



Appeal Decision

Inquiry Held on 7 and 9 June 2021

Site visit made on 11 June 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2021

Appeal A: APP/D0121/C/20/3253341

Appeal B: APP/D0121/C/20/3253342

Land on the East Side of Manor Road, Abbots Leigh

- 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 Alan Johnson (Appeal A) and Mrs Esther Johnson (Appeal B) against an enforcement notice issued by North Somerset Council.
 - The enforcement notice was issued on 30 April 2020.
 - The breach of planning control as alleged in the notice is: The material change of use of the land from agriculture/horticulture to a mixed use of agriculture and recreational/leisure.
 - The requirements of the notice are: 1. Cease the use of the land for recreational/leisure use. 2. Remove the buildings and all resultant materials from the land. 3. Remove the shepherd hut from the land. 4. Remove all hard and soft landscaping from the land not associated with the agricultural/horticultural use. 5. Remove all items and paraphernalia from the land that is not associated with the agricultural/horticultural use.
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (f) and Appeal B is proceeding on the grounds set out in section 174(2)(c) and (f) 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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Summary of Decisions

1. The appeals are dismissed and the enforcement notice upheld with variations.

Preliminary Matter

2. The notice is directed at a material change of use of land. It requires the removal of two buildings. I raised during the Inquiry whether it was the Councils intention to also allege the erection of buildings since both parties have focussed part of their cases on the effect of the buildings. However, as the buildings are not referred to in the description of the alleged breach of planning control they do not fall to be considered as part of the deemed planning application alongside the ground (a) appeal.
3. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or they would be permitted development or immune from enforcement action, so that the land is restored to its condition before the change of use took place. The Council

contend that the buildings referred to in the requirements are integral to and were erected solely to facilitate the mixed use alleged.

4. I have carefully considered the views of the parties and whether the notice might be corrected, but it is not technically defective and so, it would not be appropriate for me to expand the allegation to include the buildings. Even though Inquiry time was devoted to the buildings, they are therefore a matter for the ground (f) appeal only, where I shall consider only the arguments relevant to that ground of appeal.

The ground (c) appeal

5. For the appeal to succeed on ground (c) the onus is on the appellants to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
6. It is important to recognise that the allegation relates to a mixed use. It is therefore not the case of the Council that the site has not been used solely for agriculture or that it could not revert to an agricultural use. Indeed, the requirements of the notice only require the recreational/leisure use to cease.
7. There is no dispute between the parties that the land has been used for some recreational/leisure purposes. Opinions differ on the extent of that use and whether it constitutes a material change of use such that it is development requiring planning permission. My assessment is restricted to whether there had been the alleged material change to a mixed use prior to the issue of the notice, and therefore subsequent events, such as the introduction of a significant number of animals just prior to the Inquiry, are not relevant.
8. The appellants admit that whilst the land has been used for barbeques and games, this was only on an occasional basis and therefore does not amount to a material change of use to the mixed use alleged. The evidence of the precise extent of recreational/leisure activities was not particularly defined by the appellants, but nevertheless a limited use in this regard was not disputed by the Council.
9. Rather, it was the resultant character of the use, and for which there is photographic evidence as well as aerial photographs of the site before the Inquiry.
10. Inquiry time was spent on an area the Council described as a football pitch. The appellants disputed this term. The evidence was that the area was cleared of rubbish following the sites purchase in 2016, being described by the appellant as "an old tip", before it was levelled and turfed. Photographic evidence is before me that shows that football goals were present for a number of months. Whilst the area may not be best described as a football pitch, it was nevertheless an area where outdoor recreational/leisure activities took place. The combination of levelling, short manicured grass and the football goals demonstrate on the balance of probabilities that a material change in the character of the activities on the land had occurred which could not be described as de minimis or incidental to an agricultural use.
11. Moreover, in considering matters in the round, much of the site has been the subject of works since the appellant's purchase. Whilst the parties dispute the

extent of works, such as the ornamental planting, the driveway and that undertaken in an area widely described as a garden area during the Inquiry, the photographic evidence is compelling.

12. That evidence demonstrates on the balance of probabilities a site with a manicured appearance as you enter it and approach the buildings. There is various ornamental planting, a pathway, pond and surface treatments with edgings as well as a fire pit - all of which are more akin to a use for recreation/leisure purposes, rather than a site solely in agricultural use. Whilst I accept this change would not have been apparent from the sites gated access point, the relevant consideration is not one of visual impact albeit that be a factor in considering the materiality of any change in the character of activity on a site. In any event, I saw that it is visible from the open access woodland alongside it that I walked during my site visit, and, intrinsically within the site itself, despite much of it having remained as grassland.
13. The appellants also assert that some of the works are not development, such as the topping-up of loose stone or planting. However, like the buildings, any such matters do not form part of the allegation of development, they are merely a requirement of the notice and so do not fall to be considered under the ground (c) appeal.
14. The appellants have therefore not demonstrated on the balance of probabilities that the change of use was not a material change, constituting development.
15. The appeal on ground (c) consequently fails.

