



Appeal Decision

Site visit made on 15 March 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2021

Appeal Ref: APP/Z3635/C/20/3257865

Land to South East of The Ranges, also known as Land to the North of Chertsey Road, now addressed as 1A Priory Stables, Shepperton TW19 9NU

- 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 Edward Cash against an enforcement notice issued by Spelthorne Borough Council.
 - The enforcement notice, numbered 19/00063/ENF, was issued on 8 July 2020.
 - The breach of planning control as alleged in the notice is the carrying out on the land of building, engineering, mining or other operations in particular the erection of two blocks of stables, (comprising 8 no. stables) with feed and tack room, on Green Belt land.
 - The requirements of the notice are:
 - Cease to use the two block of stables (8 no. stables) for stabling of horses and storage of tack and feed.
 - Permanently demolish the two blocks of stables (8 no. stables) with feed and tack room. Permanently remove all resultant debris from the site following demolition of the two block of stables.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. Subject to the corrections, the appeal is allowed insofar as it relates to the specified part of the development being permitted 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 erection of a stable building comprising 4 loose boxes and referred to as Stable B, as indicated in purple, on plan reference 20_1098_102 attached to the coloured and signed copy of the Unilateral Undertaking dated 7 January 2021 and witnessed on 18 February 2021, at Land to South East of The Ranges, also known as Land to the North of Chertsey Road, now addressed as 1A Priory Stables, Shepperton TW19 9NU and subject to the following condition:
 1. The development shall be carried out in accordance with the following approved plans; Site Plan dated December 2020 Drawing No. 20_1098_102 (showing Stable B annotated and in purple); Stable Block B1 plan dated 06/19 Drawing No.09: Site Plan dated 11/19 drawing No. 02 (showing buildings annotated B1 and B2); Location Plan dated 08/19 Drawing No. 01; Stable Block roof plans dated 06/19 Drawing No. 11.

2. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the land edged black on the plan where permission is refused in respect of the erection of two blocks of stables, (comprising 8 no. stables) with feed and tack room, on Green Belt land at Land to South East of The Ranges, also known as Land to the North of Chertsey Road, now addressed as 1A Priory Stables, Shepperton TW19 9NU, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

3. Several minor spelling errors have been identified in the second bullet point of Schedule 4 (Steps required to be taken) of the notice. These do not undermine the clarity of what needs to be done and I consider that they can be corrected, without causing injustice to any of the parties. Accordingly, the corrected spelling appears in the above Heading.
4. The appellant had requested that the appeal be dealt with by way of a Hearing. However, having reviewed the evidence, I am satisfied that a rational decision can be reached on the written evidence and have considered the appeal accordingly.
5. During the course of the appeal I note that the Council raised the matter of flooding, which was not included in their reasons for issuing the notice. However, they have since confirmed that they do not wish to pursue the issue of flooding in relation to this appeal.
6. I note that the Council's appeal statement and officer's report for the associated planning application, refers to two stable buildings, an access road, turning and parking area. However, the notice relates only to the two stable buildings, all other matters fall outside the scope of this appeal and my decision is based only on the effect of the development that has been carried out.
7. The appellant has submitted a Unilateral Undertaking (the UU) dated 7 January 2021. In summary, this covenants that, should planning permission be granted for the development (the erection of Stable B as shown in purple on the attached plan), the owner will surrender and relinquish all of their rights to erect the stables permitted in 2017. The submitted Land Registry document indicates that the registered owner is Edward Cash and there are no other lender(s) who should be included, in order to ensure that the undertaking remains enforceable against successors in Title. In view of the UU it is my intention to firstly consider the development that has been carried out, before considering the effect of the UU and any fallback position.
8. It is apparent that the red line for the application site in the 2017 application, differs from that shown on the enforcement notice plan. The reason for this disparity is unclear. However, as the notice plan accords with the Title Plan provided as part of the UU, I am satisfied that the land subject to the notice is clear.

