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## Appeal Decision

Site visit made on 12 January 2021

**by K Stephens BSc (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 January 2021**

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**Appeal Ref: APP/P0240/C/20/3259045**

**Land at Brodie Stables, The Rye, Eaton Bray, Dunstable LU6 2BQ**

- 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 Sean Banks against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice was issued on 3 September 2020.
- The breach of planning control as alleged in the notice is: *Without planning permission the erection of a timber building and the creation of a hardstanding.*
- The requirements of the notice are:
  1. To remove the timber building from the land.
  2. To remove the hardstanding area from the land.
  3. To restore the land to its former condition.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary: The appeal is dismissed and the enforcement notice upheld.**

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### Background

1. The appeal site comprises two timber horse stables, a manège and a timber building (the subject of this enforcement appeal). The site lies in open countryside within the South Bedfordshire Green Belt.
2. The stable buildings and use of land for the keeping of horses were granted a certificate of lawfulness in October 2017. The retention of the manège was later approved by the Council in February 2018. There have since been two planning applications seeking to retain the timber building as a dwelling for an equestrian worker. The latter planning application was dismissed on appeal<sup>1</sup> following a Hearing. Whilst dismissing for issues relating to Green Belt, that Inspector found there was an essential need for an on-site dwelling for a professional equine worker.
3. The appellant has engaged in pre-application advice with the Council. In its reply dated 9 October 2020, the Council have indicated that a reduced sized timber building may be acceptable and possible conversion of part of the existing stables into a dwelling for a rural worker.
4. In November 2020 the appellant submitted a new planning application<sup>2</sup> (the 'new application') for the 'change of use of existing stable block to form 1

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<sup>1</sup> APP/P0240/W/19/3229914 dated 1 June 2020

<sup>2</sup> CB/20/04068/FULL

bedroom dwelling for occupation by essential worker concerned with the care of horses on the site; external changes and reduction in size of unauthorised building C to 45 square metres'. The application is awaiting determination. I note that 'building C' is the timber building the subject of the enforcement notice and this appeal.

### **The Appeal on Ground (f)**

5. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control or injury to amenity, which has been caused by any such breach, as the case may be.
6. The notice requires that the timber building and hardstanding area are removed from the land, and then the land is restored to its former condition. Therefore the purpose of the notice is to remedy the alleged breach.
7. The appeal on ground (f) could only succeed if the appellant can show that the requirements of the notice are excessive to remedy the breach and 'lesser steps' would achieve the same end. The appellant suggests that a lesser step would be the partial demolition of the timber building and retention of the adjacent hardstanding area.
8. Following the dismissal of the planning appeal the appellant has decided not to appeal on ground (a) - that planning permission ought to be granted for the matters alleged in the notice - mindful that the Council may have applied for costs had he done so.
9. But without a ground (a) appeal and no deemed planning application to consider, under a ground (f) appeal there is no scope for me to consider any matters of planning merit relating to the alleged breach, or the merits of an alternative scheme, such as a smaller timber building.
10. The appellant has submitted a new application that would involve reducing the size of the timber building. However, in the new application it is not clear what the appellant proposes for the area of hardstanding - the plans in the appellant's Appendix 4.3 show a curtilage area and a parking space but that does not include the remaining area outlined in red on the enforcement notice. Nonetheless, the application has not yet been determined by the Council and hence there is no guarantee that planning permission will be granted. Consequently, the new application awaiting determination cannot be a realistic 'fallback' position that would present an obvious alternative relating to the 'whole or part' of the alleged breach that I would be able to consider under a ground (f) appeal.
11. Without a ground (a) appeal, reducing the size of the timber shed and leaving the hardstanding would not result in their removal as the enforcement notice requires. As such, the appellant's suggestion would not remedy the breach and hence would not achieve the same end. Therefore, it is not a 'lesser step'.
12. Consequently, the requirements of the notice are not excessive in order to remedy the breach. The ground (f) appeal must fail.

### **The Appeal on Ground (g)**

13. An appeal on ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The notice requires the timber building and hardstanding area to be removed and the land restored to its former condition, all within 3 months.
14. The appellant initially considered 6 months a more appropriate time period, taking into account the aforementioned planning appeal, the need to discuss options with the Council for reducing the size of the timber building, and then submitting a new planning application
15. However, in his statement of case, following the submission of the new planning application in November 2020, he now considers 6 months may not be enough time. If the application is approved, he would still require time to convert the stables into habitable accommodation and to reduce the size of the timber building. He therefore suggests a compliance period of 6 months from the final determination of the planning application. And if the new application is refused, a two-month period following refusal to submit a planning appeal.
17. Once again, as there is no ground (a) appeal there is no scope for me to take account of any matters of planning merit, including any alternative scheme. In this case, the only reason for appealing ground (g) is to gain more time to comply with the notice in the hope that the alleged development can be modified in some form and eventually be granted planning permission.
18. The test is whether the compliance period is reasonable, which needs consideration of what must be done in practice to carry out the remedial steps and how much time is reasonable to allow for that purpose. In addition, the notice must be capable, on its face, of telling its recipients when the requirements are to have been complied with.
19. A compliance period that is dependent on the outcome of an undetermined planning application could be potentially indefinite. It is not a specific time period, is too vague and cannot be calculated or determined from the notice itself. To add an alternative time period to allow time to lodge an appeal should the new application be refused, compounds the matter. Nor can I consider allowing time for other works that may be allowed by the new application, such as converting the stables into the rural worker's accommodation.
20. There would be nothing to prevent the appellant starting to demolish part of the timber building in anticipation of a possible grant of planning permission for the smaller building shown on the submitted plans.
21. Each planning application is subject to its own timescales, including for appealing. If the new planning application is approved, the Council can impose conditions and time periods for doing works. It is not the purpose of this enforcement notice and appeal to be a surrogate for that. I must also have due regard to the reasons for issuing the notice, as effective enforcement is important to maintain public confidence in the planning system.

22. I find there is no compelling evidence as to the appellant's personal circumstances or to the nature of the works involved to persuade me that a longer compliance period is necessary now that a new planning application has been submitted. I am satisfied that the compliance period of 3 months strikes a proportionate and reasonable balance between the public and private interests in this case.
23. As the Council has yet to determine the new application, it has powers under s173A(1)(b) to extend any period for compliance, a matter which is entirely at their discretion, without prejudicing their right to take further action.
24. The ground (g) appeal therefore fails.

**Formal Decision**

25. The appeal is dismissed and the enforcement notice upheld.

*K Stephens*  
INSPECTOR