



Appeal Decision

Site visit made on 12 April 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal Ref: APP/Y3615/C/21/3281599

Land at Goal Farm, Gole Road, Pirbright, GU24 0PZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Karl Kavanagh against an enforcement notice issued by Guildford Borough Council.
 - The enforcement notice, numbered EN/20/00314, was issued on 28 July 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the carrying out of development comprising;
 - (i) The material change of use of land from a nil use to a use for equestrian purposes;
 - (ii) The erection of two buildings labelled '1' and '2' on the plan attached to the notice;
 - (iii) The installation of a hard surface facilitating access into the site and forming the bases of the unauthorised buildings;
 - (iv) The installation of drainage
 - (v) The installation of a hoarding and gate adjacent to the highway and in excess of 1m in height.
 - The requirements of the notice are:
 - (i) Cease the use of the Land for equestrian purposes;
 - (ii) Permanently remove from the Land the stables "building 1 " (shown in the approximate location outlined in green and labelled 1 on Plan B) and the tent "building 2"
 - (iii) Permanently remove from the Land the hoarding and gate
 - (iv) Permanently remove the hardsurfacing from the Land
 - (v) Permanently remove from the Land the drainage installed;
 - (vi) Permanently remove from the Land all materials, rubble, rubbish and debris arising from steps (i-v)
 - (vii) Reseed the Land with grass
 - (viii) Reinstall the planting between X and Y on Plan B attached to the notice with species as was previously in situ
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (b) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with corrections as set out in the Formal Decision below

Procedural matters

1. This appeal was travelling with an appeal made under section 195 of the 1990 Act made by the same appellant and relating to the same site, but relating to an unrelated proposed development (APP/Y3615/X/21/3281608). That appeal is the subject of a separate Decision.
2. The appeal was originally made on the grounds set out in section 174(2) (a) and (c) of the 1990 Act. The appeal on ground (c) is that, in respect of any

breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. The essence of the appellant's appeal made on ground (c) is that the principal use of the land is for the grazing of horses and is therefore for the purposes of agriculture. Section 55(2)(e) of the 1990 Act states that the use of land for agriculture is not development, and this leads the appellant to the conclusion that the use of the land for agriculture does not constitute a breach of planning control. As a matter of law, that would be correct.

3. The difficulty with the appellant's approach is that an appeal on ground (c) can only relate to the breach of planning control alleged in the notice. In this case, the enforcement notice does not (and could not) allege the use of the land for agriculture without planning permission: it alleges a material change of use of land from a nil use to a use for *equestrian* purposes (emphasis added). At no point does the appellant contend that the use of the appeal site for equestrian purposes does not constitute a breach of planning control. The appellant's appeal on ground (c) therefore does not address the breach of planning control alleged in the notice, and as such is misplaced.
4. However, on my reading, the appellant is contending that the breach of planning control alleged in the notice has not taken place: in other words, the appellant contends that the land is *not* being used for equestrian purposes but *is* being used for an agricultural purpose. It therefore seems to me that the appellant's appeal on ground (c) should more properly be considered as an appeal under ground (b): namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred.
5. The Council's response to the appellant's appeal on ground (c) does, without expressly saying so, treat the appellant's appeal as if it was made under ground (b). I am therefore satisfied neither party would be prejudiced if I treat the appellant's appeal as being made under ground (b).
6. Under the heading of 'Comment on the alleged breaches of planning control', the appellant's grounds of appeal make reference to the allegations in the notice in respect of the erection of the buildings, the installation of hard surface, the installation of drainage, and the installation of the hoarding/gates. However, on my reading, the appellant does not contend in his grounds of appeal that those matters do not constitute a breach of planning control. Neither does the appellant contend that those matters have not occurred. I am therefore satisfied that the appellant's comments in these respects do not give rise to any appeals under grounds (b) or (c), and that the appeal on ground (b) only relates to the material change of use of the land.

The Enforcement Notice

7. The breach of planning control as alleged in the notice includes, at paragraph 3 (ii), the erection of two buildings. The attendant requirement at paragraph 5(ii) of the notice, is to permanently remove from the land the stables "building 1" and the tent "building 2". There is, therefore, a slight mismatch between the alleged breach of planning control and the requirements to comply with it, with the latter being an amplification of the breach of planning control alleged. In that respect, the description in the requirements at paragraph 5(ii) of the notice is to be preferred as being the more detailed and accurate.

8. It is clear that the appellant has understood the enforcement notice and what he must do to comply with it. Nevertheless, in the interests of clarity and precision, I will correct the allegation in the notice to refer to building 1 as the 'stables' and to building 2 as the 'tent' so that they are consistent with requirements at paragraph 5(ii). I am satisfied that no injustice would be caused by so doing.

