



Appeal Decisions

Site visit made on 11 May 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2021

Appeal A: APP/R1038/C/20/3263940

Appeal B: APP/R1038/C/20/3263941

Land at Border View Farm, Rod Moor Road, Dronfield Woodhouse, Derbyshire S18 8XL

- 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 Alex Merryman (Appeal A) and Mrs J A Merryman (Appeal B) against an enforcement notice issued by North East Derbyshire District Council.
 - The enforcement notice was issued on 30 October 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a building on the Land covering a riding arena.
 - The requirement of the notice is to remove the Building from the Land.
 - The period for compliance with the requirement is 6 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/R1038/C/20/3266493

Appeal D: APP/R1038/C/20/3266494

Building at Border View Farm, Rod Moor Road, Dronfield Woodhouse, Derbyshire S18 8XL

- 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 Alex Merryman (Appeal C) and Mrs J A Merryman (Appeal D) against an enforcement notice issued by North East Derbyshire District Council.
 - The enforcement notice was issued on 15 December 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Building from agricultural use to use as a café.
 - The requirements of the notice are:
 - i) Cease the use of the Building as a café;
 - ii) Remove all works that facilitated the change of use including the blockwork and cladding to the external walls of the Building, the windows, door and all internal fixtures and fittings.
 - The period for compliance with the requirements is 6 months.
 - Appeal C is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Appeal D is proceeding on the grounds set out in section 174(2)(f) only.
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Appeal E: APP/R1038/C/20/3266496

Land at Border View Farm, Rod Moor Road, Dronfield Woodhouse, Derbyshire S18 8XL

- 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 Alex Merryman against an enforcement notice issued by North East Derbyshire District Council.
 - The enforcement notice was issued on 15 December 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a shed/building on the Land.
 - The requirement of the notice is to remove the building from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decisions: Appeals A and B

1. The appeals are dismissed.

Decision: Appeal C

2. 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 Act as amended for the development already carried out, namely the material change of use of the building as shown on the plan attached to the notice to use as a café, subject to the following conditions:
 - 1) Visibility splays at the Rod Moor Road junction, as approved under application 08/00688/FL, shall be maintained free from obstruction above 1.0m height relative to carriageway channel level for the duration of the use hereby permitted. The use hereby permitted shall cease within 3 days of the date of failure to maintain the visibility splays and shall not resume until the visibility splays have been fully restored.
 - 2) The café use shall be limited to the ground floor area of the building and shall not accommodate more than 105m² of floor space.

Decision: Appeal D

3. I take no action in respect of this appeal.

Decision: Appeal E:

4. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals A and B

The matter to be decided

5. An appeal on ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. The time periods for taking enforcement action are set out in section 171B of the Act. In accordance with section 171B(1), where there has been a breach of planning control consisting of the carrying out of building operations the relevant period is four years beginning with the date on which the operations were substantially completed. Thus, the question to be determined in this case is whether the building at the riding arena was substantially completed by

30 October 2016, four years before the issue of the notice on 30 October 2020. The burden of proof in an appeal on ground (d) falls on the appellants and the standard of proof is the balance of probability.