Main Issues

9. The site lies within an area of Green Belt. Accordingly, I consider that the main issues are:
 - Whether the proposed development would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework), including its effect on the openness of the Green Belt;

- Effect of the development on the character and appearance of the area; and
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development in the Green Belt and the effect on openness.

10. Para 133 of The National Planning Policy Framework (the Framework) identifies that the primary policy aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. It goes on to confirm that inappropriate development is harmful to the Green Belt. The purpose of the Green Belt is set out at para 134.
11. The construction of new buildings should be considered to be inappropriate development, unless they are included as one of the exceptions as set out in Paragraph 145. One of the listed exceptions at Paragraph 145 b) is the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
12. Saved Policy GB1 of the Spelthorne Borough Local Plan 2001 (LP) sets out that development will not be permitted in the Green Belt, except for uses appropriate to the Green Belt. It goes on to list a number of exceptions, including essential facilities for outdoor sport and recreation. I acknowledge that there are some inconsistencies between the wording in the policy and the Framework and thus the policy has become outdated. Therefore, whilst the general thrust of the policy is broadly in line with the Framework, I can afford it only limited weight. Accordingly, I shall rely on the Framework as a significant material consideration when considering this appeal.
13. The site is some 4.8 hectares and is sited to the north of Chertsey Road. Access is from Chertsey Road and forms part of the partially implemented planning permission for the erection of stables (4 No.) with tack room. Provision of new access to Chertsey Road and associated roadway and turning head. 17/00158/FUL on 28 March 2017, (the 2017 permission). The site is mainly flat and is divided into a number of smaller paddocks. It is not in dispute that this permission has been commenced through the provision of the access. It is therefore capable of being fully implemented through the building of the approved stables.
14. The stables subject to the appeal, form two separate buildings. Both buildings have a canopy to the front elevation, providing additional shelter. From the evidence, the eastern block comprises four stables each approximately 3.4m x 3.4m, together with a feed store of some 6.6m x 3.4m. The total size of the building is some 21.259m x 5.47m in width, including the canopy. The western block, 19.893m x 5.47m (including the canopy), comprises four stables with a

washdown room and tack room. Both buildings have an overall height of approximately 3.3m.

15. At the time of my site visit the eastern stables were being used for the stabling of horses, with a further three horses turned out on the land to the south. It was clear that these horses had hay provided. The doors to the stables in the western block were all closed. The land has been subject to gravel extraction in the past. There was no formalised access from the main gates to the stables, although in common with the remainder of the western part of the site, the ground contained significant quantities of hard surfacing. This and the remaining larger field to the east had the appearance of poor grazing interspersed with weeds.
16. My attention has been drawn to appeal decision APP/W1525/W/18/3216809 where it was considered that the provision of permanent stables would go beyond the basic provision of stables, resulting in the primary purpose of the keeping of horses, rather than being ancillary to an agricultural use.
17. Further to this decision, it is the appellant's case, that the effect of the 2017 permission was to grant planning permission for the keeping, rather than grazing, of horses across the entirety of the site and not just in the approved building. I acknowledge that the red line that accompanied the 2017 application, extended beyond the proposed stables. However, I do not consider this, in itself, is determinative and it is necessary to consider what the application proposed.
18. It is clear that the proposal for the 2017 permission was for the 'Erection of stables (4 No.) with tack room. Provision of new access to Chertsey Road and associated roadway and turning head'. I recognise that planning permission for a building conveys the right to use the building for the purposes specified in the permission, or for which the building is designed (s75), in this case for the stabling of horses. However, I have no evidence before me, to suggest that the application, or the associated plans, included a change of use of the land from grazing to the keeping of horses, or that such a change was intended by the applicant. It is apparent from the officer's report for the later 2019 application, that the Council considered that the lawful use of the Land was for development associated with the grazing of horses and approached the application on this basis.
19. To my mind, the description on the 2017 decision notice is clear and unambiguous and related to operational development for the erection of limited stables and an access, in the particular context of this site, rather than the stables together with a change of use from grazing to the keeping of horses across the whole site. Moreover, I have no evidence that such a change of use has been otherwise permitted.
20. To qualify as 'appropriate facilities' any facilities must be commensurate in size to the reasonable requirements of the use to which they are put. The poor quality of the pasture limits the number of horses that could be grazed, without the need for significant supplementary feeding. The appellant has given no indication of the number of horses that they currently own or intend to have at the site. Accordingly, I share the Council's concerns that the scale of the two stable buildings is disproportionate to the needs of a limited number of recreational horses grazing the land.