The ground (a) appeal

Main Issues

16. The main issues are:

- Whether or not the development is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- The 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 within the Green Belt

17. The site is located within the North Somerset Green Belt. It is approached via a narrow trackway and set in rural surroundings, with woodland blocks and grassland pasture immediately surrounding it. The development before me concerns the mixed use of the site for agriculture and recreational/leisure use.
18. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special

circumstances. Paragraph 133 of the Framework states that the Government attaches great importance to Green Belts. The essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development. Paragraph 134 then specifies the five purposes which the Green Belt serves, including to assist in safeguarding the countryside from encroachment.

19. Policy DM12 of the North Somerset Council Development Management Policies Sites and Policies Plan Part 1, adopted July 2016 (the LP), pre-dates the latest version of the Framework. The policy however states that material changes of use which maintain the openness of the Green Belt are not considered to be inappropriate development providing it does not conflict with the purposes of including land in the Green Belt.
20. The policy of the LP is therefore broadly consistent with the Framework as paragraph 146 states that material changes in the use of land, such as for outdoor recreation, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purpose of including land within it.
21. As I have already noted, the majority of the site is not readily visible from the gated access point. However, views can be readily taken from the open access woodland that runs alongside it.
22. The openness of the Green Belt has a spatial as well as a visual aspect. The evidence before me was of a site of manicured appearance, with an area described as a garden with ornamental planting, a pathway, pond and fire pit. The existence of the garden area has a clear visual impact, even though there is evidence of some planting in this area previously. Spatially, the combination of planted and landscaped areas associated with the mixed use, as well as the actual use thereof, given there was evidence of football goals on a levelled part of the site, has an effect on reducing openness. The ornamental planting and paraphernalia also result in encroachment in the countryside. The mixed use therefore does have a greater spatial effect than the previous lawful use.
23. The parties accept the lawful use of the site is for agriculture/horticulture and there is evidence of the previous horticultural use and planning permission for a barn at the site. This use would have generated vehicle movements and people attending the site, and the contention before me was that the mixed use was a limited use and did not generate materially greater movements or disturbance, which I accept.
24. Whilst in principle an outdoor recreational use may not constitute inappropriate development within the Green Belt, for the above reasons I find that the development enforced against does not preserve its openness and conflicts with the purposes of including land within it.
25. I therefore conclude the development is inappropriate development that is, by definition, harmful, and therefore contrary to national and local policy to protect the Green Belt. This is a matter to which I attach substantial weight.
26. The buildings facilitate the mixed use. The largest building is based upon a barn structure, albeit even larger owing to the lean-to element added at the rear. Visually, it is a building of considerable size and fails to preserve openness. Given the limited outdoor recreational activities that are said to take

place at the site, it cannot be reconciled that these buildings then amount to the provision of appropriate facilities. Neither can they be regarded as reasonably necessary for the purposes of agriculture because of the luxurious fixtures and fittings that have largely been employed.

The effect of the development on the character and appearance of the area

27. The site is situated within Character Area F1 (Abbots Leigh Sandstone Uplands) as defined by the North Somerset Council Landscape Character Assessment Supplementary Planning Guidance (the LCA). The site exhibits some of the key characteristics, being part of the elevated undulating landform with wooded, rural and pastoral character.
28. Whilst I appreciate there are a number of outdoor recreational uses in the area, some of which I was able to partially observe during my site visit, those uses and facilities are substantively different in terms of their scale and layout; most notably a golf course and rugby training ground. By contrast, the appeal site is nestled in a particularly rural part of the landscape and is accessed via a smaller network of roads and footpaths. It therefore has a closer association with the rural wooded countryside than the large recreational facilities highlighted to me. The site also exhibits a small-scale character and the photographic evidence before me gives the impression of large parts of the site having a domesticated appearance. This is at-odds with either the rural landscape or other outdoor recreational facilities.
29. The mixed use enforced against therefore does not reflect the identity of local surroundings, and, despite much of it having remained as grassland, the enduring character neither reflects nor establishes a strong sense of place. The development therefore has an unacceptable adverse impact on the landscape character and quality of the area.
30. I conclude that the development is harmful to the character and appearance of the area contrary to Policy DM10 of the LP, which amongst other things, requires that development should be carefully integrated into the natural, built and historic environment, aim to establish a strong sense of place, respond to local character, and reflect the identity of local surroundings. For the same reasons it contravenes the LCA. This is a matter to which I attach moderate weight.

Other considerations

31. The appellant has put forward planning conditions, but this would leave considerable doubt in my mind as to the balance between the mixed use and the visual and spatial effects of the development. There was no other detailed scheme or agricultural business plan that might have addressed my concerns such that planning conditions could have been imposed in accordance with the relevant tests. In the absence of these I therefore afford this proposition limited weight.

The Green Belt balance

32. I have concluded the development enforced against is inappropriate development that conflicts with national and local policy to protect the Green Belt and results in harm to the character and appearance of the area. There are no other considerations in favour of the development that clearly outweigh the presumption against inappropriate development in the Green Belt and the

substantial weight that the Framework requires to be attached to such harm. The very special circumstances necessary to justify the retention of the development do not, therefore, exist.

