



Appeal Decisions

Hearing Held on 21 May 2021

Site visit made on 24 May 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date 13 September 2021

Appeals A and B Refs: APP/K3415/C/19/3241105 and 3241104 Land on the north side of Coppice Lane, Hammerwich, Burntwood, Staffordshire WS7 0JY

- 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 Act").
- Appeal A is made by Samantha Gallier-James and Appeal B is made by Trevor Gallier against an enforcement notice issued by Lichfield District Council.
- The enforcement notice was issued on 14 October 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use of land from agricultural to equestrian use, including the erection of two timber stables (shown approximately edged black on the attached plan) and a timber hay store (shown approximately edged in blue on the attached plan)
- The requirements of the notice are to:
 - (a) Cease the equestrian use of the land.
 - (b) Demolish the two timber stable blocks shown approximately edged in black on the attached plan.
 - (c) Demolish the hay store shown approximately edged in blue on the attached plan.
 - (d) Remove all debris from the land resulting from compliance with steps ii and iii above.
 - (e) Reinstate the land previously occupied by the two timber stable blocks and timber hay store by reseeding the grass.
- The period for compliance with the requirements is six months.
- Appeals A and B are proceeding on the grounds (d)(e) and (f) set out in section 174(2) of the Act. Since the prescribed fee has been paid in respect of Appeal A, this appeal includes ground (a) and an application for planning permission is deemed to have been made.

Summary of Decision: Appeals A and B succeed in part with regard to immunity and Appeal A succeeds with regard to the change of use, the enforcement notice is quashed and planning permission is granted in the terms set out in the Formal Decision.

Procedural matters

1. A revised National Planning Policy Framework (the Framework) was published on the 20 July 2021. I am satisfied that the revisions have no material difference to the issues raised in this appeal although I have referred to the new paragraph numbers where appropriate.

The notice

2. The allegation relates to a change of use of the land including the erection of two timber stables and a timber hay store. The Council relies upon the case of *Murfitt v Secretary of State & East Cambridgeshire DC 1980* (the Murfitt case) which established that an enforcement notice relating to a material change of use can include the removal of operational development which is part and parcel of and are an integral part of the use.
3. However, the reasons for the notice relate only to the operational development not the change of use. The Council's case is that the material change of use and the erection of the buildings are interlinked and that it is therefore appropriate for the notice to attack both the use and the buildings. Although it would have been preferable for the Council to address the use issue within the reasons, I am satisfied that the appellants understood the nature of the allegation from the notice.
4. The notice does refer to an "unauthorised change of use" rather than a material change of use. To accurately reflect Section 55(1) of the Act which defines development, I can amend the notice to replace the word "unauthorised" with "material." No injustice is caused by this minor correction.
5. The appellants state that the red line enforcement plan attached to the notice covers an area that is wider than the ownership of Trevor Gallier. The Land Registry details of both Trevor Gallier and the neighbouring landowners confirm that a very modest triangular piece of land to the north- west corner of the appeal site has been included within the red line plan but is outside Trevor Gallier's ownership. The appellants' argument is therefore that the neighbouring landowners should have been served with the notice.
6. However, the Council confirmed at the Hearing that although the owners of neighbouring land had not been served with the notice, no equestrian use takes place outside the land owned by Trevor Gallier. The parties agreed that substituting the enforcement notice plan with a plan to match the Land Registry plan of Trevor Gallier's ownership would resolve this issue. I agree that the site plan can be corrected without injustice.

Appeals A and B – Ground (e)

7. An appeal under ground (e) alleges that the enforcement notice was not served upon everyone with an interest in the land. The notice was served on Trevor Gallier as the owner of the land but not upon his daughter, Samantha Gallier-James, who uses the land for equestrian purposes and to stable her horses. The appellants consider that she should have been served. Nevertheless, the appellants agreed at the Hearing that as Samantha Gallier-James was able to lodge an appeal and attend the Hearing, it could not be said that she has been substantially prejudiced by not being served with the notice. The appeals on ground (e) therefore fail.

