



Appeal Decision

Site visit made on 14 November 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 16TH DECEMBER 2022

Appeal Ref: APP/Y9507/C/22/3293731

Land at Truleigh House, Truleigh Hill, Shoreham on Sea, West Sussex BN43 5FB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Jo Grant against an enforcement notice issued by South Downs National Park Authority.
- The enforcement notice was issued on 2 February 2022.
- The breach of planning control as alleged in the notice is Within the last 4 years and without planning permission, the erection of a stable building the approximate location of which is shown in green on the attached plan.
- The requirements of the notice are: (1) Cease the use of the unauthorised stable building; (2) Remove the unauthorised stable building from the Land; (3) Remove from the Land all materials and debris resulting from the compliance of the above steps; (4) Restore the Land to its condition before the breach took place.
- The period for compliance with the requirements is: Step 1 – four months; Steps 2, 3 and 4 – ten months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

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

The appeal on ground (c)

1. The appeal on this ground is that the matters alleged do not constitute a breach of planning control.
2. By way of background, another stable building was previously erected on the site of the appeal structure in 2009. This original building was refused retrospective planning permission¹ but no enforcement action was taken against it and so it became immune from enforcement action.
3. As to the legal position, Section 55 of the Town and Country Planning Act 1990 ('1990 Act') states the meaning of 'development' as including the carrying out of building operations in, on, over or under land. It confirms that for the purposes of the 1990 Act 'building operations' includes demolition, rebuilding and structural alterations of, or additions to, buildings, along with other operations normally undertaken by a person carrying on business as a builder.

¹ Ref: DC/11/1018

4. Subsection 55(2) also notes that the following operations shall not be taken to involve development: the carrying out for the maintenance, improvement or other alteration of any building of works which affect only the interior of the building, or do not materially affect the external appearance of the building.
5. The appellant explains as regards the building of the appeal structure that this was made by a process of first replacing the eastern section of the original building. Then at a significantly later date, the western section was replaced. The appellant highlights that the only visual difference between the original building and the appeal building is that the former had a pitched roof, with the latter having a flat roof. It is thus contended that the appeal building does not represent development requiring planning permission on the basis that it represents an improvement/alteration which does not materially affect the external appearance of the building.
6. On the evidence before me, and as a matter of fact and degree, I find that the works undertaken as described by the appellant represent rebuilding rather than alterations on the basis that as a consequence of those works, all four external walls, along with the roof of the building have been replaced. The LPA points out a change to the footprint also. Whilst I acknowledge that the rebuilding was in stages, I do not consider the separation between those stages to be sufficient to indicate that the works were for improvement/alteration. In any case, in view of the change to the design of the roof, I find that the works have materially affected the external appearance of the building since they result in an obvious change to the roof profile.
7. Thus, the appeal building is not excluded from the definition of development in s55, and requires a specific grant of planning permission, which has not been obtained. The appeal on ground (c) therefore fails.

The appeal on ground (d)

8. This ground of appeal is that at the time the notice was issued it was too late to take enforcement action. In this respect, the relevant time period is four years from the date of substantial completion of the operational development.
9. The premise of the appellant's argument under this ground is linked to the ground (c) appeal; essentially the appellant contends that the appeal building is the original building in an altered form rather than a new building.
10. I found under ground (c) above that the appeal building represents a rebuild, rather than an altered/improved version of the original building. As such, it was substantially completed within a period of four years prior to the issue of the notice and so the ground (d) appeal fails.

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

Main Issues

11. The main issues are:

- the effect of the development on the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar site ('Arun Valley Sites') in relation to water neutrality, and whether the appeal development provides ecological enhancements appropriate to its scale;

- whether the appeal development is acceptable in principle in this location; and
- the effect on the character and appearance of the area, having regard to the location of the site within the South Downs National Park.

The appeal development/fallback position

12. The allegation in the enforcement notice is the erection of a stable building and not the equestrian use of the land. The appellant has made it clear in representations that, even in the absence of the appeal building, the equestrian use of the land would continue; the appellant specifically also sets out a fallback position being the siting of multiple mobile horse shelters to accommodate the equines. The effect of this fallback as regards mobile shelters is negated by the fact that it would be physically possible for the appeal building to remain and for mobile horse shelters to also be introduced, albeit that the appellant might not have any motivation to have both on site.

