mr M Stranks BA (Hons) MRTPI	Team Leader Development Management
	Rochford District Council
Mr D Goodman BSc (Hons)	Senior Strategic Planner Rochford District Council

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

1. Judgement Sage v SETR [2003] UKHL 22 submitted by the appellant.
2. Note on case submitted by the appellant.
3. Letter dated 3 March 2019 from Pills 2 U by appellant.
4. Application form 12/00530/FUL submitted by Council.
5. Plan showing extent of appellants land holding submitted by the appellant.
6. Agreed plan showing redline for revised allegation submitted by both parties.
7. Appeal decision APP/J1915/C/17/3174667
8. Supplementary note submitted by appellant.
9. Emails of agreed conditions from the parties.
10. Emails relating to building regulations for Building A and extracts from relevant documents submitted by the Council.