Evidence supporting the appellants' case

6. The appellants' case is that the building was completed in September 2016. A number of documents have been submitted in support of this:
 - Invoice from building supplier
 - Invoice from building contractor
 - Supporting letter from joint owner of a nearby farm
 - Two supporting letters from livery customers
 - Two supporting letters from riding school customers
 - Supporting letters from Mr Merryman, his son and his daughter.
 - A copy of a Facebook post, dated 4 December 2016.
7. The letters from the appellant, his children, neighbour and customers do not carry the weight of more formal statements such as statutory declarations or affidavits. Nevertheless, they are signed documents and support the appellants' case. The letters from his children and customers are specific in saying that the building was completed in September 2016. A neighbouring farmer says she was shown around the building in the autumn of 2016. The letters are consistent with one another and I attach weight to them accordingly.
8. The document describe as an 'invoice' is not headed as such. Rather, it seems to be a form which can be used by the company to deal with enquiries, quotations and orders. In this case, the date of 27 May 2016 has been entered opposite a box entitled 'Enquiry', while the 'Quotation' and 'Order' boxes are left blank.
9. The document sets out the materials for a large steel-framed building. I have no reason to doubt that this is the appeal building, but the document does not establish if/when an order was placed or when any materials ordered were delivered. Accordingly, the document does little to support the appellants' case.
10. The building contractor's invoice is dated 30 September 2016 and relates to overseeing the construction of the appeal building, said to have taken place over a 5 week period commencing 22 August. The Council questions the authenticity of the document on a number of grounds (specifically, that the company (Woodthorpe Hall Farm) is not registered with Companies House; that there is no person named as a company director or business owner in the letterhead; that there is no web-site for the company; that the VAT number on the invoice is unrecognised when searching on the Gov.uk website; and that the Border View Farm Facebook page suggests that there is a link between Border View Farm and Woodthorpe Hall Farm).
11. The appellant advises that the farmer at Woodthorpe Hall Farm at the time of the invoice has now retired and the company no longer exists. It is also stated that, while the appellants have now taken over Woodthorpe Hall Farm, that was not the case when the invoice was issued. While I cannot be certain of the

authenticity of the invoice, the explanations are plausible and I attach some weight to the document, which is consistent with the statements and letters outlined above.

12. The Facebook post dated 4 December 2016 includes a photograph taken in what appears to be the completed arena. This does not show that the building was completed by 30 October 2016. It does, however, suggest that the building was completed earlier than the Council contends.

Evidence supporting the Council's case

13. The Council has provided aerial images of the site captured in June 2016 and June 2017. The building is clearly visible in the later image but there is no sign of it in the first. While I cannot be sure that the building was fully functional by the time of the second photograph, the main structure was clearly in place. This is consistent with the cases made by both parties.
14. An email dated 25 July 2017 to the Council from a member of the public indicated that the building was in the process of being erected at that time. The Council is unable to produce the original email for data protection reasons but it has reproduced the text. It seems unlikely to me that a complainant would wait until July 2017 to complain about a large building completed in September the previous year. That said, it refers to the building being put up in the present tense, whereas the aerial image shows that the roof had already been in place for more than a month at the very least. Overall, the email does not give clear support to either side's case.
15. Mr Merryman made a retrospective application for planning permission for the building in September 2018. On the planning application form he stated that work on the building started on 20 November 2016 and was completed on 15 December 2016. Since the appellants have not offered any explanation of this inconsistency, it substantially undermines their case in my view. If the building was not even started until 20 November 2016, it was not too late to take enforcement action when the notice was issued on 30 October 2020.
16. The Council also states that Mr Merryman advised officers verbally at a site meeting in October 2020 that the building had been erected 7 years earlier. This claim, which has not been refuted by the appellants, is inconsistent with the other dates claimed for the building's completion. In August 2020 the Council issued a Planning Contravention Notice. Amongst other things, this sought to clarify the date when the building was substantially completed. The appellants did not respond to the Notice.

Assessment and conclusion – Appeals A and B

17. While the invoice for the erection of the building and the letters the appellants have provided weigh in favour of their claim, it is undermined by the inconsistent dates that have been claimed for the completion of the building, most notably in the planning application form. The appellants could have clarified when the building was completed before the enforcement notice was issued by responding to the Planning Contravention Notice, but did not do so. Viewing the evidence before me as a whole, the position regarding when the building was substantially completed is unclear and it has not been demonstrated, on the balance of probability, that the time for taking

enforcement action had expired at the point when the notice was issued. Accordingly, the appeals fail.