The appeal on ground (b)

9. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred. In the case, the onus is on the appellant to show, on the balance of probability, that the material change of use of land from a nil use to a use for equestrian purposes has not occurred.
10. In this respect, the appellant's grounds of appeal are briefly stated. The appellant explains that the principal use of the land is for the grazing of horses, and that the horses are grazed on the grassland forming the majority of the site. It is also explained that the owner also has additional grazing on land nearby in Pirbright (3.6 hectares) and in Chobham (5.2 hectares) which, together with the appeal site, amounts to 9.96 hectares of grazing land for the horses.
11. However, I have difficulty reconciling the appellant's stated position that the principal use of the land is for the grazing of horses with the evidence presented by the Council. Photographs of the site taken by Council Officers in April and May 2021 show much of the land as being barren and devoid of grass, with only limited patches of grass available for grazing by the horses. The area of grassland shown in those photographs could not reasonably be described as forming the majority of the site, as claimed by the appellant.
12. The situation had not changed significantly by the time of my site visit. The majority of the site was still barren earth and devoid of grass. There was a patch of grass towards the south-east corner of the site and two horses were grazing on that patch of grass. There were, in addition, a total of eight horses within the stables building (Building 1), including two new-born foals. On the limited evidence before me, I am not convinced that the limited amount of grass on the site is sufficient to provide grazing for the number of horses on the site at the time of my site visit, especially in the long term. Furthermore, having regard to the evidence produced by the Council and that contained in third party representations, I am not convinced that the primary use of the land has ever been for the grazing of horses.
13. The stables building is a substantial structure. The building provides a total of four stalls for horses, two either side of a central section providing ancillary accommodation. This central section is itself a not insubstantial and well-appointed space, with laminate flooring, heating, electricity sockets and a kitchenette with a hot & cold water, a sink and storage cupboards. There is also a well-appointed bathroom, with a toilet, shower and pedestal basin.
14. In my view, the accommodation provided by Building 1 as whole goes way beyond the provision of a simple shelter typically used to protect horses from the weather when not grazing. In particular, the accommodation exceeds what may reasonably considered necessary to cater for workers supporting the use

of the land for the grazing of horses. On the other hand, the space and facilities provided by Building 1 are entirely consistent with supporting the use for equestrian purposes.

15. At the time of my site visit, Building 2 contained a barbeque and some seating, together with some bales of straw. The appellant has not explained the purposes for which any of the aforementioned is used but, it seems to me, the barbeque and the seating are more consistent with supporting the use for equestrian purposes than for supporting just the use of the land for the grazing of horses.
16. The Council also considers that there is further evidence that the land is not used solely for the grazing of horses insofar as, at the site visit made by Council Officers on 21 May 2021, there was a device on site which facilitates the 'covering' (breeding) of horses. This device was still in place at the time of my site visit. The Council reports that the owner advised at that site visit that they have a stallion that people travel to site to breed their mares with. This suggests, the Council argues, that there is also a breeding operation taking place at the site. The appellant has had the opportunity to comment upon or refute that suggestion in his Final Comments, but remained silent on the point. The presence of two foals in the stable building at the time of my site visit, together with their respective mothers, tends to support the Council's view.
17. Having regard to the paucity of the area of grass on the appeal site, the size of Building 1, the facilities within both Buildings 1 and 2 and the not disputed potential for the breeding of horses on the site, I am not persuaded that the use of the appeal site is solely or primarily for the grazing of horses. I am therefore not persuaded that the land is in agricultural use. In that respect, the appellant has failed to discharge the burden of evidence that falls upon him under this ground of appeal. Against that, the evidence produced by the Council and in third party representations, together with my own observations at the site visit, tend to indicate that the site is being used for equestrian purposes, as alleged in the notice.
18. I conclude that, on the balance of probability, the matters stated in the notice have occurred. Accordingly, the appeal on ground (b) fails.

The appeal on ground (a) and the deemed planning application

19. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated two substantive reasons for issuing the enforcement notice, from which the main issues raised are:
 - whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt
 - the effect on the character and appearance of the area, and
 - if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, 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.

