



Appeal Decision

Site visit made on 14 July 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2020

Appeal Ref: APP/P0119/C/20/3245878

**Land adjacent to the River Boyd, Newpit Lane, Golden Valley, Bitton
BS30 6NT**

- 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 B Andrews against an enforcement notice issued by South Gloucestershire Council.
- The enforcement notice was issued on 9 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of land from agriculture to a mixed use of agriculture and equestrian use, including associated operational development consisting of the construction of a riding arena and a hard surfaced roadway, and the erection of fencing.
- The requirements of the notice are: (i) Cease the equestrian use of the land. (ii) Remove from the land gates, gate posts and fencing erected and marking out the nine paddocks. (iii) Remove the roadway servicing the nine paddocks and reinstate the land to its former all grass condition. (iv) Remove the materials making up the riding arena. (v) Remove the steel storage container from the land. (vi) Remove all non-agricultural vehicles from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Background

1. The appeal site consists of two relatively large fields with stables, a tack room and a feed store located adjacent to the eastern boundary. A riding arena is sited close to the stables, with a steel storage container stationed nearby. Timber post and rail fences with associated gates have been erected to subdivide the field nearer the stables into nine paddocks. An access track has also been formed between the paddocks, leading from a pre-existing driveway.

Ground (c) appeal

2. The enforcement notice is clearly directed at a material change of use of the site. The notice is headed "material change of use" and refers to ten years, which is the appropriate time limit set out under s171B of the Act for taking enforcement action against such development. Whilst the description of the alleged breach refers to associated operational development, it is not directed at this separately, but rather only in the context of being *associated* with a change of use. It is well-established in case law that a notice directed at a material change of use can require the removal of all works, including

operational development undertaken integral to and solely for the purposes of facilitating that change of use, even where such works would, if undertaken separately, be permitted development or not involve development¹. The appellant's argument under ground (c) that the fences do not constitute a breach of planning control is therefore misplaced. For an appeal to succeed on ground (c), the onus is upon the appellant to demonstrate, on the balance of probability that, the alleged change of use of the site would not be development (i.e. it does not constitute a material change of use) or that it is development not requiring planning permission. It is the former that is argued.

3. Part of the appellant's case is that the site has been in equestrian use for in excess of ten years. There are two associated points here; firstly that the mixed use alleged has not occurred, but rather only an equestrian use, a matter appropriately argued under ground (b) and, assuming that were the case, that the use of the site solely for equestrian purposes has occurred for a continuous period of ten years or more prior to the issue of the notice, a matter appropriately advanced under ground (d). Whilst the appellant's case focuses on an equestrian use albeit making comparisons to agriculture, it doesn't challenge the accuracy of the allegation describing the breach as a mixed use. I need not therefore consider these points further.
4. The appellant sought to argue that the grazing of horses and ponies amounts to agriculture. In some circumstances, the grazing of horses and ponies is integral to the keeping of horses for outdoor recreation (equestrian use). Alternatively, it may be that the purpose of allowing the horses to graze is for agriculture only. In this case, it would appear by reason of all the associated facilities such as stables, the need to manage the access to the grazing and a riding arena that there is, more likely than not, an element of keeping horses for leisure purposes. In any event, whether the ponies are kept for agriculture or equestrian use is academic since the notice refers to a mixed use for agriculture and equestrian purposes.
5. A mixed agricultural and equestrian use is of a materially different character to a use where agriculture is the primary activity. Due to the presence of associated facilities including, as in this case, stables, storage, a riding arena together with fences for managing access to the grazing, as well as the likely activities and comings and goings involved, an equestrian use has materially different characteristics and impacts compared to an agricultural use. Therefore, there has been a material change in the use of the site to a mixed use including for equestrian purposes. This has involved development as defined in s55 (1) of the Act, for which planning permission is required by virtue of s57 (1) of that Act. As far as I was made aware, no grant of express planning permission authorised the material change of use.
6. Accordingly, I conclude on the evidence before me and on the balance of probability that the material change of use alleged constitutes a breach of planning control and the ground (c) appeal fails.

¹ *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630.

Ground (a) appeal

Main Issues

7. As the site is in the Bristol and Bath Green Belt, the main issues in this ground of appeal are:
 - Whether the development is inappropriate, having regard to the effect on the openness and purposes of the Green Belt, the National Planning Policy Framework (the Framework) and the Development Plan.
 - The effect on the character and appearance of the countryside.

Reasons

Whether inappropriate development; effect on Green Belt openness and purposes

8. According to the Framework paragraph 146, a material change of use of land for the purposes of outdoor sport or recreation is not inappropriate development, provided the openness of the Green Belt is preserved and there is no conflict with the purposes of including land within it. At paragraph 145, similar considerations apply to providing appropriate facilities for outdoor sport or recreation. South Gloucestershire Local Plan: Core Strategy (CS) Policies CS5 and CS34 and South Gloucestershire Local Plan: Policies, Sites and Places Plan (PSP) Policy PSP7 are all consistent with the Framework. Equestrian use could reasonably be regarded as an outdoor recreational activity. It is the development associated with such use that the Council consider fails to preserve the openness of the Green Belt.
9. The paddock fences are of limited height. The upright posts and railings have slender profiles, with substantial gaps between the horizontal and vertical members. As a result, the fences are very modest built features which individually and cumulatively have a minimal effect in terms of enclosing the field or adversely affecting its openness. Also, due to the above factors, the fences appear as lightweight, visually permeable features. Accordingly, the fences have a limited visual presence in their surroundings, which is further diminished by their muted colouring and natural finish consistent with the rural background. The effects of weathering will assist in further assimilating the fences into the countryside setting over time. Moreover, the fences are not untypical of those found elsewhere on the site and in the surrounding area, including in agricultural and recreational contexts, as well as in countryside locations more generally.
10. The track extends a considerable distance into the field. When the track was constructed a grassy, open part of the field was lost to a lengthy hard surface with an engineered appearance. However, since the notice was issued, the track has been covered with topsoil and grass has been allowed to grow over its surface, which is roughly level with the surface of the adjacent land. Two soil covered ruts made by the passage of vehicles are now the only obvious evidence of the track's existence. The above works have therefore successfully assimilated the formerly hard surface into the field and have significantly reduced the visual presence of the track in its surroundings such that it no longer appears as an engineered feature.
11. I am given to understand that the arena was formed over a pre-existing hard surface. As a result, forming the arena involved no appreciable increase in the

portion of the site occupied by man-made features. The arena occupies a reasonably discreet siting adjacent to mature boundary planting. In any event, the visual impact of the arena is unlikely to be greater than that of parked vehicles such as horse boxes together with storage on the pre-existing hard surface. Consequently, the fences, track and arena have not adversely affected openness and they do not conflict with any of the Green Belt purposes set out in the Framework at paragraph 134.

12. Stationing a container has resulted in a relatively small, additional part of the site being enclosed by and adjacent to, a man-made feature. However, it is not unreasonable to assume that in the absence of the container, plant and equipment used on the site would be stored externally, with a correspondingly greater effect on openness. Moreover, the container could be repositioned to a more secluded location closer to the stables and adjacent to boundary trees, thereby reducing its visual impact. Repainting the container dark green would also give it a muted colouring more consistent with the naturalistic surroundings and would therefore promote its further assimilation into the countryside setting. Therefore, with the above caveats, the container has no adverse effect on openness and does not conflict with the Green Belt purposes.
13. Drawing the above matters together, the equestrian use with its associated fences, track, arena and container has resulted in little appreciable physical change and has not had an adverse effect on openness, the site's open characteristics having been preserved. Also, as there has been no encroachment into the countryside, the use does not conflict with any of the Green Belt purposes. It is not unreasonable to regard the fences, track, arena and container as facilities appropriate to the equestrian use. Therefore, the development is not inappropriate in the Green Belt, it is consistent with the Framework and there is no failure to accord with criteria in Policies CS5 and CS34 and criterion in Policy PSP7.

Character and appearance of the countryside

14. The site occupies an open countryside setting which forms part of the east-facing slopes of the Golden Valley Landscape Character Area (LCA 11) in the Council's Landscape Strategy (LS). Significant erosion of the landscape character in Golden Valley as a result of the proliferation of horse-keep activities and uses is identified in the LS. Resisting further such development that impacts on the LCA and avoidance of fencing and lighting eroding landscape character is therefore sought by the LS.
15. The site is located on the valley slopes and is largely surrounded by maturing trees and hedge boundaries. As a result, although the landform rises steeply away from the river, the lower parts of the site in particular occupy a reasonably secluded location in relation to the surrounding countryside.
16. Having regard to the modest scale, reasonably discreet siting and sympathetic treatments, the fences, track and arena have had a limited visual impact on the immediate and wider surroundings, comparing favourably with similar development at other equestrian holdings in the locality. The visual impact of the container can be mitigated, as set out above. Consequently, the above features do not appear alien in the surrounding countryside, they have not eroded the site's rural qualities or given it a more built-up appearance. Moreover, equestrian use is generally an accepted activity in a countryside setting. As noted above, adjoining holdings together with other land in the

wider surroundings are in equestrian use. Accordingly, the equestrian use of the site does not appear alien in its surroundings.

17. Therefore, the development has conserved the character and appearance of the surrounding countryside, there is no inconsistency with the LS objectives and it accords with criterion in Policy CS5, being commensurate with the locality in terms of form, character and landscape. The development also accords with criteria in Policy CS9, because the natural environment is conserved as is the character, quality, distinctiveness and amenity of the landscape. Furthermore, the development accords with criteria in Policy CS34, as the rural area's distinctive character and landscape and the setting provided by that area are protected. By conserving the quality, amenity, distinctiveness and special character of the landscape set out in the LCA, the development accords with Policy PSP2. The development also accords with criterion in Policy PSP30, as there has been proper regard to preserving the landscape. Moreover, by conserving the natural environment the development is consistent with the Framework.

Conclusion on ground (a)

18. The development is not inappropriate in the Green Belt, as there has been no adverse effect on the openness of the Green Belt or conflict with its purposes. Also, the character and appearance of the countryside has been conserved. The development is therefore consistent with the Framework and accords with the Development Plan.

Conditions

19. I have imposed a condition requiring the submission of a scheme for repositioning and repainting the container, together with a scheme for restricting external lighting at the site, including any existing lighting. The condition is necessary to safeguard the openness of the Green Belt and the character and appearance of the surrounding countryside. The condition is drafted in the form set out below because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the above schemes, because the development has already taken place. The purpose and effect of the condition is therefore to ensure that any external lighting and the container may only remain if the appellant complies with its requirements.
20. For similar reasons, I have imposed a condition requiring the topsoil and grass surface of the track to be maintained, alongside conditions limiting the equestrian use to private recreation and restricting the keeping of more than one horse transporter on the site. Additionally, after seeking the views of both main parties, a condition has been imposed preventing horse jumps from being permanently left in situ outside the arena. This condition is necessary to safeguard the character and appearance of the countryside.
21. However, I have not imposed a condition requiring the submission and approval of a landscaping scheme. Having regard to the existing maturing boundary treatments, further planting is unnecessary. Similarly, as the track has already been satisfactorily surfaced it is not necessary to require the approval of such details. Nor have I imposed a condition removing permitted development rights to erect further gates, fences, walls and other means of

enclosure. The Framework paragraph 53 advises that such conditions should not be used unless there is clear justification to do so. Given my findings on the main issues, I am not persuaded that a condition is reasonable or necessary in this case.

Conclusion

22. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

Formal Decision

23. The appeal is allowed, the enforcement notice is quashed and 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 change of use of land from agriculture to a mixed use of agriculture and equestrian use, including associated operational development consisting of the construction of a riding arena and a hard surfaced roadway and the erection of fencing on land adjacent to the River Boyd, Newpit Lane, Golden Valley, Bitton BS30 6NT referred to in the notice, subject to the conditions in the Schedule attached to this Decision.

Stephen Hawkins

INSPECTOR

SCHEDULE OF CONDITIONS

1) Unless within three months of the date of this decision schemes for:

- a) Repositioning and repainting the container, and;
- b) Restricting any external lighting, including the details of any existing lighting;

are submitted in writing to the Local Planning Authority for approval, and unless the approved schemes are implemented within three months of the Local Planning Authority's approval, the container and any external lighting shall be removed together with any associated demolition materials until such time as the schemes are approved and implemented; and

If no schemes in accordance with this condition are approved within six months of the date of this decision, the container and any external lighting shall be removed together with any associated demolition materials until such time as schemes approved by the Local Planning Authority are implemented.

Upon implementation of the approved schemes specified in this condition, the container and any external lighting shall be maintained in accordance with the approved details and no other external lighting shall be installed.

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.

- 2) The topsoil and grass surface treatment of the roadway hereby permitted shall be maintained in perpetuity.
- 3) The equestrian use hereby permitted shall be for private recreation only; the site shall not be used for livery purposes or as a riding school.
- 4) No more than one horse transporter shall be kept at the site.
- 5) Outside of the riding arena hereby permitted, any horse jumps shall be dismantled and stored within a building when not used for any continuous period of greater than 7 days.