



Appeal Decisions

Hearing held on 11 October 2022

Site visit made on 11 October 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal A Ref: APP/R0660/C/22/3296853

Appeal B Ref: APP/R0660/C/22/3296854

Canalside Farm, Wood Lane East, Adlington, SK10 4PH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Karina Boland and John Kelly, Adlington Petting Farm Limited against an enforcement notice issued by Cheshire East Council.
 - The notice, numbered 20/00835E, was issued on 14 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from agricultural to the use of the Land as a petting farm and for falconry experiences/events, together with associated operational development comprising i) the erection of animal shelters and enclosures, ii) the siting of catering, ice cream and lorry trailers, portable toilets, picnic benches and iii) the formation of areas of hardstanding.
 - The requirements of the notice are to: a) Cease the use of 'the Land' as a petting farm and for falconry experiences/demonstrations. b) Remove all animal shelters and animal enclosures from 'the Land' within the area shaded in blue on the attached plan marked 'Plan B'. c) remove the catering trailer, the ice cream trailer and the lorry container from 'the Land'. d) Remove all portable toilets and picnic benches from 'the Land'. e) Remove the areas of hardstanding shown in the approximate positions shaded in green on the attached plan marked 'Plan C'. f) restore the areas of land shown in the approximate positions shaded in green on the attached plan marked 'Plan C'. by covering in topsoil and reseeding with grass seed. g) Remove all resulting debris from 'the Land' arising from compliance with b) and e) above.
 - The periods for compliance with the requirements are: a) 1 month. b) 5 months. c) 1 month. d) 1 month. e) 6 months. f) 6 months. g) 6 months.
 - Appeal B is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended and Appeal A is proceeding on the same grounds as well as ground (a). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 7 November 2022.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
2. The deletion of the wording of section 3 of the notice and replacement with: "Without planning permission, the material change of use of the Land to a petting farm which includes i) the erection of animal shelters and enclosures, ii) the siting of catering trailer, ice cream trailer and lorry container, portable toilets and picnic benches, and iii) the formation of areas of hardstanding."

3. The deletion of section 5(a), (b), (c), (d), (e), (f) and (g) and replacement with the words : "5(a) Cease the use of "the Land" as a petting farm. 5(b) Restore "the Land" to its condition before the change of use took place."
4. The deletion of section 6 (b), (c), (d), (e), (f) and (g) and replacement with the words "6 (b) 8 months after this notice takes effect."
5. Subject to the corrections and variations, the appeals are 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.

Preliminary Matters

6. Whilst the appellants accept that some falconry displays happened on the site during 2021, there have been no such displays this year and the falconry business is not based and does not operate from the appeal site. The Council is therefore satisfied that the notice can be amended to remove the references to falconry experiences/demonstrations, and I agree that this can be done without causing injustice.

Ground (b)

7. An appeal on this ground is on the basis that the matters stated in the notice have not occurred. The main issue in this ground of appeal is whether the land had an agricultural use prior to the change of use to a petting farm.
8. The appellants' case is that the land has been used for the keeping of horses since around 2003 when it was acquired by the family, and has therefore not been in an agricultural use since that time. The Council accepts that the site had stables and horse jumps on it (and therefore some equine use) prior to 2020. The aerial photographs, whilst only a snapshot of the actual date on which they were taken, show that there were no structures on site in 2010 but the stables are first evident in the photograph dated March 2016. The planning history for the site indicates that two separate permissions were granted for the erection of 3 timber stables in 2003 and 2013, and it was the second of these permissions which was built. These stables do not form part of this appeal.
9. The appellants agree that there was a material change of use of the appeal site to a petting farm (as opposed to being used for the keeping of horses and other animals) once visitors were allowed onto it as part of the commercial enterprise.
10. The notice can be corrected to remove the reference to the previous use as agricultural, without causing injustice to the appellant or Council. In addition, the Council accepts that the allegation refers to 'lorry trailers' rather than 'lorry container' (the structure shown as 'Storage Container' on the Site Plan submitted by the appellants) and the notice will also be varied to make this correction which will not cause any injustice.
11. The appeal on this ground is therefore partially successful to the extent as set out above.

Ground (c)

12. The appellant argues that part of the matters stated in the notice does not constitute operational development and therefore does not constitute a breach of planning control.
13. Caselaw¹ holds that where a notice is issued in respect of a material change of use, and works are carried out to facilitate that change, the notice may require that the ancillary/associated works are removed in order that the site is restored to its previous conditions and the breach is remedied. Where an enforcement notice alleges the making of a material change of use of land and requires that certain works be removed, these works must have been integral to, or part and parcel of the making of the material change of use.² The notice cannot require the removal of works that were undertaken for a different and lawful use and which could still be utilised in that other lawful use if the unauthorised use ceased.
14. The appellants say that Stables 2 and the storage container (as shown on the Site Plan and Details of Structures on Site drawing handed in during the hearing) were on site during 2015 when a retrospective planning permission was made to retain them. The size of the building shown in the retrospective application is different to that on site at the date of the notice, but Stables 2 and the storage container are in the same location as shown.
15. The retrospective application supports the appellants' version of events regarding these structures and predates the material change of use alleged in the notice. The Council has submitted no evidence to contradict this (irrespective of whether the structures have been on the site for more than 4 years), and as such I accept the appellant's case on the balance of probability. Stables 2 and the Storage Container do not form part and parcel of the breach of planning control and should not, therefore, be part of the allegation in the notice and cannot be required to be removed as associated development.
16. Stables 3, 4 and the Rams' Den (as shown on the drawing) can be moved about the site, and the appellants therefore argue that these do not form operational development. Whilst this may be the case it is not relevant for the purposes of this decision. The case law as set out above clearly holds that even works which might have been permitted development if they had not been constructed to facilitate the alleged use, or even did not amount to development at all, can be required to be removed where they facilitated such a material change of use.
17. However, the appellants' case is that Stable 3 was on the site prior to the material change of use, and was used to house the family pets before the commercial element of the use began. The Council did not have evidence to contradict this but could only say that this structure was on the site when they first visited which was after the material change of use. It is likely on the balance of probability that this structure was on the site prior to the material change of use to petting farm, as part of the previous private use of the site for the keeping of animals. As such it does not form part and parcel of the development alleged in the notice and cannot be required to be removed.

¹ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

² *Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin)

18. The Council does not dispute that the polytunnel is not used as part of the petting farm business but is only used by the appellants and their children. It is not referred to in the notice in any event.
19. The varied allegation also includes the erection of animal shelters and enclosures, the siting of catering, ice cream and lorry container, portable toilets, picnic benches and the formation of hardstanding. These elements are associated with the material change of use alleged and integral to it. As such they should remain in the allegation describing the development.
20. The appeal on this ground therefore succeeds to the limited extent set out above.

Ground (d)

21. In order to be successful on this ground the appellant must prove on balance that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice. This is argued in relation to the hardstanding, and Stables 2 and the Storage Container have been addressed above in relation to ground (c).
22. Whilst I accept that there has been some element of hardstanding on the appeal site for more than 4 years prior to the service of the notice, it did not cover the full extent of the area that now forms the car park. The photographs of the car park area in 2021 and 2022 clearly show that the area covered by hardstanding has increased in overall size and this constitutes development. As such it is not immune overall from enforcement action.
23. The submitted Google Earth Images dated 2016 show a track to Stables 2 but the track does not go beyond that point. The earliest photographic evidence submitted which shows the track extending beyond the stables is dated 2021.
24. As no other evidence has been provided to me to indicate that the tracks beyond Stables 2 or the hardstanding at the northern end of the site were laid more than 4 years prior to the date of the notice, this ground has not been proven on the balance of probability.
25. The appeal on this ground therefore fails.

Ground (a) and the deemed application for permission

26. As a result of the corrections to the allegation in the notice as set out above, the description of development in the deemed application for permission is the material change of use of the Land to a petting farm which includes i) the erection of animal shelters and enclosures, ii) the siting of catering trailer, ice cream trailer and lorry container, portable toilets and picnic benches, and iii) the formation of areas of hardstanding.
27. The main issues in the deemed application for permission are:
 - Whether the development is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - The effect of the development on the openness of the Green Belt;

- The effect of the development on the Macclesfield Conservation Area and Grade II Listed Building Canal Bridge 18; and
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, as to amount to the very special circumstances required to justify the proposal.
28. The appeal site lies between the Macclesfield Canal and the Middlewood Way, and was previously agricultural but the parties agree that it was more recently used for the keeping of horses (and other animals) prior to the change of use to petting farm. The site contains various structures used primarily for the housing and enclosure of animals, along with hardstanding, pathways and the siting of other items including 2 mobile toilets, ice-cream trailer, food store and picnic benches. Other uses in the vicinity include a marina on the canal, a café/events business immediately opposite the site and a row of houses and gardens adjoining the opposite side of Middlewood Way.

Whether the development is inappropriate development

29. Policy PG3 of the Cheshire East Local Plan Strategy 2017 ('the CELPS') saved policy GC1 of the Macclesfield Borough Local Plan 2004 ('the MBLP'), and the exceptions set out within them, are broadly consistent with Section 13 of the National Planning Policy Framework 2021 ('the Framework') and seek to protect the Green Belt. The Framework, which is a material planning consideration, advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. One of the purposes of Green Belt is to assist in safeguarding the countryside from encroachment.
30. Paragraph 149 of the Framework advises that the construction of new buildings should be regarded as inappropriate. The appellant's case is that Stables 3, Stables 4 and the Rams' Den are moveable and do not therefore constitute buildings. Whilst these structures may be moveable, there is no evidence before me to show that they have in fact been moved to date which suggests a permanence as set out in case law, irrespective of whether they could have been brought to the site already constructed or that they rest on the ground by their own weight³. In any event, aside from whether these structures are buildings for the purposes of the 1990 Act and the Framework, there has been development by the material change of use of the land. This may also be inappropriate development unless it falls within one of the exceptions.
31. Paragraph 150 provides that certain forms of development are not inappropriate in the Green Belt provided the development preserves its openness and does not conflict with the purposes of including land within it. It includes a material change in the use of the land such as a change of use for outdoor sport or recreation, and the parties agree that the use as a petting farm could fall within this exception in principal depending on its impact on openness and whether it causes encroachment.

Openness

32. The openness of the Green Belt has a spatial as well as a visual aspect. The development is visible through the hedgerow in many places when walking along the path next to the canal, with clear views of the wooden structures and

³ Skerrits of Nottingham Limited v SSETR (No.2)[2000] 2 PLR 102

enclosures, pathways and hardstanding. This is very different in appearance and character to an agricultural, or even private use for the keeping of animals including horses. The extent of the fencing and associated signage and other paraphernalia as viewed is on a much larger scale than would normally be seen passing land in a rural or private equine use. In addition, the close proximity of the appeal site to the tow path mean that the noise of visiting people and vehicles will be also clearly heard and experienced, particularly when the appeal site is busy.

33. The character of the surrounding area is quiet and fairly tranquil, notwithstanding the other commercial uses in the vicinity. The quiet nature of the canal and marina and Wood Lane East, the small road leading over the canal bridge, means that the effect of the development on the character of the area causes harm to the openness of the Green Belt in this location, by introducing increased traffic, parking and people (and associated noise and disturbance).
34. During the site visit there were extremely limited views of the appeal site from the Middlewood Way. However, these views, and those from some of the properties on Wood Lane South will be more exposed when there is less leaf cover. The same considerations in relation to the additional noise apply (particularly caused by the car park and traffic) and the character of the area and openness of the Green Belt is materially harmed.
35. The material change of use to a petting farm conflicts with the purpose of the Green Belt in assisting in the safeguarding the countryside from encroachment, and does not preserve its openness. It is therefore inappropriate and harmful to the Green Belt.

Heritage Assets

36. When considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special or architectural or historic interest which it possesses. With respect to land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
37. There are two heritage assets to be considered in this appeal, the Macclesfield Canal Conservation Area within which the site is located and the Grade II listed building Canal Bridge Number 18. The Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
38. The significance of the Conservation Area comes in part from its historic interest as part of the canal and wider industrial heritage. The Conservation Area Appraisal identifies that in 'rural areas the canal is dominated by surrounding pastureland, which enhances the canal's setting'⁴, and identifies some of the key characteristics are a rural setting, tranquillity, surrounding pastureland and open fields, buildings being related to the canal and some isolated dwellings and surrounding agricultural uses.

⁴ Macclesfield Canal Conservation Area Appraisal (adopted 2009), section 6.7

39. The listed building, Canal Bridge Number 18 is of a standard design, and its main significance is also its historical interest as part of the wider canal structure and the use of locally quarried materials, although it is also attractive in its own right and within its overall setting. The Bridge is experienced when crossing it, from the tow path in both directions and also from views from the opposite side of the canal. These areas form part of its setting.
40. The appeal site has a long hedgerow boundary alongside the tow path (which is identified as typical of the character of the Conservation Area overall) but there are gaps in it allowing many clear views into the site. The extensive fencing, animal stables and hutches, and signage associated with the change of use have materially changed the character of the appeal site so that it is no longer typically rural. These views of the site harm the setting of the bridge as a listed building, and also the character and appearance of the Conservation Area.
41. The petting farm was not open to the public during the site visit but it is evident as a matter of common sense that the use of the car park by visiting vehicles and people associated with the petting farm will also change the character of the Conservation Area in terms of the increased noise and impact on tranquillity. This will also affect the setting of the listed building. Taken together, the associated physical works, and the increased activity associated with the use cause harm to the character and appearance of the heritage assets.
42. It would not be possible to regulate the use of the car park to fully mitigate this harm which is caused by the material change of use and visitors to the appeal site. Whilst a condition to secure a landscaping scheme to fill in gaps in the hedgerow would reduce the visual impact it would not fully mitigate against the harm to the heritage assets caused by increased numbers of visitors and associated noise.
43. The development causes less than substantial harm as defined in the Framework to the Conservation Area and to the Bridge. It is therefore necessary to consider whether there are any public benefits which outweigh the considerable importance and weight which must be given to this harm. I have taken account of the unquantified economic and educational impacts as well as the positive mental and emotional health and well-being benefits experienced by visitors to the petting farm. Many individual representations were received regarding these types of health and well-being benefits, and to which I accord moderate weight, but there was nothing before me to demonstrate a wider or ongoing need for this type of facility in the area.
44. The potential use of the site as a private farm for the keeping of animals, and any fallback position regarding the structures and buildings on site is not a public benefit as outlined in the Framework in heritage terms as it does not provide any positive effect. The potential economic benefit of the site to the area was not outlined or quantified in any detail and so I can accord it little weight as a public benefit.
45. The public benefits identified do not outweigh the desirability of preserving the setting of the listed building or outweigh the considerable importance and weight to be given to the desirability of preserving or enhancing the character and appearance of the Conservation Area.

Green belt balance

46. The Framework advises that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.⁵
47. I have given substantial weight to the harm to the Green Belt by reason of inappropriateness identified above. In addition, the less than substantial harm to the significance of the Macclesfield Canal Conservation Area and to Canal Bridge 18 also needs to be taken into account when considering whether very special circumstances exist, as well as any other harm.
48. The considerations identified by the appellant regarding whether very special circumstances exist are: the fallback position in relation to the lawful use of the land and structures which would be present on the site; the ways in which the development accords with the local development plan; the educational and well-being benefits associated with the petting farm; and the economic benefits to the rural area
49. The appellant's argue that the site would continue to be used for the keeping of animals, and that many of the existing animals would remain as the family pets even if the commercial element ceased. As such, many of the structures would be reinstated as permitted development, for example Stables 4 and the enclosures.
50. I accept that the keeping of animals pre-dates the commercial use of the site and that some structures would therefore be needed to properly care for the remaining pets. However, the appellants do not argue that they would retain all of the animals currently on site, or that they would need all of the enclosures, buildings and other shelters. Whilst the appellants say that the quantum of the structures which would be removed would be small this figure considered alone is not a true reflection of the effect of the notice if upheld.
51. When considering a fallback position it is necessary to consider whether there is a real prospect of it being implemented. In this case, it is not likely that all of the enclosures and structures would be reinstated as there would simply be no need in order to cater for a lower level personal use of the site (as was the case prior to the commercial use). In addition, the visual impact of the built structures is only one element of the harm that I have found, and the argument regarding the fallback does not address the harm including the impact on openness and the encroachment to the Green Belt caused by the activity associated with the use and increased numbers of comings and goings to the site. I therefore give the fallback position limited weight when considering if very special circumstances exist.
52. As set out above, many representations were received from visitors to the petting farm in support of the development and which outlined the positive experiences in relation to educational, health and wellbeing benefits. Taking this into account with CELPS Policy SE3 which promotes health and well-being I accord these considerations moderate weight. In addition, the appellants' support of volunteer work on the site, including by people who needed

⁵ Paragraph 148, NPPF 2021

experience to aid in a career working with animals and some with autism, is clearly a positive consideration to which I attach moderate weight.