Whether the proposal is inappropriate development in the Green Belt

20. Paragraph 149 of the National Planning Policy Framework (Framework) indicates that, with some exceptions, the construction of new buildings is inappropriate in the Green Belt. One of the exceptions is the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport or outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
21. I am satisfied that Building 1 is an appropriate facility for outdoor sport or outdoor recreation: in this case, an equestrian use. However, notwithstanding that Building 1 is single-storey, by reasons of its length, footprint, mass and bulk it fails to preserve the openness of the Green Belt in this location, both in spatial and visual terms. The resultant harm to the openness of the Green Belt is exacerbated by the siting of the building in an exposed position in the centre of the site, from which it is widely visible. This is particularly evident when viewed from Gore Road. From within the site itself, building 1 is typically viewed against the backdrop of the railway embankment to the north but, even so, the size and bulk of the building is apparent. For those reasons, I assess the resultant harm to the openness of the Green Belt to be significant.
22. In this respect, I note that each pair of stables on either side of the central block within Building 1 is mounted on skids and is moveable. The appellant explains that once de-coupled from the central facilities block (kitchen/w.c.), each pair of stables can be individually relocated to alternative locations within the appeal site¹. The appellant maintains that this overcomes any concerns about the impact of Building 1 on the openness of the site.
23. I do not agree. Firstly, even if separated into three units, whilst the visual impact on the openness may be lessened to some extent, there would still be some loss of openness in visual terms. By definition, any degree of loss of openness, however slight, would fail to preserve the openness of the Green Belt. Secondly, separating Building 1 into three smaller units would not affect the loss of openness in spatial terms. For those reasons, I consider that separating Building 1 into three smaller units would not preserve the openness of the Green Belt in this location.
24. I am less convinced that Building 2 is an appropriate facility for outdoor sport and recreation in its own right. However, insofar as it is used in conjunction with Building 1, on balance I accept that Building 2 should also be considered to qualify as an exception for the purposes of paragraph 149 of the Framework. Building 2, whilst of a lesser volume than Building 1, nevertheless also harms the openness of the Green Belt in this location in spatial terms. Although that harm to the openness of the Green Belt in that respect is not significant, by definition that loss of openness fails to preserve the openness of the Green Belt. In visual terms, the design of Building 2 and the dark colouring of the materials from which it is made result in a significant harm to the openness of the Green Belt.
25. The hoarding at the entrance to the site, and to a lesser extent the entrance gates, by reason of their verticality causes significant harm to the openness of

¹ I am not, however, convinced that this applies to the central unit which has electricity and water services connected, and is therefore attached to the ground with a degree of permanence.

the Green Belt. There is no evidence before me to suggest that this hoarding is a replacement for a previously existing hard boundary feature: indeed, the Council indicate this hoarding replaced a previous hedge and low-level wire fencing. It is therefore reasonable to conclude that the harm to the openness of the Green Belt results directly from this new development.

26. Paragraph 150 of the Framework indicates that certain other forms of development are not inappropriate in Green Belt provided they preserve the openness of Green Belt and do not conflict with the purposes of including land in Green Belt. These include the material changes in the use of land such as changes of use for outdoor sport or recreation, as in this case.
27. The use of the appeal site for equestrian purposes requires built development in order to take place including, in this case two buildings and extensive hard surface. For the reasons set out above, I have already found that the two buildings do not preserve the openness of the Green Belt. For reasons that I set out below, the hard surface similarly fails to preserve the openness of the Green Belt. In addition, by the introduction of built form onto an area of land previously devoid of built development, the change of use does not assist in safeguarding the countryside from encroachment, and therefore conflicts with the purposes of including land in Green Belt.
28. The hard surface constitutes an engineering operation and therefore, in accordance with paragraph 150 of the Framework, would be considered as being not inappropriate in Green Belt provided it preserves the openness of Green Belt and does not conflict with the purposes of including land in Green Belt. However, due to its extent and solid appearance, the area of hard surface is harmful to openness of the Green Belt in visual terms and does not assist in safeguarding the countryside from encroachment. It therefore conflicts with the purposes of including land in Green Belt.
29. The installation of the drainage would also constitute an engineering operation for the purposes of paragraph 150 of the Framework. The drainage alleged in the notice is completely below ground level and consequently does not affect the openness of the Green Belt. Neither would it conflict with the purposes of including land in Green Belt. The installation of this drainage would therefore be considered as being not inappropriate development in the Green Belt.
30. I therefore conclude that, with exception of the drainage, the breach of planning control alleged in the enforcement notice is inappropriate development in the Green Belt in the context of Paragraphs 149 and 150 of the Framework. Paragraph 147 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Character and appearance of the area

31. The appeal site falls within Landscape Area G1 as defined within the Guildford Landscape Character Assessment and Guidance Supplementary Planning Document 2007 (SPD). The key features that contribute to the character of that landscape area identified in the SPD include a rural peaceful character and intimate landscapes with views framed by woodlands.
32. The area to the south of Gore Road displays some of the landscape attributes identified in the SPD, including pockets of woodland. These give the landscape

an attractive character and appearance. The appeal site itself does, however, portray remnants of its previous use as a golf course, giving the appeal site and the landscape immediately beyond a certain man-made quality. Nevertheless, the wider landscape is generally open and maintains the attractive character and appearance.