21. Turning to the effect on openness. The inclusion of new buildings under certain circumstances as exceptions in para 145 b) of the Framework indicates some acceptance that new buildings, which would have some impact on openness, could be acceptable in the Green Belt. The provision of two substantial buildings to provide eight stables, with the associated storage, have a greater impact on openness than the four stables that were permitted in 2017.
22. One of the purposes of the Green Belt set out at para 134 of the Framework, is to assist in safeguarding the countryside from encroachment. I have already found that the stables are larger than necessary to support the limited number of horses, capable of being grazed on the land. Consequently, the scale of the built development conflicts with one of the purposes of including land in the Green Belt.
23. For the above reasons, I find that due to the particular circumstances of this site, the additional two building to provide eight stables and associated facilities, form inappropriate development, as they do not constitute the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, and they do not preserve the openness of the Green Belt.
24. The appellant has suggested that a scheme of land improvement could be required through a suitably worded condition, to improve the quality of the grazing. However, in the absence of any evidence to demonstrate how this could be achieved, I am not satisfied that this would overcome the serious concerns I have identified above.

Character and appearance

25. Since 2015, when the previous Inspector considered the effect that eight stables would have on the character and appearance of the area, the 2017 permission has been granted. Additionally, planning permission has been allowed on appeal, for close boarded fencing along the southern boundary of the site. Consequently, save for limited views of the site through the permitted access, the fencing provides an effective screen from Chertsey Road, which is the main public vantage point.
26. In view of the changes that have taken place, the Council do not therefore consider that the development harms the rural character and appearance of the area. From the evidence and my site visit, I have no reason to disagree with this view.

Other considerations (VSC)

27. The Framework indicates that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. Any harm to the Green Belt carries considerable weight.
28. The appellant submits that considerations relating to animal welfare, the likely location of other sites and the fallback position represent general material consideration that weighs in favour of the development. As set out above I shall consider the proposed fall-back position separately.
29. I have found that the 2017 permission did not grant planning permission for the use of the entire site for the keeping of horses and the poor quality of the grazing, limits the number of horses that can be grazed on the land. As four

stables have already been permitted, I consider that this would provide an appropriate level of shelter for the horses. Moreover, I saw at my site visit that the horses, both in and out of the stables, were wearing suitable rugs to provide them with additional protection. The separate paddocks offer the ability to separate horses, if that became necessary.

30. I acknowledge that the availability of suitable sites may be problematic, given the area's Green Belt designation. However, I have not been provided with evidence to demonstrate that approaches have been made to local Land Agents, or that other searches for availability have been carried out and that suitable alternative sites are not available
31. For the above reasons, I give limited weight to the other considerations referred to above.

Green Belt balance

32. The Government attaches great importance to Green Belts and Paragraph 144 of the Framework states that substantial weight should be given to any harm to the Green Belt. In this case, I have not found harm to the character and appearance of the area. I have, nonetheless found harm to the Green Belt by reason of inappropriateness, and the effect on openness. Balanced against this are the considerations discussed above.
33. Overall, I consider that the substantial weight to be given to the Green Belt harm I have identified, is not clearly outweighed either individually, or cumulatively, by other considerations, sufficient to demonstrate the very special circumstances that are necessary to justify the development exist. The development is therefore in conflict with the Framework.

