



Appeal Decision

Site visit made on 21 July 2020

by C Sherratt DipURP MRTPI

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

Decision date: 18 November 2020

Appeal Ref: APP/R0660/C/19/3237523

Land at Little Island Livery, Haymoor Green Road, Wynbunbury, CW5 7HG

- 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 Graham Heath against an enforcement notice issued by Cheshire East Council.
 - The enforcement notice was issued on 21 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection and retention of a timber outbuilding and raised timber decked area for use as Groomsman Accommodation shown in its approximate position edged green on the attached to the notice marked "Plan B".
 - The requirements of the notice are to:
 - a) Cease the use of the timber outbuilding for residential accommodation and associated equestrian uses;
 - b) Remove from the site the timber outbuilding and associated raised decked area serving the building shown in the approximate position edged in green on the attached plan marked "Plan B";
 - c) Remove from the site the base the timber outbuilding and decked area rests upon;
 - d) Remove from the site all associated service connections to the building (e.g. electric, gas, water, sewage, telephone, satellite or cable) from the land;
 - e) Remove all resultant materials arising from b), c) and d) above from the land edged red on the plan marked "Plan A";
 - f) Reinstate the area of land shown in the approximate position hatched black on the attached plan marked "Plan B" arising from compliance with b) and c) in topsoil and reseed with grass seed;
 - g) Reinstate the area of land shown in the approximate position hatched red on the attached plan marked "Plan B" arising from compliance with b) and c) and leave on bare ground;
 - h) Erect a boundary fence at a height of between 1 to 2 metres between points "A" and "B" shown on the attached "Plan B".
 - The period for compliance with each of the requirements is:
 - a) 3 weeks;
 - b) 3 months;
 - c) 3 months;
 - d) 4 months;
 - e) 4 months
 - f) 4 months;
 - g) 4 months;
 - h) 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (d) of the Town and Country Planning Act 1990 as amended.
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The Notice

1. The Enforcement Notice is headed 'operational development'. However, the description of the alleged breach refers to both the building as 'an outbuilding' and its 'retention for use as Groomsman Accommodation', implying a change of use. The parties have clearly understood the Enforcement Notice to be directed at the erection of a building for Groomsman Accommodation and raised timber deck with no intervening use of the building that might be inferred by the description. That being the case, I consider that the description of the alleged breach can be clarified to read "the erection of timber building and raised timber deck area for use as Groomsman Accommodation" without causing injustice to the parties. Consequential corrections will also be required to those requirements that refer to an 'outbuilding'.
2. I note that instead of repeating the term 'Groomsman accommodation' in requirement (a), it requires the 'residential and associated equestrian use' to cease. Whilst that may be the Council's understanding of what Groomsman accommodation is, for clarity, I shall vary requirement (a) to require the use of the building as groomsman accommodation to cease to accurately reflect the wording of the allegation. This will not cause injustice since the effect of the notice is to remove the building and timber deck in any event.
3. I shall determine the appeal on this basis.

Decision

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

- the deletion of the words "and retention", and the replacement of the word "outbuilding" with "building" in the description of the alleged breach of planning control;

and varied by:

- the deletion of requirement (a) and its replacement with "Cease the use of the building as Groomsman accommodation";
- the replacement of the word "outbuilding" with "building" in requirements (c) and (d).

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.

Reasons

Ground (b)

5. For the appeal to succeed on ground (b) the onus is upon the appellant to demonstrate that, on the balance of probability, the development alleged has not occurred. The case being advanced is that the appeal development has been used for a mixture of uses including groomsman accommodation and a viewing platform for customers associated with the business. However, no substantive evidence is submitted to support this. In any event, the notice is directed at the operational development, that being the erection of the building and decking. There is no dispute that this has occurred. Based on the

evidence before me, it seems that the primary purpose for which the building was erected is, on the balance of probability, correctly recorded in the alleged breach as 'groomsman accommodation'.

6. The appeal on ground (b) fails.

Ground (d)

7. For the appeal to succeed on this ground, again the onus is upon the appellant to demonstrate, on the balance of probability, that the building was substantially completed four years or more prior to the issue of the enforcement notice (i.e. 21 August 2015) such that it is too late to take enforcement action against the operational development.
8. The appellant's case is that the building and decking was substantially completed before 21 August 2015. In support, the appellant has provided photographic evidence dated 14 August 2015 and an invoice for the chalet. However, the photo only shows one elevation. No window is in place in that elevation. The building still appears only partially complete. The invoice, dated 6 July 2015, offers no indication of when it was substantially complete.
9. Crucially, this evidence also conflicts with the response of the appellant to the Planning Contravention Notice (PCN) dated 4 April 2017. In response to question 4.5 which asked for the date when the building was substantially complete, the response received stated "date of completion of erection of building – completion November 2015". Failure to respond to a PCN or to provide false or misleading information is an offence and liable on summary conviction to a fine. It is therefore a document to which I afford great weight. It is given further credence as it is also consistent with the application forms that accompanied the appellant's retrospective planning application for the 'retention of outbuilding for use as Groomsman accommodation and associated equestrian uses' dated 16th June 2017, which stated in response to question 3 on these forms, that the date that the building work was completed was on 1 November 2015.
10. Based on the evidence before me, it is considered more probable than not, that the building was not substantially complete before 21 August 2015. Accordingly, it was not too late for the Council to take enforcement action. The appeal on ground (d) fails.

Ground (a)

11. The main issues are (a) whether additional Groomsman accommodation is justified in a countryside location, outside of a settlement boundary; and (b) the effect of the development on the character and appearance of the area, by reason of scale.
12. The appeal site is situated within the open countryside, outside of any defined settlement boundary as defined in the Cheshire East Local Plan Strategy (CELPS). Policy PG6 is of particular relevance and seeks to preserve the countryside. Only development that is essential for specific purposes including outdoor recreation, or for uses appropriate to a rural area, will be permitted. Exceptions include development that is essential to the expansion or redevelopment of an existing business. Saved Policy RES.5 of the Crewe and Nantwich Replacement Local Plan sets out that housing in the open countryside will only be permitted where it meets a number of defined purposes. One of

- these stated purposes is for persons engaged full time in agriculture, forestry or other rural enterprises.
13. Paragraph 28 of the National Planning Policy Framework (the Framework) promotes a positive approach to sustainable new development in rural areas. Paragraph 55 states that LPA's should avoid new isolated homes in the countryside unless there are special circumstances. One of these is the essential need for a rural worker to live permanently at or near their place of work. The relevant development plan policies are generally consistent with the framework.
 14. The use of the site as a livery / show jumping yard is lawful and compatible with the types of uses supported by policies in rural areas. However, the erection of residential accommodation is not generally supported unless essential to the rural business. An Equine Need Appraisal, dated March 2020, accompanies the appeal. It confirms that the two-bed accommodation has the capacity to accommodate two members of staff (Key Workers).
 15. The land identified on Plan A attached to the notice comprises a dwellinghouse that is the subject of an equine occupancy condition (previously an agricultural occupancy condition) together with an equine livery business. The Provision of a 60 x 30m menage and 60 x 12m stable block, a muck midden, hay store and horse walker together with the variation of the occupancy condition to include an Equestrian Manager was allowed on appeal on 15 August 2011. Since then, planning permission was granted in 2014 for the change of use of part of an existing garage to accommodation for one Groomsman, being a studio type apartment.
 16. The development that is the subject of this appeal is for additional Groomsman accommodation. The building is two-storey with the first floor accommodated in the roof space. It provides all the facilities for day-to-day living. This would be in addition to the Equestrian Manager's dwelling and Groomsman Accommodation granted in 2014.
 17. The appellant explains that the business has now advanced in terms of the number and quality of horses at the livery and as such the business has now expanded to a point whereby there is a requirement for another groomsman to reside on a full-time basis. The focus of the business has shifted from livery to high-end show jumper training. There is an increased number of horses from a rolling stock of up to 25¹; these being at an elite competition level. I understand that the horses are entirely elite level standard, and unlike a general 'leisure' livery, such horses retail at a significantly higher level and therefore require a higher degree of care and exercising than would be the case for 'leisure' horses generally.
 18. Little Island livery extends to around 9 acres and is used solely for equestrian purposes except for the family home. The main function of the yard is to enable the appellant's family to fulfil their ambition to show-jump competitively and successfully at both National and International levels. It is explained that the yard usually operates at full capacity, which is 25 horses, all housed in the main American style barn. Further to this, there are also loose pens in an open fronted shed used for young stock until the land is in a suitable condition where

¹ I have taken the figure to be 25 as set out in the Appellant's statement, despite a reference to 20 in other documentation provided.

- they may be turned out. In addition, there are two quarantine stables which are adjacent to the appeal building. The quarantine stables are used for new horses which come into the yard until they are proven to be clear from disease or horses with an infectious disease, needing to be separated.
19. Having carefully considered the needs appraisal, I appreciate that there will be occasions when both the appellant and his family are away with his daughters when competing and thus the Equestrian Manager is absent. One (or sometimes two) groomsmen will also be required to attend the events to provide care and support throughout. The appellant therefore seeks to provide on-site accommodation for two additional groomsmen (i.e. three in total) in order to take on the additional responsibilities at the site.
 20. The labour requirements of the business are calculated to be 5.7 persons. Currently there are two full time members of staff employed and some casual workers on occasion. The appellant, his wife and two daughters work alongside the employees to make up the shortfall. As the yard has evolved into an elite training facility and the numbers of horses have increased as well as the level at which they compete, the requirement for extra staff has, the appraisal states, also increased.
 21. Key workers are generally understood to be those required to live on the holding within close proximity (sight and sound) of livestock buildings. I do not doubt that the business requires a number of staff to do all the day-to-day activities associated with the keeping and training of the horses. However, many of the activities listed as necessary to care for the horses are routine and can be carried out during a normal working day without the need for an overnight stay by others in addition to the equine manager and groomsmen already living on site. I do not therefore accept that there is any functional need for additional key workers to live on site to carry out these day-to-day tasks. When not away competing, the equine manager and other family members who live on site, in addition to a groomsmen, are clearly knowledgeable and capable of dealing with routine evening checks and requirements and any emergencies that may occur.
 22. The appellant explains that by providing residential accommodation immediately adjacent to the two quarantine stables, that any potential health issues that occur during the night can be quickly resolved. The proximity of the equine managers property to these stables, is barely any greater distance than the unauthorised accommodation, and so also sufficiently close for regular checks to be carried out at no materially greater inconvenience or loss of time than would be the case from the unauthorised building. I am not aware of any reason why technology could not be provided as a further means of visibility and alert. Similarly, the existing residential accommodation already improves natural surveillance which will serve to reduce the risk of crime. This is not a situation where there would, should the appeal fail, be no residential presence on site.
 23. It seems to me, that a potential lack of immediate and overnight care would only be apparent when the family are away travelling together and also accompanied by the groomsmen already living on site. I note that it is argued that there is no suitable and available living accommodation in the surrounding area which is affordable for their staff to live nearby, and the existing public

transport network is not sufficiently reliable enough to enable them to commute to and from the site.

24. However, to my mind, the fact that one (or two) Groomsman are required to travel with the family does not justify an additional permanent residential accommodation, only to effectively provide cover in their absence; this is a temporary situation. A Groomsman travelling away to competitions with the family need not live on the site to do that particular role. Alternatively, if the resident groomsmen is travelling away, the existing groomsmen accommodation would be available and temporary arrangements for cover could be made. Based on the evidence before me, I am not therefore satisfied that there is a need for any further residential accommodation of a permanent nature. The development therefore conflicts with relevant policies of the development plan that resist new residential development in open countryside, outside settlement boundaries.

Character and appearance

25. The Council's concern relates to the scale of the building rather than the design of the building itself. Policy RES.5 states that when considering residential accommodation that is essential for a rural need that the scheme should be "sited within a nearby group of existing dwellings or a farm/building complex" and should be "of a form, bulk, design and materials which reflect the locality's rural character and the needs of the enterprise". In wider design terms, Policy SE1 requires all development to be of a high standard, to conserve or enhance the character of the surrounding area and to maintain environmental quality. This policy requires proposals to be acceptable in terms of design and landscaping.
26. Had I found a rural need, then I accept that the building is situated within the established complex of buildings and is therefore read in this context. Furthermore, the western boundary of the site is presently bounded by a mature hedgerow which provides an active screen of the building to a point around the eaves height. As a consequence, only limited views of the building can be had from public vantage points and it therefore has only a limited impact upon the countryside by reason of scale. I do not therefore find it causes unacceptable harm to the character and appearance of the area.

Other Matters

27. The appellant has referred to policy that supports economic growth in rural areas including paragraph 83 of the Framework. I acknowledge that the business is clearly thriving and supporting a number of jobs. However, the implications of this appeal being dismissed would simply be to not authorise further permanent living accommodation on site. The business would continue to support jobs. I afford this little weight in the context of this particular proposal.
28. I also note that when the appellant purchased Little Island Livery (prior to it being used as a livery), the property was in a very untidy state, littered with dilapidated buildings, open storage and extensive glass houses. The appellant explains that the current livery operation at the site has resulted in a scheme which has significantly improved the character of this part of the countryside, and the appeal building has continued in this vein. However, there is no evidence to suggest that the business will be unable to continue without further

groomsman accommodation being provided or that the site is likely to fall into a dilapidated state. I afford this little weight.

29. To conclude, I find conflict with the relevant policies in the development plan that direct the location of residential development. These considerations would not be outweighed by the lack of harm to the character and appearance of the surrounding area or any other considerations. I find conflict with the development plan overall.

Overall conclusions

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

C. Sherratt

Inspector