Appeal C

The Notice

18. The allegation in the notice is, 'Without planning permission, the material change of use of the Building from agricultural use to use as a café'. Establishing the nature of any material change of use requires an understanding of the relevant planning unit. Deciding which land comprises the planning unit is a matter of planning judgement, based on the facts of the case. It has been the subject of various decisions in the courts, including the case of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207.
19. In this instance, the area identified by the enforcement notice is part of a building, the remainder of which is used as a cowshed. The building is within a larger area within the appellant's control which is currently used for farming and other activities. After visiting the site I raised the question of the planning unit with the parties to inform my views on the matter.
20. *Burdle* suggests three broad categories of distinction in considering the question of the planning unit:
 - a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
21. In this case, the unit of occupation includes the wider farmyard, which accommodates a range of uses, including agriculture, livery, riding lessons, pony trekking, farm shop, kennels, cattery and residential use. There are plainly links between the various uses. For example, the café uses food that is produced on the site and customers can view the cattle in the cowshed via the internal window. A shared access and parking area serve the whole farm complex.
22. However, the café is in a single, definable part of the building and is an identifiable use in its own right. On the evidence before me the links with the other activities at the farm are not so strong as to indicate a composite mixed use, notwithstanding the common occupation of the wider farm site. Thus, the creation of the café has resulted in a new planning unit containing the café use on the land identified in the notice.
23. The Council's statement refers to 'unauthorised works' and also states that 'the building, in its new use, is essentially comprised of new fabric.' However, the allegation in the notice refers to a change of use only and does not make reference to any building operations. I queried this matter with the Council and it confirmed that, while it considered that work had been carried out to

facilitate the change of use to the café, it did not seek to allege separate building operations in the notice.

24. With these points in mind, I am satisfied that the allegation in the enforcement notice is correct.

Main issues

25. Since the site is in the Green Belt, the main issues are:

- Whether the café is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
- The effect of the development on the openness of the Green Belt and the purposes of including land in it.
- Its effect on the character and appearance of the area;
- Whether the development is satisfactory in respect of road safety, access and parking; and
- If the development is inappropriate, whether any harm due to 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.

Green Belt considerations - inappropriateness, openness, Green Belt purposes and very special circumstances

26. Paragraph 146 of the Framework identifies certain forms of development that are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The forms of development listed include the re-use of buildings provided that the buildings are of permanent and substantial construction. Policy GS2 of the adopted North East Derbyshire Local Plan (LP), read alongside Policy GS7, and Policies SDC1 and SS10 of the emerging Local Plan (ELP) follow a similar approach. Policy ENV1 of the Dronfield Neighbourhood Plan 2016-34 (NP) is generally supportive of Green Belt policy as set out in the NPPF.
27. The appeal building is part of a larger building, the remainder of which is used as a cow shed. The building is a steel-framed structure with cladding. While no structural evidence has been submitted by the appellant, the steel structure appears to have remained throughout the conversion and I am satisfied that the building is of permanent and substantial construction.
28. I appreciate that the cladding was changed during the conversion of the building. However, on a building of this type that has no bearing on its structural integrity or its permanence. The original cladding apparently needed changing in any event because it contained asbestos. Neither the fact that the building was only partially clad originally or that a new floor has been installed lead me to conclude that the building was insubstantial, given the steel framework. I accept that the building has had major alterations, but the notice specifies a change of use and I consider that sufficient of the original structure remains to be consistent with my view that the subject building is of permanent and substantial construction.

29. Turning to the questions of openness and the purposes of the Green Belt, the use is contained within the original building, which has not been extended. It appears to me that car parking generated by the use is likely to be limited, given the small size of the unit and the likelihood that some customers will be those already at the site in connection with the other facilities there. Any additional car parking will be seen in the context of the farm vehicles at the site and the range of buildings it contains. While the Council refers to the customer activity, advertising and clutter arising from the range of uses at the farm and considers that a 'tipping point' has been reached, it is not evident to me that the café materially adds to these. With these matters in mind, I am not persuaded that it leads to harm to the openness of the Green Belt or to encroachment of the countryside. None of the purposes of the Green Belt, as defined by the Framework, have been compromised in my view.
30. For these reasons I conclude that the change of use accords with the provisions of Paragraph 146 of the Framework and with LP Policy GS2, NP Policy ENV1 and Policy SDC1 and SS10 of the ELP. Accordingly, it is not inappropriate development in the Green Belt. It follows from this that it is not necessary to consider the question of whether very special circumstances exist.

Character and appearance

31. The primary visual manifestation of the change of use is the changed appearance of the building. The cladding is new but is fitting for a building of this type. Two white uPVC windows and matching doors have been introduced to the end elevation, which also contains a modest sign and some brickwork. Overall, however, despite the domestic appearance of the doors and windows, the building retains its simple, agricultural appearance. Moreover, the café is seen in the context of the adjacent farm shop, which is the product of a similar conversion.
32. Furthermore, the building is not prominent. While it can be seen from the public footpath that runs along the access road to the farm, it is some distance from Rod Moor Road and the trees and hedgerows along the road provide some screening. The visual effect of the additional customers at and around the café is likely to be very limited, given that people already visit the farm to make use of the other businesses there.
33. For these reasons I conclude that the development does not harm the character or appearance of the area. Consequently, there is no conflict with the visual aims of LP Policy GS7, which is concerned with changes of use and conversions.

Road safety, access and parking

34. The site is reached via a long, surfaced access drive from Rod Moor Road. Although much of the drive is narrow, it widens out near to the junction. Thus, vehicles seeking to turn into the site are unlikely to be blocked by vehicles waiting to exit. There is also plenty of room within the farmyard for vehicles to turn. Consequently, it is inconceivable that anyone would choose to reverse along the lengthy access drive and onto the road.
35. I have no technical evidence from either side to show the appropriate standard of visibility where the drive meets Rod Moor Road. Nor do I have figures to show what is currently achieved. I have been provided with a plan showing

visibility splays of 2.4m x 160m. This was apparently agreed in connection with a planning permission for the farm shop and boarding kennels.

36. I cannot assume that the visibility splay in the plan will be maintained as a result of the existing permission but, to address this, the Council has suggested a condition requiring it to be maintained in the event that this appeal is allowed. The appellant raises no objection to the condition and advises that he owns the necessary land on both sides of Rod Moor Lane. While I do not have proof of ownership, I have not been advised of any compliance issues regarding the existing condition relating to the farm shop and boarding kennels and the splays appeared adequately maintained when I viewed the site. The condition I shall impose will require the cessation of the café use in the event that the visibility splays are not maintained.
37. Furthermore, it appears to me that the traffic levels the café alone is likely to generate will be quite limited. Although the café promotes a full menu and has had a significant number of bookings on occasion, its floorspace is limited and it is likely in my view that a significant number of customers will be people already visiting the site for other reasons. This means that, whatever the total number of people visiting the farm, the number of additional movements at the road junction and the need for additional parking and manoeuvring space as a result of the cafe will be limited.
38. I understand that a public right of way runs along the access drive. However, the width of the drive and visibility along it are sufficient to minimise any undue risk to pedestrians.
39. For these reasons I conclude that, subject to a condition relating to visibility at the road junction, the change of use does not harm road safety and that the access and parking provisions are adequate. Consequently, there is no conflict with the aims for highway safety set out in LP Policy T2.

Other considerations

40. The Council is concerned that the café could, in the future, change to other uses within Use Class E, as defined by *The Town and Country Planning (Use Classes) Order 1987* (as amended). However, I have no evidence to show that any such change would be harmful, particularly given the small scale of the building.
41. The café is a form of farm diversification. It provides a service to local people and will make a small contribution to the local economy. I attach some weight to this benefit.