Conclusion

33. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) should be dismissed.

The ground (f) appeal

34. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellants to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
35. The appellants contend that it is excessive to require the removal of the buildings, the largest of which is referred to as the barn. The evidence is of a barn prior to the appellant's purchase of the site that was predominantly of steel framed construction and enclosed by steel or similar cladding.
36. The witness of fact before the Inquiry very fairly explained how he was often out of the country. He therefore could not provide sufficiently precise evidence about the works undertaken to the building. Moreover, he neither provided invoices nor drawings relating to the works, and, did not take the opportunity to have one of the farm hands, who undertook the works, to provide evidence to the Inquiry.
37. Given the onus rests with the appellants, there is very little first-hand evidence from them as to the extent of works undertaken to the building. On the balance of probabilities, the evidence demonstrates that the existing metal frame was retained as well as a concrete pad or hardstanding within that footprint. Indeed, I was able to observe very small parts of what I will accept as the original structure during my site visit. The external envelope of the building (aside from the extension to the rear) and its position is therefore the same. However, the evidence does not demonstrate on the balance of probabilities whether additional structural works were undertaken in order to support the loads associated with a new insulated roof and walls. This casts considerable doubt in my mind.
38. The building looks materially different to its predecessor given the timber cladding used and choice of fenestration. Given the extent of works that it is apparent have been undertaken from photographs and my site visit, together with the appellant's lack of documentary evidence to demonstrate on the balance of probabilities that those works merely amount to maintenance, improvement or alteration/conversion, it is only possible to conclude that this is a rebuilding operation. This is possible even where parts of the old building remain¹.
39. That rebuilding operation is then part and parcel of the mixed use alleged given the building has been finished to a very high standard with bi-folding doors as well as windows and, internally, there is a sealed floor, plastered walls,

¹ I have also had regard to *Hibbitt v SSCLG* [2016] EWHC 2853

numerous lights, sockets and radiators (since removed) as well as a toilet and shower. It has very limited features that might be expected as part of an agricultural building. Given this is a rebuilding operation, I cannot require the land to be restored to its former condition by means of erecting the former barn, as this would be tantamount to another rebuilding operation without planning permission. Demolition of the building is therefore not excessive.

40. The smaller building houses a bore hole pump which provides water to the larger building and water troughs. It therefore is part and parcel of the mixed use alleged. It is therefore not excessive to require the removal of the buildings to remedy the breach of planning control.
41. The notice does not specifically prescribe the hard and soft landscaping to be removed, nor the items or paraphernalia. However, the appellants are best placed to know what landscaping and paraphernalia they have either undertaken or brought to the site that is associated with the unauthorised mixed use. They have also offered no specific alternative requirements to then assist on this point. That planning permission is not required for planting, does not make it an excessive requirement when it is part and parcel of the unauthorised mixed use.
42. The uncontested evidence of the appellant is that the shepherd hut was on the land at the time of his purchase and that no works have been undertaken other than the inclusion of a dishwasher. It would therefore be excessive to require its removal in order to remedy the breach. However, it should be restored to its condition prior to the material change of use taking place in order to avert any continued recreational/leisure use. This strikes an appropriate balance.
43. The appeal on ground (f) consequently succeeds to a limited extent.

Other Considerations

44. I am mindful that there was an agricultural barn at the site which benefitted from planning permission and this appeal does not provide the appellants with opportunity to seek planning permission for building operations. I have discretion to extend the compliance period if I believe it would be a proportionate response and therefore an additional period of 3 months would afford the appellants time to explore their options, should they be so minded, without unduly perpetuating the breach of planning control.

Overall Conclusion

45. For the reasons given above I conclude that the appeals should not succeed overall. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal Decisions

Appeals A and B

46. It is directed that the enforcement notice be varied by:
 - deleting the words '*Remove the shepherd hut from the land.*' and inserting the words '*Restore the shepherd hut to its condition prior to the material change of use taking place.*'
 - substituting '*6 months*' as the time for compliance.

47. Subject to these variations the appeals are 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.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Patrick Robinson, Solicitor (Consultant), Burges Salmon, instructed by the Appellants

He called	Mr Alan Johnson	Appellant
	Mr Christopher Stokes	Stokes Morgan Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Emma Anderson, Solicitor, North Somerset Council

She called	Mr Geoff Douglas	Pelham Planning Associates Ltd
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INTERESTED PERSONS:

Mr John Grierson, Planning Officer, representing North Somerset Council during the site visit

DOCUMENTS

1. Authorities bundle provided by the appellants
2. Appellant's opening statement
3. Council's opening submission
4. Copy of the Town and Country Planning (General Permitted Development) (England) Order 2015
5. Copies of the two Council notification letters
6. Statement of Common Ground
7. Council's list of suggested conditions
8. Copy of appeal decision APP/W1145/W/16/3146084
9. Appellant's list of additional suggested conditions
10. Council's closing submission
11. Appellant's closing statement