53. I accept that the development is in accordance with policies SE2 and EG4 in that it supports other businesses and rural tourism in the area and attracts visitors, and that parking to support the needs of outdoor recreation is supported by saved policy DL33. However, these benefits have not been quantified and do not overcome the conflict with the parts of the development plan as already set out. I therefore accord them little weight.
54. The development could be controlled by way of condition. For example the opening hours and types of use, the provision of catering, waste management and any new lighting could be regulated and the use of amplified noise could be prohibited. However, this would not adequately overcome the harm that I have outlined above but would simply reduce the hours in which it occurred. This is not an exceptional occasion where a personal permission would be justified, and whilst benefits would be achieved through the implementation of approved landscaping and biodiversity schemes this would not fully mitigate the adverse effects of the development, or outweigh the harm.
55. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Other considerations

56. Concerns were also raised regarding the effect of the development on parking and highway safety. There are other businesses in the vicinity and there was no specific evidence before me to indicate that any off-site parking had been necessarily caused by visitors to the appeal site. I am also mindful that there was no objection to the development from the Highway Authority.
57. The previous appeal decision (APP/R0660/W/21/3279765) made reference to the unknown effect that the hardstanding on the site would have on the trees along the boundary. There is no evidence before me regarding this issue, and that appeal included a new café building in addition to the change of use. However, the effect on these trees would not change my conclusion regarding whether permission should be granted in any event.

Conclusion on ground (a)

58. The development is inappropriate development in the Green Belt and is in conflict with Policies PG3 (CELPS), GC1 (MBLP) and Section 13 of the Framework. It fails to preserve or enhance the character and appearance of the Conservation Area or the setting of Canal Bridge 18, and is also contrary to Policies SE1, SD2, SE7, which amongst other things, aim to respect heritage assets, and Section 16 of the Framework. In the absence of any other considerations of sufficient weight to overcome this conflict, very special circumstances do not exist and the ground (a) appeal fails and permission for the deemed application is not granted.

Ground (f)

59. The appellants argue that if the use as a commercial petting farm is not permitted it is their intention to use the site for the keeping of animals and that there is a reason to keep the shelters and enclosures in association with that

lawful use even if the notice were to be upheld. The appellants do not have an alternative scheme as such to be considered but rather refer back to the fallback position argued in the ground (a) appeal.

60. It is not the appellants' case that they would retain all of the animals as pets should the commercial use cease. Stables 1 on the site has permission and is not required to be removed by the notice in any event, and for the reasons as set out above Stables 2 and 3 are not required to be removed as they pre-dated the breach of planning control.
61. A requirement to restore the Land to its previous condition before the development took place does not exceed what is necessary to remedy the breach of planning control (which is the purpose of the notice), and the notice should be varied accordingly. Requirement 5a) should be varied to remove the reference to falconry experiences/demonstrations (following on from the variation to the allegation). Requirements 5b), c), e), d), f) and g) should be deleted and replaced with a requirement that the land is restored to its previous condition before the change of use took place.

Ground (g)

62. This ground of appeal is whether the time for compliance falls short of what should reasonably be allowed. The appellants seek an extension of time to 12 months to ensure that the welfare of all of the animals is properly accommodated.
63. The time for compliance with the requirement to cease the use of the land as a petting farm is 1 month and the harm associated with the increased numbers of visitors and vehicles will therefore stop after that short period. Taking into account the animal welfare, and that the original compliance period in the notice for the removal of hardstanding and recovering in topsoil and grass was 6 months, an extension of time to a period of 8 months to restore the land to its previous condition is reasonable. This takes into account all of the circumstances to ensure that the appellants' have sufficient time to rehouse some of the animals as necessary.

Zoë Franks

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/R0660/C/22/3296853	Karina Boland, Adlington Petting Farm Limited
Appeal B	APP/R0660/C/22/3296854	Mr John Kelly (Karina Boland, Adlington Petting Farm Limited)

APPEARANCES

FOR THE APPELLANT:

Karina Boland
John Kelly
John Groves, BA (Hons) MRTPI, Groves Town Planning

FOR THE LOCAL PLANNING AUTHORITY:

Andy Cush, Senior Planning Officer (Enforcement), Cheshire East Borough Council
Thomas Highton, Planning Officer, Cheshire East Borough Council

INTERESTED PARTIES:

Dave Griffiths
Mike Sewart
Roger Lowe
Christine Lowe
Graham Edmunds
David Booth
Sue Booth
David Lambert
Caitlyn Whitehouse
Michael Lowe
Natalie Bruce
Matthew Hunt
Stephen Matthews
Karen Marshall
Kerry Wainwright
Angela Derbyshire
Philip Rothwell, BA Dip EP, MRTPI representing Wood Lane Friends
Walter Thomas

DOCUMENTS

Appellants' Suggested Conditions

Appellants' information pack re: Adlington Petting Farm.

PLANS

Site Plan and Details of Structures on Site No. 210422 Rev P1

Site Layout/Landscape Plan, 14-020-P-001, 25/06/15

PHOTOGRAPHS

Appellants' pack of photographs of the Macclesfield Canal and tow path and Bridge
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