Conclusion and conditions

42. I have concluded that there is no harm to the Green Belt, character/appearance or road safety. Accordingly, there is no conflict with the development plan. There will be modest economic benefits which weigh to a small degree in favour of the development. I therefore 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.
43. I have attached a condition relating to visibility splays in the interests of road safety. I have not, however, included any requirement for internal fixtures etc to be removed in the event of a failure to maintain the splays, since a

requirement to cease the use would address the issue. A condition limiting floorspace is needed to ensure that the café does not expand without the opportunity to consider possible adverse effects.

44. I am not persuaded of the need for a condition relating to parking and manoeuvring space, given the existing space available at the farm. I have insufficient evidence to show the need for a condition relating to land contamination. I do not see any need to control the hours of opening based on the need to protect the Green Belt or the character of the area. I am not persuaded either of a need for a condition to control take-away or delivery services, since planning permission would be needed anyway to change the primary use of the building from the café use that is sought. The Council has referred to permitted development provisions but has not identified the specific provisions it wishes to address.

Appeal D

45. Since I will grant planning permission for the café and quash the enforcement notice as a result of Appeal C, there is nothing left to consider in respect of Appeal D, which is on ground (f) only. Accordingly, I will take no action in respect of this appeal.

Appeal E

Main issues

46. The main issues are:

- Whether the building is inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies.
- The effect of the development on the openness of the Green Belt.
- Its effect on the character and appearance of the area; and
- Whether any harm due to 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.

Whether the development is inappropriate within the Green Belt

47. The building targeted by the notice is a modest wooden chalet-type building. It has been erected next to some seating and children's play equipment. The Framework advises at Paragraph 145 that, other than in the case of a number of specified exceptions, the construction of new buildings within the Green Belt is inappropriate. LP Policy GS2 adopts a similar approach and NP Policy ENV1 seeks to protect the Green Belt in accordance with the Framework.
48. None of the exceptions set out either in Paragraph 145 of the Framework or Policy GS2 apply. Accordingly, the building is inappropriate development in the Green Belt. The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be permitted except in very special circumstances.

Openness

49. The building is modest in scale and is sited close to other buildings in a farmyard. These factors mean that, while there has been some loss of openness due to the creation of a new building, the extent of that loss is very limited. Nevertheless, the loss that has occurred means that there is further harm to the Green Belt.

Character and appearance

50. The building has the appearance of a structure that would normally be found in a domestic garden and consequently looks slightly out of place in this farm setting. However, its modest size and unobtrusive location close to other, much larger buildings means that its visual impact is very limited. Views into the site from Rod Moor Road are further limited by trees. Overall there is only very slight harm to the character and appearance of the area.

Other considerations

51. The building has been used to provide additional seating in connection with the café at the site, to make up for the space lost to social distancing. It is argued that a temporary permission to cover the period of the pandemic would be beneficial in supporting the viability of the farm enterprise. The appellant makes a comparison with the temporary planning provisions the Government has made to help the hospitality industry, which are in place until 1 January 2022.
52. However, the notice already allows a 3 month period for compliance and the actual dismantling and removal of such a modest building will take up very little of that time. While the Government's response to Covid-19 in terms of planning provisions has been wide-ranging, I am not persuaded that the comparison shows a need for this specific building to remain for the rest of the year. Indeed, the small size of the building means that any opportunities it provides in terms of social distancing must be very limited indeed. Consequently, I attach little weight to this consideration. Nor do I consider that planning conditions could address the harm arising from the development.

Conclusion

53. I attach substantial weight to the harm to the Green Belt. There is also very slight visual harm. I accept that less harm would occur if the building were to remain for a temporary period only. Nevertheless, having considered the matters raised in support of the development I conclude that they do not clearly outweigh that harm. Accordingly, very special circumstances do not exist, and the development is at odds with the Framework, LP Policy GS2 and NP Policy ENV1. I therefore conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Peter Willows

INSPECTOR