Appeals A and B – Ground (d)

8. The burden of proof lies with the appellants and the relevant test of the evidence is the balance of probabilities. The ground of appeal is that at the time when the notice was issued, it was too late to take enforcement action.

9. The enforcement notice states that the breach occurred within the last 10 years which is the relevant period of immunity for a material change of use. However, as operational development a building attracts a 4 year period for enforcement under Section 171B(1) of the Act which states that "*Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, over or under land, no enforcement action may be taken after the end of the period of four (4) years beginning with the date on which the operations were substantially completed.*" There is a distinction between a breach of operational development to which the 4-year limit applies and one where the works facilitate a material change of use where the 10 year period is applicable. However, it is necessary firstly to consider whether the two timber stables and a timber hay store are buildings which in turn would constitute operational development as alleged in the notice.
10. Section 336 of the Act states that "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. The structures are wooden clad with profiled metal sheets on the roof. They are not obviously fixed to the ground as in bolted down or concreted in place but in terms of appearance have a degree of permanence. Although there are skids to the base of the structures, they appear as a border rather than a functional means to move them.
11. The Council states that the "structures are buildings and not chattels on the basis that in practice they are not moved and having been in the same position for 6 years as such they are permanent". Reference is made to *R (Hall Hunter Partnership) v FSS & Waverley BC 2007* which refers to three primary factors namely size, permanence, degree of attachment in assessing whether or not structures are buildings. With regard to permanence, there is no dispute that the structures have not moved since they came onto the land in February 2014. In terms of size, the structures are around 68 square metres, with heights to the eaves of around 2.4 metres and to the ridge of around 3.1 metres. The structures are on top of hardstanding. With regard to physical attachment, the appellants' view for the purposes of ground (d) is that the structures are operational development. The Council states that there is no evidence to suggest that they structures are capable of being moved. It is not clear how the buildings could be moved without damage given the effect upon the skids of not having been moved since coming onto site in early 2014.
12. The appellants applied for retrospective planning permission solely for the structures and not for any change of use in May of 2017 on the basis that as buildings they required planning permission. The previous Inspector assessed the structures as "a mass of new permanent built development" in her decision issued on the 21 September 2018.¹ There have been no changes with regard to the nature or location of the structures since that date which would lead me to reach a different conclusion to that of the parties i.e. the structures are buildings which are operational development. On the evidence before me, I therefore agree with the parties that the hay store and stables are operational development.
13. The next issue therefore is whether the notice can require the removal of operational development as part of a notice attacking a material change of use

¹ APP/K3415/W/17/3182602

so that a 10 year period or immunity is applicable rather than the 4 year period that would be required for operational development by itself. The facts of the Murfitt case related to a material change of the use of the land to the storage of HGV vehicles and the removal of an area of hardstanding. The operational development in that case was an area of hardstanding rather than the construction of separate buildings. The use of the land formed the basis of the allegation and the hardstanding was found to be integral and part and parcel of that use.

14. However, there does appear to me to be a distinction to be drawn between the Murfitt case where the material change of use was central to the breach of planning control and this case where the Council's evidence is largely about the operational development and the Council has no policy objection to the use. However, a notice based upon operational development alone could not have been served as the Council accepts that a 4 year immunity period has been satisfied for the buildings. The lack of reasons for the notice with regard to the material change of use which deals solely with operational development also reinforces the Council's position with regard to the appeal site. The Council indicated at the Hearing that including the use in the allegation was a mechanism for enforcing against both the use and the operational development. However, the Council has no issue with the use.
15. The operational development consists of three separate buildings which by themselves have been the subject of two separate planning applications without any change of use applications. The equestrian use of the land did commence and take place without the buildings for a period of around 4 months. Given the size and nature of the buildings in relation to the appeal site, I do not consider that the buildings are ancillary and integral to it. I do consider that a four year period of immunity should apply to the buildings as operational development. In order to succeed on ground (d) therefore the appellant must show on a balance of probability that the buildings enforced against were substantially completed more than four years before the date the notice was issued so as to be immune from enforcement.
16. The appellants have provided evidence with regard to how the buildings came onto the land in February 2014. There is therefore no dispute between the parties that the buildings were substantially completed on or before the 14 October 2015 i.e. on or before 4 years prior to the service of the notice.
17. I therefore do find that on the balance of probabilities the operational development described in the notice has taken place more than 4 years prior to the issue of the enforcement notice so at the date that the enforcement notice was issued, the time for taking enforcement action as set out in Section 171B (1) of the Act had expired. The ground (d) appeal succeeds to that extent. I shall amend the notice by deleting from the notice, the part of the allegation and the requirements that relate solely to the buildings.

Appeal A - Ground (a) and the deemed planning application (DPA)

18. The terms of the DPA are directly derived from the allegation. Given my findings on ground (d) above, the timber stables and hay store are immune from enforcement action. The corrected allegation now reads *without planning permission, the material change of use of land from agricultural to equestrian use*. Planning permission is therefore sought for the equestrian use of the site.

The main issues

19. The site is located within the designated Green Belt and in a rural area. The Council's concern relates to the location of the site within the Green Belt and I will focus upon that issue. The main issues are:
- Whether the change of use from agricultural to equestrian use is inappropriate having regard to development plan policies and the Framework.
 - If the development constitutes inappropriate development, whether the harm by way 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

20. The appeal site forms part of a field off Coppice Lane and is within the Green Belt. Apart from the buildings previously described, the remainder of the appeal site is a field used by the horses owned by Samantha Gallier- James for her own personal use. The character of the surrounding area is agricultural.
21. The first paragraph of Policy NR2 of the Lichfield District Local Plan Strategy 2015 (the Local Plan) does refer to supporting opportunities for outdoor sport and recreation within the Green Belt. However, the policy itself largely addresses new buildings in the Green Belt and the supporting text states that reference should be made to the Framework for certain other types of development which are considered appropriate in the Green Belt.
22. Paragraph 150 (previously Paragraph 146) of the Framework sets out 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. Paragraph 150 e) refers to material changes in the use of land (such as changes of use for outdoor sport or recreation). It is not disputed by the parties that the current use of the land for the keeping and riding of her horses is outdoor sport which preserves openness and does not conflict with the purposes of including land within the Green Belt.
23. The appeal site is modest in size and three horses currently occupy the land although there is stabling for four horses. Whilst, any grant of planning permission would run with the land, the modest size of the appeal site together with appropriate conditions are sufficient in my view to preserve the openness of the land and not conflict with the purposes of including land within it.
24. Accordingly, for the reasons given above, the change of use from agricultural use to equestrian use is not inappropriate having regard to Policy NR2 of the Local Plan which supports opportunities for outdoor sport and recreation and the exception contained in Paragraph 150 e) of the Framework. As the equestrian use is not inappropriate, I do not need to consider the second main issue which would have considered whether any harm or very special circumstances would have outweighed any inappropriateness. The Council is not alleging any other harm such as to character and appearance.

Conditions

25. Two conditions were suggested by the parties which related to the equestrian use. A condition preventing the use of external lighting is necessary given the

countryside location to protect ecology. A condition restricting the use of the land to recreational rather than commercial uses is also appropriate given the modest size of the field and the Green Belt designation. Whilst a personal condition was initially suggested by the Council, wording such as limiting use to a named person and immediate family can create uncertainty and I do consider that limiting the use to recreational purposes is, on balance, preferable given the appeal site limitations previously referred to.

Conclusion

26. As to the appeal on ground (d), I am satisfied on the evidence that the appeal on this ground should succeed in respect of the operational development stated in the notice as being part of the breach of planning control. I have further concluded that ground (a) succeeds to the extent that the equestrian use is not inappropriate development in the Green Belt. I shall grant conditional planning permission for the use described in the notice as corrected. Given the success on grounds (d) and (a), the appeal under ground (f) does not fall to be considered.

Formal Decision

27. Appeal B succeeds in part in relation to the operational development referred to as part of the breach of planning control in the notice.

28. It is directed that the enforcement notice is corrected by:

- a) the substitution of the plan annexed to this Decision for the plan attached to the enforcement notice
- b) deletion of the word "unauthorised" from the allegation and replacing it with the word "material."
- c) deletion of the words "including the erection of two timber stables (shown approximately edged in black on the attached plan) and a timber hay store (shown approximately edged in blue on the attached plan)."
- d) deleting requirements (b) (c) and (d) and (e) from Section 5 of the notice.

29. Subject to the above corrections, Appeal A 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 for the development already carried out namely the material change of use of the land from agricultural to equestrian use as shown on the amended plan attached to this decision and subject to the following conditions:

- 1) No external lighting shall be installed.
- 2) The land shall not be used commercially for the giving of riding lessons, the schooling of horses or any commercial livery or grazing.

E. Griffin

INSPECTOR



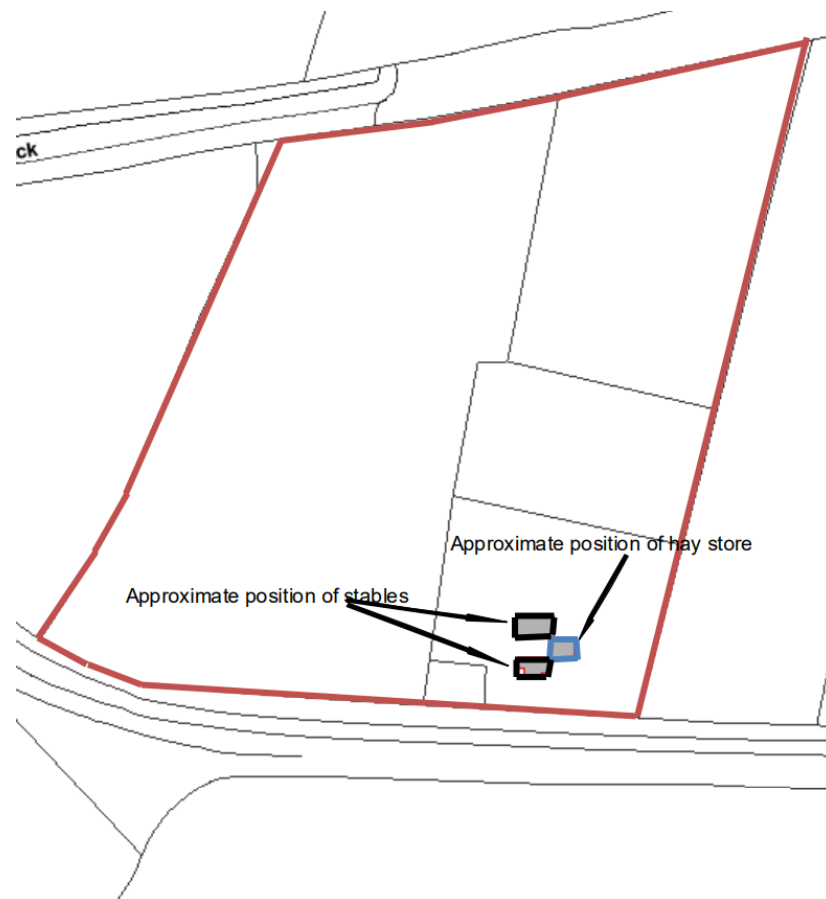
Plan

This is the plan referred to in my decision dated: 13 September 2021

by **E. Griffin**

**Land on the north side of Coppice Lane, Hammerwich, Burntwood, Staffordshire
WS7 0JY**

Reference: APP/K3415/C/19/3241105 and APP/K3415/C/19/3241104



E. Griffin
INSPECTOR

APPEARANCES

THE APPELLANTS

Mr Trevor Gallier
Mrs Samantha Gallier-James

FOR THE APPELLANT:

Mr Fred Quartermain Solicitor
Mr Phil Plant Consultant

Thrings Solicitors
Mid West Planning Limited

FOR THE LOCAL PLANNING AUTHORITY:

Mr Glen Baker-Adams Senior Planning Officer

INTERESTED PERSONS:

Mr Dave King Councillor

Documents submitted at or after the hearing

Land Registry Information

Revised Enforcement Notice Plan