33. Notwithstanding that Building 1 is single-storey and largely of timber external finish, by reason of its size and appearance the insertion of that building into this generally open landscape results in an alien and incongruous feature in a landscape otherwise largely devoid of buildings. The harm in this respect is again exacerbated by the siting of the building in the centre of the site, where it is clearly visible from Gore Road. Moreover, in those public views, Building 1 is largely viewed against the backdrop of the pocket of woodland beyond, and as such detracts from the contribution that this key feature makes to the character and appearance of the area.
34. Although smaller, by reason of its design and dark colouring, Building 2 is visually intrusive and in detracts from the character and appearance in its own right. The harm in this respect is exacerbated by its siting directly adjacent to Building 1, resulting in a conglomeration of built form in the centre of the site that is clearly visible from the public domain.
35. The extensive area of hard surface is, by its very nature, incongruous in this location otherwise characterised by soft surfaces and vegetation. The hoarding at the entrance of the site, by reason of its height, the use of poor-quality materials and its position adjacent to the highway, is visually intrusive and harmful to the character and appearance of the area.
36. I take the appellant's point that Building 1 may be considered to be a type of building this commonly found in a countryside location. I also accept that in some rural locations a building of that size and design might be acceptable. However, for the reasons stated above, in my view Building 1 is not acceptable in terms of its design and appearance in this particular location. I do not, however, agree with appellant that Building 2 is of a type or design commonly found in a countryside location, and in my view is both visually intrusive and incongruous in this particular location.
37. I also acknowledge the appellant's point that the use of land for horse pasture is recorded as a characteristic of this type of landscape identified in the SPD. I am also mindful that one of the management guidelines for this type of landscape refers to the management of horse paddocks with the aim of retain the rural character of the area. However, whilst the grazing of horses might be part of the use subject to the notice, other aspects of that use require/have resulted in the erection of buildings and other development on the appeal site. I do not consider that the latter aspects accord with the characteristics of this type of landscape as identified in the SPD.
38. I conclude that the breach of planning control unacceptably harms the character and appearance of the area. I therefore conclude that the development which has taken place is contrary to Policy D1 of the Guilford Borough Local Plan: Strategy and Sites 2019, as well as those elements of saved Policy G5 of the Guildford Borough Local Plan that have not been superseded by the new Local Plan. These policies require, amongst other things, that all new developments will be required to achieve high quality

design that responds to distinctive local character (including landscape character) of the area in which it is set.

Green Belt balancing exercise and conclusion on the ground (a) appeal

39. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development (with the exception of the drainage). I further conclude that the development subject to the enforcement notice has an unacceptably harmful effect on the character and appearance of the area, a matter to which I attach significant weight. These harms could not be overcome by the imposition of suitably worded conditions
40. Against this, I have not been advised of any material considerations that constitute a benefit arising from the development that might weigh against the harm that I identified above.
41. Consequently, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.
42. For the reasons set out above, the breach of planning control alleged in the notice (with the exception of the drainage) is also contrary Policy P2 of the Guilford Borough Local Plan: Strategy and Sites 2019. That policy indicates that the Council will continue to protect the Green Belt against inappropriate development in accordance with the Framework, and that inappropriate development will not be permitted unless very special circumstances can be demonstrated. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.
43. This, then, just leaves the drainage to be considered. Even though the installation of the drainage is not inappropriate development in the Green Belt, that does not necessarily mean that planning permission ought to be granted for it. Other material considerations must also be taken into account.
44. In that respect, it is settled case law that an enforcement notice may require the removal of works that facilitate a material change of use. The Courts have consistently supported that principle. In this case, the drainage facilitates the supply of water to the central unit within Building 1. The drainage therefore facilitates the use of that building in connection with the material change of use of the land for equestrian purposes alleged in the notice a use which I have found to be unacceptable in planning terms.
45. Following my conclusions above, planning permission will be refused for all the other matters stated in the notice (including the use of the site for equestrian purposes) and the notice will be upheld. The Council consider that the appeal site has a nil use, the previous use as a golf course having been abandoned. The appellant has not challenged that, and I see no reason to take a different view. It follows that there is no lawful use of the land for which the drainage could be used.
46. I recognise that the drainage is not visible above ground, and has no impact on the character and appearance of the area. Nevertheless, the installation of the drainage has facilitated a use of the land and the associated operational

development that is significantly harmful to the openness of the Green Belt and to character and appearance of the area. The drainage is an integral part of the operation to erect Building 1 and the notice requires the removal of the building that the drainage serves. In the absence of any lawful use to which the building could be put, it makes no sense to grant planning permission for the drainage in isolation. Consequently, there is no sound planning reason to grant planning permission for the drainage and, in my view, that outweighs the neutral effect on the openness of the Green Belt and character and appearance of the area.

47. Accordingly, I conclude that planning permission ought not to be granted for any of the matters stated in the notice. Accordingly, the appeal on ground (a) is dismissed.

Conclusion

48. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

49. It is directed that the notice is corrected by:

- In paragraph 3 of the notice, insert after the words 'two buildings' the words ',comprising stables (Building 1) and a tent (Building 2),'

50. Subject to that variation, the appeals are dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR