



Appeal Decisions

Site visit made on 12 April 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal A: APP/X1355/C/22/3291375

Appeal B: APP/X1355/C/22/3291376

Appeal C: APP/X1355/C/22/3291377

Land referred to as 'Pine Tree Stables' being land to the South of Esperley Lane, Cockfield DL13 5RB

- 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 Paul Metcalfe (Appeal A), Mr Stuart Kirby Metcalfe (Appeal B) and Mrs Susan Dawn Metcalfe (Appeal C) against an enforcement notice issued by Durham County Council.
- The enforcement notice was issued on 14 December 2021.
- The breach of planning control as alleged in the notice is Without planning permission the material change of use of the Land to a mixed use site, including the keeping of dogs; the keeping of horses; the keeping of poultry and storage use for vehicles, trailers, caravans, equipment and importation and storage of waste. The incidental operational development consisting of: the erection of timber stables, storage building, kennels; shipping container and cabin (with incidental walls, fencing, steps); entrance gates, pillars and fencing, and means of enclosure.
- The requirements of the notice are A - Discontinue the use of the Land, by:- a) Permanently cease the use of the Land for the keeping of animals, including dogs, horses and poultry, removing all animals from the Land; b) Permanently cease the use of the Land for storage purposes; c) Permanently cease the use of the Land for storage of imported waste items; B - Restore the Land to its condition prior to development taking place by undertaking the following actions: a) Dismantle in their entirety and permanently remove from the Land the stable, kennels and storage building, removing the resultant materials, waste and building debris from the Land; b) Dismantle in their entirety and remove the operational works around the day room cabin including steps, walls and fencing, removing resultant materials, waste and construction debris from the Land; c) Permanently remove from the Land all shipping containers, cabins and portable toilets; d) Permanently remove from the Land any skip or other waste receptacle, and all waste, rubbish, debris, waste electrical equipment, domestic items, scrap materials/metals, cycles, toys, gas canisters, pallets, IBC tanks, timber, tyres, barrels etc stored on site; e) Permanently remove from the Land all equestrian items or paraphernalia, feed, bedding, hay, straw, supplies, materials, equipment, carts or traps; f) Permanently remove from the Land all canine items, kennels, feed, equipment and paraphernalia; g) Permanently remove from the Land all stored items and equipment, including domestic paraphernalia; h) Permanently remove from the Land all vehicles, motor homes, caravans, trailers, motorised carts and bicycles (including any parts, tools and equipment); i) Dismantle and remove in its entirety the entrance gates, pillars and flanking fencing on the Land shown between points A and B on plan 2 attached, removing the resultant materials, waste and building debris from the Land; j) Dismantle and remove in their entirety the stone walls, gates and fencing inside the Land enclosing the area around the portacabin, including the solid boarded fencing abutting the tree belt (including the dwarf concrete wall panels, and concrete posts) on the Land shown between points B-C-D-E-F-G-D on plan 2 attached, removing the resultant

materials, waste and building debris from the Land; k) Dismantle and remove from the Land all lighting columns.

- The period for compliance with the requirements is 10 weeks.
- The appeals are proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Appeal D: APP/X1355/W/22/3291370

Land to the South of Esperley Lane, Cockfield, Bishop Auckland DL13 5RB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Paul Metcalfe against the decision of Durham County Council.
- The application Ref DM/21/01811/FPA, dated 17 May 2021, was refused by notice dated 10 November 2021.
- The development proposed is Change of use of land for the keeping of horses and for the erection of stables and tack room. Retention of existing timber stables, steel container, dog kennels and day room.

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. The appellants allege that the wording of the notice is flawed, on the basis that some of the features identified in the breach have been incorrectly referred to as operational development. I have dealt with this matter as part of the ground (c) appeal.

Appeals A, B and C on ground (c)

2. The appeals on ground (c) are that the matters alleged do not constitute a breach of planning control. The appellants' ground (c) case does not relate to the entire alleged breach of planning control, but only to certain aspects of it. Firstly the appellants claim that several of the structures on the site do not constitute development at all; secondly that the various means of enclosure are permitted development and thirdly that the keeping of chickens would not amount to development.
3. The meaning of development is set out in s55(1) of the Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. The appellants claim that the container, cabin, kennels, and stables do not amount to development, on the basis that they rest on the land, under their own weight, without foundations.
4. However irrespective of whether these various structures should be regarded as operational development, it is important to remember that, with the exception of poultry keeping, it is undisputed that the alleged mixed use of the site for the keeping of horses, dogs and various forms of storage constitutes a material change of use requiring planning permission. In accordance with case law¹ it is possible for an enforcement notice to require the removal of works that do not in themselves amount to development, but that facilitate the unauthorised material change of use.

¹ *Somak Travel v SSE & Brent LBC* [1987] JPL 630

5. From the information before me and my visit I draw the following conclusions, on the balance of probability, regarding the use of the various structures. The cabin is used to provide shelter and welfare facilities in connection with the horse, dog keeping and storage uses. Obviously, the stables and kennels accommodate the respective animals and the container and so-called storage building are for the storage of items connected to the alleged unauthorised uses. I am in no doubt that each of the structures serve to facilitate the unauthorised use of the site and are therefore in breach of planning control. There is therefore no need for me to go on to consider whether these structures constitute operational development in their own right. It would be possible for the allegation in the notice to be amended so as to refer to incidental 'structures' rather than 'operational development', without resulting in injustice to the appellants. I do not accept that the notice would be a nullity for this reason.
6. Turning to the various means of enclosure cited in the notice, there is no dispute that they constitute an act of development in the context of Section 55 of the Act. The question is whether they would have amounted to permitted development. Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure constitutes permitted development, subject to various conditions.
7. Paragraph A.1. of Class A goes on to indicate that, with the exception of specific circumstances relating to schools, development is not permitted by Class A if the structure in question is erected or constructed adjacent to a highway used by vehicular traffic and would exceed a height of 1 metre above ground level. In any other case the height of the structure should not exceed 2 metres above ground level, in order to be permitted development.
8. The parties do not dispute that the various entrance structures comprising gates, pillars and fencing and the other means of enclosure cited in the notice exceed 1 metre in height but do not exceed 2 metres in height. The parties however differ in terms of whether the entrance structure should be regarded as being 'adjacent' to a highway used by vehicular traffic.
9. It is widely accepted that a fence does not need to be abutting a highway in order to be adjacent to it. The common dictionary definition of 'adjacent' refers to it also meaning close or near to something. A fact and degree assessment will therefore be necessary in each case, to determine whether an enclosure should be regarded as adjacent to a highway.
10. In this case the entrance structure is set back in excess of 9 metres from the edge of the carriageway, and on either side is also set back from and substantially screened by a mature hedgeline. I consider these characteristics serve to give the entrance a recessive appearance in the street scene, such that it does not tend to draw the eye as an imposing boundary feature.
11. Drawing the above considerations together, and as a matter of fact and degree, it seems to me that the separation of the entrance enclosure from the carriageway, combined with the character of its surroundings, gives the impression that the structure is not situated close to and therefore adjacent to

- the highway. The combined entrance structure would therefore constitute permitted development in the context of the GPDO.
12. The second means of enclosure targeted by the notice, further within the site, even if this provides screening, would also constitute permitted development on the basis of complying with the relevant height restriction.
 13. The Council has, however, referred to the significance of Article 3(5) of the GPDO. This states that planning permission granted under permitted development rights does not apply if (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful. The Council therefore considers that the unlawful nature of the uses in this case means that any permitted development rights that might 'normally' apply to the land would not be available.
 14. However, it seems to me that the permitted development right relating to gates, fences and walls, as summarised in paragraphs 6 and 7 above, is not predicated on the existence of a building or, applied to this site, a specific use of the land. I am not therefore persuaded it can be said that the structures owe their existence to and are 'in connection with' an existing building or use of the land, or that they facilitate the use of the land in this case. I conclude that the prohibition provided by Article 3(5) is not therefore relevant in this case. Furthermore having regard to case law², because the means of enclosure constitute permitted development that does not facilitate the unauthorised material change of use, they do not fall within the scope of the notice for this specific reason.
 15. As to the chickens, I noted the presence of a small number of birds on the site that no longer appeared to be associated with any dedicated structure. I find their presence to be too insignificant, *de minimis*, in nature to constitute a primary use of the site.
 16. Drawing the above considerations together I conclude that the appeals should succeed in part on ground (c). The notice will therefore be corrected to omit reference to the keeping of poultry and the incidental operational development consisting of entrance gates, pillars and fencing and the other means of enclosure.

Appeals A, B and C on ground (f)

17. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and include remedying the breach of planning control by discontinuing the use of the land or by restoring the land to its condition before the breach took place (s173 (4) (a)). The Council expressly states that it requires steps to be taken to discontinue the use of the land and to restore its condition. The purpose of the notice is therefore to remedy the breach of planning control.
18. The appellants' ground (f) appeal specifically relates to the requirement to discontinue the dog keeping use and to remove canine related items from the

² *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

site. They state that the keeping of dogs does not result in any noise impacts, because of the separation of the site from the nearest noise sensitive receptors, noting that there have been no complaints on this basis, nor objections from the Council's Environmental Health officers.

19. However, I am unable to consider the planning merits of the development, or any part thereof, in the absence of a ground (a) appeal. Given that the purpose of the notice is to remedy the breach of planning control, to require this by ceasing each unauthorised element of the mixed use and the subsequent restoration of the land would be in accordance with the Act. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail.

Appeals A, B and C on ground (g)

20. The appeal is that the compliance period falls short of what should reasonably be allowed. I need to balance the public interest in the notice being complied with expeditiously against any practical constraints over the required actions.
21. In this regard I acknowledge concerns regarding the lead-in time for the hire of specialist lifting equipment. I do not accept the argument that the appellants have had the period of the appeal to make the necessary arrangements, because the appellants are entitled to assume success on any grounds. I consider that extending the compliance period to three months which, on the basis of the information before me and in the current circumstances, I have no reason to believe would not be achievable, would amount to the optimum position. The ground (g) appeal therefore succeeds to this limited extent.

Appeal D

Main Issues

22. The main issues are the principle of the development and its effect on i) highway safety with particular regard to the standard of driver visibility; ii) the welfare of horses being kept on the site with particular regard to food and shelter; iii) the character and appearance of the countryside and the surrounding landscape and iv) the living conditions of nearby residents.

Reasons

Principle of development

23. Policy 10 of the County Durham Plan 2020 (CDP) presumes against new development in the countryside unless 'allowed for by' specific policies in the Plan or other specified exceptions. Furthermore it sets out general design principles. These include the need to avoid harm to the character and appearance of the countryside, highway safety and residential amenity; matters which are considered in further detail below.
24. Policy 13 of the CDP states that equestrian development will be considered an appropriate countryside use and will be permitted where certain criteria are met. These include that stables should be of an appropriate size and that the number reflect the amount of grazing land available. It seeks new permanent buildings to be located as part of or close to an existing farmstead or other

- building grouping. The general design principles referred to above are also relevant.
25. The application of horse welfare standards is a significant issue between the parties and will be considered further below. However, at the outset the proposal in this case involves the development or retention of 'new' structures. The site was previously devoid of any structures and is significantly separated from the nearest farmsteads. As such the proposal does not meet the criterion of being part of or close to an existing building grouping. The Council explains in its statement that the objective of this approach is to avoid a proliferation of such developments in the open countryside. It seems to me that for this reason alone the development is not 'allowed for by' specific policies in the Plan and as such would be in conflict with Policies 10 and 13 of the CDP.
26. The appellant argues that the development would accord with Policy 10 of the CDP insofar as it is a recreation or leisure development, improving access to the countryside. Whilst this is not an unreasonable point, this element of the policy is specifically concerned with 'infrastructure development' which I would interpret as seeking to provide benefits more widely than just the private interests of the appellant. I am not persuaded that the policy concerns I have identified above are outweighed by this point.
27. The National Planning Policy Framework (the Framework) excludes from the definition of previously developed land (PDL), that which has been developed for minerals extraction, where provision for restoration has been made. It therefore seems to me that the appeal site, as part of a restored open cast coal mining operation and despite exhibiting vestiges of the original hardstanding at the site entrance, would fall outside of this definition. Accordingly I do not accept the appellant's argument that the site should be regarded as PDL.
28. The proposal includes the retention of the steel container, dog kennels and day room. It was evident from my visit that the container is used to store equipment associated with the proposed horse keeping use, notably a trailer utilised for 'trotting'. The kennels would accommodate dogs in connection with site security. In principle, I consider the use of these structures to be reasonably related and ancillary to the primary use of the site for equestrian purposes.
29. It is stated that the day room would be used to provide basic welfare facilities including shelter and refreshments. However I note that the site is relatively close to the appellant's home in Cockfield, and I am not persuaded from the information before me, given the relatively limited scale of the proposed use, that this facility is reasonably required. It seems to me that this sort of facility, whilst ostensibly linked to the proposed equestrian use, could establish a precedent leading to an undesirable proliferation of similar sporadic developments if repeated too often. I am therefore sympathetic to the Council's stance in this regard.

Highway Safety

30. The appellant has provided a speed survey, with a plan depicting current and required visibility splays. There is no issue between the parties in terms of an adequate visibility splay being available from the site entrance in a south-easterly direction. It is also undisputed that on the basis of 85th percentile

speeds recorded on Esperley Lane (that is the speed at or below which 85 per cent of motorists' drive), a visibility splay, at the site entrance, of some 215 metres would be required in a north-westerly direction.

31. The Council's position is that, because of the presence of intervening vegetation, the requisite visibility splay in a north-westerly direction for drivers seeking to exit the site cannot be achieved. Accordingly it considers that the development results in harm to highway safety.
32. The appellant states that the findings of the speed survey have been skewed by a small number of speeding motorists, also that there are no official records of accidents in the vicinity of the site. Notwithstanding this, the 85th percentile speed provides an indication of the speed which most drivers consider to be reasonable. In my view it therefore provides a robust basis for visibility requirements, and I struggle to identify a compelling rationale for the relaxation of the aforementioned visibility splay. Although the appellant refers to low vehicle numbers using Esperley Lane, the speed limit adjacent to the site is 60mph, and I am not persuaded that vehicle conflict would be improbable. The degree of shortfall in the visibility standard is not just a matter of a few metres, but rather in the order of two thirds of the requirement. The shortfall is therefore very significant.
33. I understand that the site was previously used by industrial traffic. However it would appear that this has not been the case for many years and I cannot rule out that traffic conditions on Esperley Lane will have changed in the intervening period. Whilst it would appear that visibility could be improved by the removal of a mature tree immediately adjacent to the carriageway and by the cutting back or trimming of a boundary hedge, these measures do not appear to be within the control of the appellant, with the obstructing vegetation apparently on Local Highway Authority land.
34. I am invited to impose a so-called 'Grampian' condition, requiring that improvements to the visibility splay are secured prior to the development being brought into use. However, even if the obstructing tree is in very poor condition as claimed, I am not persuaded that such a requirement would be achievable and that as such it would be reasonable. Accordingly, on the basis of the information before me, I consider that such a condition would not meet all of the policy tests for conditions, as set out in the Framework. In any event I am not persuaded that this type of condition would be appropriate, given that the case relates to an enforcement matter.
35. I conclude, in the current circumstances, that the development would be harmful to highway safety. Accordingly it conflicts with Policies 10, 13, 21 and 31 of the CDP and with the Framework insofar as they seek to avoid an unacceptable impact on highway safety and achieve safe and suitable access.

Horse Welfare

36. Policy 13 of the CDP seeks, amongst other things, proposals for equestrian developments to demonstrate adequate provision for the proper care of horses, in accordance with the Equine Industry Welfare Guidelines and the British Horse Society Standards. The proposal is to retain three stables on the site and to build five more. I am mindful that the British Horse Society (BHS) recommends minimum stabling dimensions, according to the size of horse.

37. There is no dispute that, as measured on site at the time of my visit, each of the existing stables are some 3.5m by 3.5m in area. The dimensions of the proposed stables range from 3.1m by 3.6m to 3.54m by 3.6m. The Council recognises that the appellant intends to accommodate additional animals and accepts that the development will allow for a range of equine sizes to be accommodated. According to the DEFRA code of practice³ it would allow for the keeping of different sizes of pony. However the Council's position is that each of the proposed stables should be made larger to allow for the possibility of larger horses being accommodated on the site, to enable effective enforcement of welfare standards.
38. It seems to me that the appellant's equine stock may change over time; also that the actual size of the stable constructed will dictate the size of equine that may reasonably be accommodated. The appellant would be responsible for ensuring the welfare of animals on the site and it may be that there is no need over time for all of the stables to be a larger size, such that to require this would therefore be unreasonable.
39. Notwithstanding this, it is clear from the representations that the appellant's stock includes horses (as distinct from ponies). The BHS minimum recommended stabling size for horses is 3.65m by 3.65m which, as set out above, would not be provided for on the site. Whilst a requirement for all of the stables to be this size would be excessive, I nevertheless find for this reason that the proposal falls short of meeting the Policy 13 requirement for stables to be an appropriate size and design for their intended use.
40. Turning to the question of feeding arrangements, there is no grazing land on the site at present. The appellant is in the process of acquiring an adjoining paddock which is understood to be approximately 0.4 hectares in size. The appellant's family have also set out that they own a field of about 5 hectares in area, adjoining their property in Cockfield, on which their horses and ponies spend a majority of their time and which would continue to be used for horse grazing. I viewed this land during my visit. It is also understood that grazing rights exist for a certain number of equines on a nearby Common.
41. The fact that this grazing land does not adjoin the appeal site is, to my mind, not a significant impediment to its use, given that animals could easily be transported the relatively short distance between the site and the land in question. I do not therefore agree with the Council that this would be unrealistic and unsustainable. Equally though, there is no mechanism before me to secure the continued availability of grazing land in the long term. As such the present and proposed availability of grazing land does not carry with it significant positive weight.
42. Notwithstanding this, I have not been presented with any evidence to persuade me that animal welfare standards could not be satisfactorily maintained by a regime of supplemental feeding. The aforementioned DEFRA code of practice does not suggest that equines must have access to grazing land. Furthermore, paragraph 3.1 of the document contemplates a scenario where turnout for grazing is not feasible. From the information before me I am not persuaded that the development would be at odds with Equine Industry Welfare

³ Department for Environment, Food and Rural Affairs – Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids (December 2017)

Guidelines or with British Horse Society Standards, in terms of feeding arrangements.

43. Policy 13 of the CDP does not expressly require there to be sufficient grazing land to eliminate the need for supplemental feeding. When also taking into account the existence of grazing land, albeit mainly away from the appeal site, I do not find there to be a conflict with the policy in this regard. I find the development to be consistent with the policy objective that the number of stables should reflect the amount of grazing land available. This does not however overcome the concern expressed above with regard to stable size.

Character and Appearance

44. The appeal site is located in open countryside, characterised by an undulating agricultural landscape of grassed fields, trees and hedges. It includes an expanse of mature evergreen woodland on the north-western side. The proposed development includes the erection of stables and tack room and the retention of structures that are already on the site.
45. The existing group of structures are visible when approaching the site along Esperley Lane from the south-east. It would also be possible to view the site, including the structures as existing and proposed, from certain vantage points along the public footpath which crosses fields to the south.
46. However the structures are of limited single storey height, with all but the cabin finished (or substantially finished) in dark colouring and relatively well clustered together. Views of the structures tend to be limited and fleeting in nature, above or between hedges, and then against a backdrop of landscape features including mature trees or rising ground. From the north-west the development is significantly screened by the aforementioned belt of mature woodland.
47. I do not find the proposed development to be sprawling. Rather, in general I find the layout of the site to be well assimilated into the landscape. I agree that the light colouring of the cabin tends to draw the eye. However, notwithstanding that I found the use of the cabin to be unacceptable in principle, as set out earlier in my report, purely in terms of character and appearance it would be possible to impose a condition requiring the finishing materials of the cabin and proposed stables to be agreed, so as to avoid the development appearing incongruous in the landscape.
48. For the avoidance of doubt, in the event that measures were taken to remove the tree and trim back the hedge, found to be obstructing highway visibility, I do not consider that this would result in significant visual harm when taking into account the mature woodland that stands behind this.
49. Drawing the above considerations together, I conclude that the development would not result in harm to the character and appearance of the countryside and the surrounding landscape. It would therefore accord with Policies 10, 13, 29 and 39 of the CDP and with the Framework insofar as they seek buildings to be of an appropriate scale and design and which contribute to or protect landscape character.

Living Conditions of nearby residents

50. The Council's concern in this regard is disturbance resulting from dog barking. The planning application does not specifically propose the keeping of dogs as a primary use of the land. It does however refer to the retention of dog kennels on the site. I have set out above that the principle of keeping a small number of dogs on the site for security purposes could be reasonably related to the proposed horse keeping use. Given that there is considerable separation, in the order of several hundred metres, between the site and the nearest noise sensitive receptors, also that the Council does not appear to have received any complaints to date about dog barking, I consider it unlikely that the presence of a small number of dogs on the site would result in harm to the living conditions of nearby residents due to noise disturbance. I do not therefore find conflict with Policies 10 and 13 of the CDP in this specific regard.

Planning Balance

51. I have found the principle of the proposed development to be in conflict with the Council's development plan. I have also found that, given the present circumstances, the development would result in harm to highway safety and would fall short of the Council's requirements for appropriately sized stables. The appeal will therefore be dismissed.
52. Notwithstanding this, I have also found that the development would not be in conflict with horse welfare standards, regarding feeding arrangements in particular, and would not result in harm to the character and appearance of the surrounding area or to living conditions. It may therefore be possible that despite the location being at odds with the development plan in policy terms, a horse keeping use in some limited form, could be made acceptable in the future.

Conclusions

Appeals A, B and C

53. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Appeal D

54. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeals A, B and C

55. It is directed that the notice be corrected by the deletion of the words "incidental operational development" and substituting the words "siting of incidental structures" instead in **paragraph 3**.
56. It is directed that the notice be corrected by the deletion of the following wording in **paragraph 3**:
- "the keeping of poultry"; and
- "walls, fencing," within the words "(with incidental walls, fencing, steps)"; and

“entrance gates, pillars and fencing, and means of enclosure”.

57. It is directed that the notice be corrected by the following amendments in **paragraph 5:**

By the deletion of the words “, horses and poultry” and substituting the words “and horses” instead in paragraph 5A a); and

By the deletion of the words “walls and fencing,” in paragraph 5B b); and

By the deletion of the wording at paragraphs 5B i) and 5B j) in its entirety.

58. It is directed that the notice be varied by the deletion of the words “10 weeks” in **paragraph 6**, and the substitution of the words “3 months” instead.

59. Subject to the corrections and variation the appeals are dismissed and the enforcement notice is upheld.

Appeal D

60. The appeal is dismissed.

Roy Merrett

INSPECTOR