
Appeal Decisions

Site visit made on 27 May 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 01 July 2020

Appeal A Ref: APP/Y9507/C/19/3236310

Appeal B Ref: APP/Y9507/C/19/3238955

Land at Cams Hill Lane, Hambledon, Hampshire PO7 4RQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr & Mrs S Toms respectively against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice was issued on 13 August 2019.
 - The breach of planning control as alleged in the notice is the material change of use of the land from agricultural use to use for equestrian purposes on the land shown within the redline boundary on the attached plan; the erection of enclosures and the erection of a stable building, including tack room and hay store, shown crosshatched on the attached plan.
 - The requirements of the notice are to:
 1. Cease the use of the land for equestrian purposes.
 2. Demolish the stable block including tack room and hay store.
 3. Remove all enclosures.
 4. Remove all resultant demolition waste material from the land.
 5. Reinststate the land to its former condition.
 - The period for compliance with the requirements is stated as three calendar months for steps 1-3 above.
 - Appeal A 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.
 - Appeal B is proceeding on grounds (b), (c), (f) and (g) only.
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Decisions

1. It is directed that the enforcement notice be corrected by the deletion of the words 'the erection of enclosures' from both the description of the breach of planning control alleged and the third requirement ('remove all enclosures').
2. Subject to these corrections the appeals are allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the material change of use of the land from agricultural use to use for equestrian purposes and the erection of a stable building, subject to the following condition:-
 - 1) The equestrian use hereby permitted shall be restricted to the keeping of horses for private recreational use of the land only and shall not at any time be used by any other form of equestrian activity such as for any livery, commercial riding, breeding or training purposes.

Application for costs

3. An application for costs was made by Mr & Mrs S Toms against South Downs National Park Authority. This application is the subject of a separate Decision.

Reasons

Ground (b)

4. This ground is that those matters alleged in the notice have not occurred. The onus is upon the appellants to demonstrate, on the balance of probability, that the matters alleged in the notice have not occurred as a matter of fact.
5. The appellants argue that there has been no material change in the use of the land, a 1.2 hectare grass field, from agriculture to use for equestrian purposes. Agriculture is defined in S336 of the Town and Country Planning Act 1990 (the Act) and includes the use of land as grazing land.
6. The appellants' case turns on the purpose for which the horses are kept. The appellants explain that there are only two horses on the site which graze the field and use two of the stables essentially as a field shelter; they are not ridden.
7. I do not accept that the building could be described simply as a field shelter. It contains sub-divided areas with doors capable of being shut to manage the access to and from them by the horses rather than simply a building designed to function as nothing more than a shelter that is freely accessible at all times and serves no other purpose. It is of a size that would appear to have a wider function. This to my mind, makes it more probable that the land is associated with the keeping of horses rather than for agricultural purposes.
8. Whilst the appellants explain that the horses currently kept at the field do not need additional supplementary feed, that alone is not determinative of an agriculture use. The fact that horses on the site graze the land is not sufficient to demonstrate an agricultural use. The evidence suggests the horses are essentially the owners' pets and cared for as such. Furthermore, the appellants have conceded that there were previously another two horses on the site that were ridden for recreational purposes before being moved to a livery yard clearly demonstrating, on the balance of probability, that the recreational keeping of horses has occurred.
9. The field was subdivided by plastic fence poles linked by green web cord into four separate areas such that its use is clearly apparent for the keeping of horses, irrespective of the fact that the horses graze the land. I conclude from this and for the above reasons that there has been a material change use of the field from agriculture to its use for equestrian purposes.
10. Based on the evidence before me, the appellants have not demonstrated, on the balance of probability that the appeal site has not been used for any equestrian purposes. The appeal on ground (b) fails.

Ground (c)

11. This ground is that the matters stated in the notice do not constitute a breach of planning control. Again, the onus is upon the appellants to demonstrate that the matters alleged do not constitute a breach of planning control, the relevant test being on the balance of probability.

12. The appellants claim that the plastic fence poles linked by the green web cord are easily moveable and not permanent boundary features. There are no other enclosures located on the site and so the reference to the erection of enclosures and their removal must refer to the web-linked plastic fence poles. They are moved to allow rotational grazing of the field. As such it is argued that they do not constitute development requiring planning permission.
13. S55 of the Act sets out the meaning of 'development': the carrying out of building, engineering, mining or other operations in, on over or under land, or the making of any material change in the use of any buildings or other land. Well established case law has established three principles for determining if something is a 'building' – size, degree of permanence and physical attachment.
14. The web-linked plastic poles give the field a clear appearance of equestrian use. But I agree they are easily capable of being moved by hand on a frequent basis and it seems likely that the field divisions I saw during my visit could and probably have been regularly changed. I agree with the appellants that they are not boundary features permanently fixed to the ground and that in themselves do not constitute a building and are not therefore development.
15. For these reasons ground (c) succeeds. Consequently, I consider that the notice should be corrected by removing reference to the erection of enclosures and their removal from the site, as set out above.

Ground (a)

16. This ground is that planning permission ought to be granted for the matters stated in the notice.
17. The appellant points out that the planning appeal against the Council's refusal of planning permission for the stable building (the S78 appeal), submitted at the same time as this appeal, has been allowed and so the stable building itself is now lawful.¹ That is correct since the grant of planning permission means that the notice will now cease to have effect in so far as it is inconsistent with the planning permission granted.
18. That decision clearly stated that it did not prejudice the Council in relation to any alleged material change of use of the field. However, it is reasonable to expect that a building containing four stables will necessarily need a turning out area for the horses.
19. The appeal decision concluded that there was no harm from the stable block to the character or appearance of the area, including the landscape of the South Down National Park. It also concluded that it does not result in any unacceptable impact on highway safety with specific regard to visibility of the access. I have no reason to disagree with these conclusions.
20. The field, as well as the stable block, is well screened by high mature hedges and there are minimal views into it from the road and nearby public footpaths. Although there may be glimpsed views into it during the winter, such views would do no more than offer views of horses and the temporary subdivision of the field as set out above. This would be no worse than glimpsed views of the stable block itself, which the S78 appeal decision decided was acceptable. In

¹ APP/Y9507/W/19/3236309 (LPA Ref: SDNP/18/05450/FUL) – Appeal allowed 27 January 2020

any case, several nearby fields in the vicinity exhibit similar equestrian uses, none of which harm the character or appearance of the area.

21. For these reasons the appeal on ground (a) succeeds. Planning permission is granted for the material change of use of the field for equestrian purposes. The notice is therefore quashed.
22. The Council suggests five conditions that should be attached to any planning permission for the development. The Inspector did not consider any of these were necessary. I agree with him that those conditions that seek details of any future lighting, any new operational development, details of horse manure/stable waste storage and further details of surface water drainage on the site are unnecessary for the reasons he states in his decision.
23. However, he made clear that he was only dealing with the stable building as operational development and did not pre-judge whether there had been a material change of use of the site from agriculture to use for equestrian purposes. I make clear that such a material change of use has occurred. Whilst the use of the site for the keeping of horses for private recreational use would be acceptable, its use for any commercial livery, riding school, breeding or training purposes would not, owing to its location and the restricted access to it. However, I do not see why the keeping of horses for private recreational use have to be owned by the appellants, provided no livery use is permitted. I therefore attach the condition listed in the decision above.

Conclusion

24. For the reasons given above I conclude that, subject to the necessary condition set out above, Appeal A succeeds on ground (a) and planning permission is hereby granted. The appeals on grounds (f) and (g) do not therefore need to be considered.

Nick Fagan

INSPECTOR