Water neutrality

13. Following the issue of the enforcement notice, Natural England released a Position Statement in relation to applications within the Sussex North Water Supply Zone ('Supply Zone'). This indicated that the Supply Zone includes supplies from a groundwater abstraction which cannot with certainty conclude no adverse effect on the integrity of Arun Valley Sites.
14. The Position Statement advises that, since it cannot be concluded that the existing abstraction within the Supply Zone is not having an impact on the Arun Valley Sites, developments within the Supply Zone must not add to this impact.
15. Natural England further advises that one way of avoiding new development adding to this impact, is for developments within the Supply Zone to demonstrate 'water neutrality'. Water neutrality is defined as the use of water in the Supply Zone before the development takes place being the same or lower after the development has taken place.
16. The appeal site is located within the Supply Zone and the Authority's position is essentially that the presence of the appeal building has an impact on water consumption and thus, in the absence of mitigation measures, the Authority cannot exclude the possibility of an adverse effect, either alone or in combination with other plans and projects.
17. The appellant emphasises that the notice attacks only the stable building and not the equestrian use of the site; the comment is made in this context that the use would continue in the absence of the stable building – again the appellant references an intention also to use mobile horse shelters in connection with such use. I acknowledge also that, prior to the erection of the appeal building, another stable building existed in approximately the same position. However, the Position Statement is clear that where an adverse effect is known, it is necessary to be able to demonstrate certainty that development will not contribute further to the existing adverse effect.
18. Whilst I have some limited information as to the history in relation to the number of equines kept in the previous stable building, this is not sufficiently detailed for me to have the appropriate level of certainty that the new appeal building does not result in increased numbers of equines and so water

consumption. For example, it could in theory be the case that the previous building was in disrepair and so could not accommodate the full number of equines that it was designed to stable.

19. Equally, as regards the appellant's stated fallback position to continue using the land for equestrian purposes also with use of multiple mobile horse shelters, I also cannot be sufficiently certain that the presence of the appeal building would not result in a greater number of equines and thus higher level of water consumption as compared to those that might be accommodated in multiple horse shelters. In addition, as outlined above, it would in theory be possible for the appeal building to remain and for horse shelters to be introduced also.
20. As such, on the available evidence, applying the precautionary principle and following an appropriate assessment, I conclude that there is an unacceptable risk of harm to the Arun Valley Sites in relation to water neutrality. Thus I find conflict with Policy SD9 of the South Downs Local Plan (2019) ('SDLP') which indicates that development proposals will be permitted where they preserve and enhance biodiversity and geodiversity. The development also in this way does not accord with paragraph 180 of the National Planning Policy Framework (2021) ('Framework') which seeks to avoid significant harm to biodiversity resulting from development.

Ecological enhancements

21. The Authority's second reason for issuing the notice referred to the absence of ecological enhancements. In its statement, the Authority also identifies specific concerns also related to the use of the land for equestrian purposes. As explained though, the notice does attack the use of the land and the appellant has confirmed that this will continue even without the appeal building. As such, whilst no specific supporting statement has been produced by the appellant in relation to these matters, I consider that in this case, any appropriate enhancements could be dealt with by condition.
22. As regards this aspect of the first main issue, I find then that subject to imposition of suitable conditions, appropriate net gains for biodiversity could be achieved. To this extent there would be accordance with Policies SD2 and SD9 which seek to ensure that developments have an overall positive effect on the natural environment's ability to contribute goods and services, and that development proposals conserve and enhance biodiversity and geodiversity.

Principle of development

23. The appeal site sits outside of any settlement boundary and so Policy SD25 of the SDLP sets out that development will be approved exceptionally where it complies with relevant policies in the SDLP, responds to its context, and falls within one of the listed specific exceptions. The exception stated at SD25(b) which the appellant relies upon is that there is an 'essential need for a countryside location'.
24. The policy cited as relevant to the principle of the appeal development is SD24 which sets out that proposals for equestrian development will be approved where they: (a) are of a scale and/or intensity compatible with the landscape and special qualities; (b) demonstrate good design which is well located and responds to local character and distinctiveness; (c) re-use existing buildings where feasible; (d) locate new buildings...adjacent to existing buildings; (e) are

well located to existing utilities and transport infrastructure; (f) provide new landscape features consistent with local character; and (g) demonstrate a conservation based land management approach.

25. In my view, the appeal building is necessarily related to the equestrian use of the site and as such relates to a form of development which has an essential need for a countryside location. The development is not therefore excluded in principle by Policy SD25 provided that it responds to its context and complies with Policy SD24.

Policy SD24

26. Turning then to the criteria of Policy SD24, as regards (a), it must be borne in mind that the notice does not attack the equestrian use. As such, I must consider whether the scale of the building is compatible with the landscape and special qualities. As regards criterion (b) also then, it is the design of the appeal building which is in question. I turn then to consider these two criteria.
27. The statutory purposes of the National Park designation are (a) to conserve and enhance the natural beauty, wildlife and cultural heritage; and (b) to promote opportunities for the public understanding and enjoyment of the special qualities of their areas. In the event of conflict between these two purposes, the conservational purpose takes precedence.
28. The appeal site falls within the South Downs National Park within the Adur to Ouse Open Downs Landscape Character Area, which the Authority identifies as being typified by its vast, open and exposed character, and rolling topography. This impressive, expansive and beautiful landscape setting is readily appreciable from many local public vantage points.
29. As the Authority comments, development has taken place in the locality including formal tracks, fencing and enclosures, scrub and tree screen planting, masts and dwellings which has resulted in erosion of the open downland character in the immediate area. The immediate locality is noticeably developed as compared to the unmarred beauty of much of the surrounding wider landscape. The appeal building sits to the immediate west of a cluster of generally much larger assorted buildings. To the north is a further cluster of development, with a youth hostel development visible from the appeal site to the north west. A small group of sizeable buildings also lies south west of the youth hostel.
30. The appeal building is of a design typical of its purpose and so not an uncommon feature within many countryside settings. It is not larger than necessary for its intended purpose, and benefits from a relatively low profile in part due to its flat roofed design. It slightly extends the cluster of built development immediately to the east in a westerly direction. However, whilst in an exposed location, bearing in mind the context of development in the immediate locality as outlined, and taking into consideration also the presence of a stable building of a very similar appearance previously on site for many years, I find that the appeal building is of a scale compatible with the landscape and special qualities. It demonstrates well located, good design which appropriately responds to its context and to the character of the area.
31. In terms of criterion (c) of Policy 24, the appeal building has not re-used an existing building but photographic evidence of the previous building on site

indicates that this was likely in a poor state of repair and re-use may well not have been feasible. Indeed, the appeal building sits in essentially the same position as the previous stable building and thus the visual effect at least is comparable to a re-use. On the same basis as regards criterion (d), whilst not immediately adjacent to other buildings, the stable building is close to the existing cluster of buildings to the east and indeed, sits on the site of a previous stable building.

32. As to criterion (e), the Authority does not raise this factor as an issue and bearing in mind the close proximity to an access track and to other buildings where services would presumably be connected, there is nothing to indicate non-compliance with this stipulation.
33. In regard to criterion (f) no new landscape features have been provided but this is something that could be dealt with by condition. As outlined, the notice attacks only the stable building and not the equestrian use. Consequently I find that criterion (g) is complied with in that, regardless of the Authority's views as to management of the appellant's land, the stable building at least assists in a conservation based land management approach by providing the equines with accommodation enabling them to spend less time in the fields.
34. I conclude then on the second main issue that the appeal development is acceptable in principle and is compliant with Policies SD24 and SD25 of the SDLP for the reasons outlined above.

Character and appearance

35. The effect of the appeal building on the character and appearance of the landscape was covered as part of my assessment on the principle of the development above. As regards this issue though, the Authority also references Policies SD4, SD5 and SD6 of the SDLP, the Framework, and the first purpose of the National Park.
36. Assessing the appeal building against Policy SD4 of the SDLP, it is a modest scaled and low profile building of a design not untypical in a rural location. Although set against a wider backdrop of an expansive and unspoiled downland landscape, in many public views its layout means that the appeal building is generally seen in the context of surrounding development. As such, although in a relatively elevated and exposed location, its position close to the cluster of buildings to the east, its small scale relative to nearby buildings to the east, and low-key design means that it appropriately reflects its context and conserves landscape character.
37. In this way it also safeguards the experiential and amenity qualities of the landscape. As compared to the previous stable building which appeared to be in a poor state of repair and with a higher profile, it represents an enhancement to landscape character.
38. As regards Policy SD5, the height, massing, roof form and materials used in the appeal building sit comfortably in the context of the assorted group of buildings to the east. The position of the building close to the built development on the opposite side of the track and in relation to surrounding built development in the immediate locality integrates sufficiently sympathetically with the context such as to respect landscape character.

39. Turning to Policy SD6, as detailed above, although the appeal building is in a fairly exposed location, its relatively small size, traditional design and position relative to the nearby buildings to the east means that in many public views, including from well-used routes, the appeal building is seen in the context of surrounding development as a relatively understated addition. As such, bearing in mind this context, the visual integrity, identity and scenic quality of the National Park are preserved by the appeal development.
40. Thus I find as regards the third main issue that the appeal development conserves and, as compared to the previous structure on site, enhances the character and appearance of the area, having regard to the location of the site within the South Downs National Park. For the reasons detailed above, I find that the appeal building overall accords with Policies SD4, SD5, SD6 and SD24 of the SDLP. No conflict arises as regards similar stipulations in the Framework and nor as regards the first purpose of the National Park.

Other matters

41. The appellant makes detailed submissions in relation to animal welfare requirements of the equines on site seeking to justify the appeal development. However, I have no detailed evidence such as to indicate how the presence of moveable horse shelters as proposed would impact upon this consideration. Indeed, I have very little information as to the appellant's fallback plans in this regard. This matter is therefore due only limited weight in my assessment.
42. Although no formal ecology evidence has been provided, the appellant states that it is understood that the existing building is used by nesting birds. As the appellant states, legislative protection prevents damage or destruction of the nest of any wild bird while it is in use or being built. The presence of nesting birds would potentially justify an extension to the compliance period but does not of itself weigh strongly in the balance to grant permission for the appeal building since an ecologist could be employed to make arrangements in respect of removal of any nesting.

Conclusion on ground (a) and the DPA

43. The appeal development would be acceptable in principle and would appropriately conserve the character of the landscape. Ecological enhancements could be achieved by the imposition of conditions. However, on the evidence before me, there is an unacceptable risk of harm to the Arun Valley Sites in relation to water neutrality. In view of this fundamental concern, I find that the appeal development conflicts with the development plan, read as a whole. Material considerations identified are due only very limited weight and so do not justify a decision otherwise than in accordance with the development plan.
44. For these reasons and taking into account all other matters raised, I conclude that the appeal on ground (a) should fail and that planning permission should be refused in respect of the DPA.

The appeal on ground (f)

45. This ground of appeal is that the requirements of the notice exceed what is necessary

46. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires ceasing the use of the stable building, removal of the stable building and restoration of the land suggests that its purpose is to remedy the breach of planning control.
47. The appellant argues on this ground that the concrete base and bund should be permitted to remain. The Authority indicates that the concrete base forms part of the stable building and so should be removed per the requirements of the notice. The Authority has confirmed though that the notice does not attack the bund nor require its removal.
48. In my view, the notice is clear in attacking the stable building only. The Authority has not explained its position as to why it considers the concrete base to be part of the building and I see no logical reason on the available evidence for taking this view.
49. As such, the requirements in the notice to remove the stable building from the land, and to remove all resultant materials and debris would not entail removal of the concrete base. Equally, on the basis that the concrete base was in place before the stable building was erected, the requirement to restore the land to the condition before the breach (i.e. erection of the building) took place would also not necessitate removal of the concrete base. As such, I do not consider it necessary to vary the terms of the notice in these regards.
50. I do not consider though that the requirement in relation to restoration is imprecise or would indicate that the previous building would need to be rebuilt. The breach of planning control is the works that resulted in the erection of the new stable building. Demolition of the previous building is not part of the allegation. As such, whilst the appellant is best placed to know the condition of the site prior to the breach, in essence restoration would entail removal of the new building itself and any associated materials and debris.
51. The appeal on ground (f) succeeds to the limited extent outlined but this success does not require any variation to the requirements of the notice as these are sufficiently clear on their face.

Period for compliance with the notice

52. Whilst the appellant has not made an appeal on ground (g) seeking to extend the period for compliance with the notice, I consider that it is proper in this case to extend the time for compliance with step 1 of the notice which requires the appellant to cease the use of the appeal building.
53. In my view and in the interests of the welfare of the equines on site, it is appropriate to extend the period for compliance with step 1 of the notice to ten months. I consider that this would provide a more reasonable period in which to enable the appellant to seek to make alternative arrangements for the accommodation of the equines. This would also encompass a sufficient period outside of the nesting season to seek advice and make arrangements in respect of any birds nesting in the building.
54. I have borne in mind the appellant's firm intention to continue to use the appeal site for equestrian purposes and note also that the notice gives the

appellant a period of ten months to remove the appeal building from the land. For these reasons, I do not consider that any prejudice would result from my exercising my powers under s176(1)(b) to vary the terms of the notice by extending the time for compliance with step 1 as outlined.

Conclusion

55. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation 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

56. It is directed that the enforcement notice is varied by in paragraph 6 of the notice deleting all wording after "TIME FOR COMPLIANCE" and insertion of the following wording: "Ten months from the date this notice takes effect."

57. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V Bond

INSPECTOR