Fallback position

34. It is common ground that the 2017 application remains extant and the approved stable building can therefore be constructed in accordance with that permission.
35. The appellant submits that, the submitted UU would waive the right to construct the 2017 approved stable building, in exchange for the retention of the stable that is annotated in purple as 'Stable B' on the plan attached to the UU. I consider that this represents an alternative scheme that is before me and have considered it accordingly.
36. From the evidence, the 2017 building is slightly larger than Stable B. As this would be an overall reduction of the size of the built form, this weighs in favour of the proposal.
37. I recognise that Stable B is sited further to the north of Chertsey Road and in a more exposed part of the site. However, the close boarded fencing along the southern, part northern and eastern boundaries, provides significant screening of this relatively flat site. As a result, views of either the 2017 building, or Stable B would be broadly similar.
38. Building B is sited slightly further to the east. However, when comparing the location of the two buildings, in the context of surrounding development, I find that there would be minimal additional encroachment into the countryside.

39. I also acknowledge that Stable B is significantly further from the approved access and this could result in the request for a longer hard surfaced roadway. However, as the notice only relates to the two unauthorised buildings, the means of access to these buildings is not a matter before me and does not form part of the deemed application. Moreover, any future access is likely to require planning permission, so the Council would be in a position to assess whether a proposal is acceptable.
40. For these reasons in my judgement, I find that the fall-back position provided by the UU results in Stable B, being considered as appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, that preserves the openness of the Green Belt and does not conflict with the purposes of including land within it, when compared with the 2017 permitted scheme. Accordingly, I find that the appeal should succeed in part.
41. S180(1) of the TCPA90 provides that where planning permission is granted after the service of a notice for any development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the planning permission. This means that the permission granted on the above deemed application, overrides the notice to the extent that it authorises what is being enforced against, in this case the western building. However, the notice is not quashed and does not cease to have effect altogether.
42. As I am only granting planning permission for part of the matters contained in the notice the requirements of the notice will not change in this respect.

Ground (g)

43. For an appeal under this ground to succeed, it is necessary to consider whether the compliance period of 3 months is too short. The appellant has suggested that an alternative timescale of 12 months to comply with the full requirements of the notice would be more reasonable.
44. The development must be considered in the context of the identified harm to the Green Belt. Moreover, the time for compliance refers to the time required to undertake the works, in this case cessation of the use and the removal of the buildings and resultant debris. The required works do not involve any complex building operations. As I have granted planning permission for the retention of the Stable B, it is open to the appellant to retain this building, rather than fully implement the 2017 permission.
45. I am also aware of the uncertain situation that currently exists with regard to COVID-19. However, under s173A the Council have the power to extend the time for compliance with the notice. This is however, a purely discretionary power within the Councils' gift to exercise.
46. Accordingly, I consider that a period of 3 months is a reasonable timescale for the requirements of the notice to be complied with. The appeal on ground (g) therefore fails.

Other matters and conditions

47. The Council have not provided me with proposed conditions. I note that the 2017 permission imposed a large number of conditions, although I have no information about whether these conditions have since been complied with.

Nonetheless, as it is agreed by the parties, that this permission has been implemented, these conditions remain extant.

48. As the development has already been built, conditions relating to the commencement of the development and submission of materials are not required. However, in granting planning permission for part of the development, in the interests of providing certainty, a condition to specify the approved plans is necessary.
49. I have had regard to the other conditions imposed by the 2017 permission and have assessed these, in accordance with the tests set out in the Planning Policy Guidance. However, I have no evidence to suggest that conditions relating to the siting of caravans or the storage of vehicles are necessary, because they constitute development for which planning permission would be required. In my judgement a condition to control the provision of additional fencing is not necessary, in order to make the approved part of the development acceptable.

Conclusion

50. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the erection of the stable building referred to as Stable B and indicated in purple on plan reference 20_1098_102 of the signed copy of the UU dated 7 January 2021 and witnessed 18 February 2021, but otherwise I will uphold the notice with corrections and refuse to grant planning permission in respect of the erection of two stable blocks (8 no. stables) with feed and tack room. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Hilary Orr

INSPECTOR