The Planning Inspectorate

Appeal Decisions

Site visit made on 29 November 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2023

Appeal A Ref: APP/C3620/C/21/3269843
Ridgefield House Norwood Hill, Charlwood, Horley, Surrey, RH6 0ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Carol Jackson of Kilmarnock Horse Rescue against an enforcement notice issued by Mole Valley District Council.
- The notice, numbered 2019/0196/ENF, was issued on 15 February 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land from Agriculture to Equine Centre (Sui Generis Use) along with associated operational development namely erection of 24 No. stables, 3 No. tack rooms, storage buildings, sandschool and hardstandings.
- The requirements of the notice are to:
  (1) To cease the use of the Land for the purposed of an Equine Centre
  (2) Remove from the land all associated operational development namely;
    a. The 24 stable buildings along with all associated bases, fittings, materials and debris,
    b. 3 No. tack rooms along with any associated bases, fittings, materials and debris,
    c. Storage building along with any associated bases, fittings, materials and debris,
    d. Sand school along with any associated bases, fittings, materials and debris,
    e. Hardstanding
  (3) Restore the land to its former state before the breach took place
- The periods for compliance with the requirements are stated in the notice as follows:
  Part 1 – Four (4) Months after this notice takes effect
  Part 2 – Twelve (12) months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. 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.

Summary Decision: The enforcement notice is quashed.

Appeal B Ref: APP/C3620/W/20/3258943
Ridgefield House, Norwood Hill, RH6 0ET

- 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 Kilmarnock Horse Rescue against the decision of Mole Valley District Council.
- The application Ref MO/2019/1326/PLA, dated 19 September 2019, was refused by notice dated 10 March 2020.
- The development proposed is: change of use of land for horse rescue centre. Development includes 24 stables, 3 tack rooms, storage building and sandschool (20m x 10m).

Summary Decision: The appeal is dismissed.

Appeal A

The Notice

1. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority. With this in mind, I have concerns with regard to two aspects of the notice.

2. The first is with regard to the allegation. This refers to 'operational development namely erection of 24 No. stables, 3 No. tack rooms, storage buildings, sandschool and hardstandings'. The location of these items has not, however, been shown on any plan attached to the notice. At the site visit I noted numerous buildings on side, as well as large areas of hardstandings. The location of the sandschool was pointed out to me, but this was not obvious.

3. The block plan[1] submitted with the planning application subject of Appeal B provides some clarity on the location of some of the development alleged in the notice. This does not, however, refer to any areas of hardstanding. No other plans or further details have been provided in order to show the location of the hardstanding that is the target of the enforcement notice. Accordingly, even if I were to correct the notice to include the block plan, I cannot be satisfied that the recipient of the notice would have the necessary degree of certainty with regard to what he has done and what must be done to remedy it. For this reason I find the notice to be invalid, but not so hopeless as to render it a nullity.

4. Turning to my second concern, the notice gives 4 months for compliance with 'Part 1' and 12 months for compliance with 'Part 2'. I assume that 'Part 1' and 'Part 2' are reference to requirements (1) and (2) in part 5 of the notice, but I cannot be certain of this as there are, in fact, three requirements. This ambiguity in the notice means that its recipient would not be reasonably certain as to what he must do to comply with the notice.

5. In an attempt to resolve this issue, two alternative variations to the notice were suggested to the parties. The first was to remove requirement 5.(3) altogether. The second was to include a period for compliance with the requirement.

6. I have discounted the first option as I consider the requirement to be necessary in this case. As for the second option, the Council suggest that the 'Part 1' period should be aimed at requirement 5.(1), whilst the 'Part 2' (12 month) period should be for requirement 5.(2) and (3). This would, however, introduce a period for compliance with 5.(3), where formerly there was none. This matter renders the notice invalid, but not so hopeless as to make it a nullity.

7. The appellant has not objected to the suggested variations to the notice. I am not, however, persuaded that injustice would not be caused to the appellant were I to vary the notice as suggested by the Council. Such a variation would

[1] Drawing no. 185/2019/2

make the notice more onerous. On this basis, I conclude that I am unable to put the notice in order.

8. In finding as I have above, I am mindful of the provisions of section 171B(4) of the 1990 Act, which allow the Council to issue a further enforcement notice, should it be considered expedient to do so.

Conclusion

9. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance and the period for compliance.

10. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

11. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

12. The enforcement notice is quashed.

Appeal B

Preliminary Matters

13. The information before me suggests that the site is used by children and young adults with particular health and social difficulties. Having regard to this, I am concerned that there is potential for the development and my decision to have an effect on a person or persons with a protected characteristic, as defined by the Equality Act 2000. I am also mindful of Article 3(1) of the United Nations Convention on the Rights of the Child and the implications of my decision on the best interests of the child or children. I sought the parties views on this matter, and have taken the comments received into account in reaching my decision.

14. The application subject of this appeal is described in the application form as retrospective. The evidence before me suggests that the buildings on site are broadly in the location indicated on the block plan submitted with the application. The location of the existing sand school was also pointed out to me on site. Again, this was in the approximate location indicated on the block plan, although this did not appear to be complete. The evidence also indicates that the site is being used as a horse rescue centre. In view of this, I will determine the appeal on the basis that the use and the vast majority of the built development has already been carried out.

Main Issues

15. The main issues in this case are as follows:

- Whether or not the development is inappropriate development in the Green Belt;
- The effect of the development on the openness of the Green Belt;

- The effect of the development on the living conditions of nearby residents with regard to noise and disturbance; and
- If the development is inappropriate, is the harm by reason of inappropriateness, and any other harm, clearly outweighed by other considerations. If so, does this amount to the very special circumstances required to justify the development.

Reasons

Whether the development is inappropriate development in the Green Belt

16. The appeal site is within the Metropolitan Green Belt. As such, the National Planning Policy Framework (the Framework) informs that new buildings in the Green Belt should be regarded as inappropriate. The Framework sets out exceptions to this. The appellant points to one such exception, which is:

> 'b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it'

17. On the basis that the development is for outdoor recreation, in order to determine whether the above exception applies, I must consider the effect of the development on the openness of the Green Belt.

Effect on Openness

18. Paragraph 137 of the Framework confirms that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that openness is one of the essential characteristics of a Green Belt. Openness can be defined as an absence of development; it has both a spatial and visual aspect.

19. The evidence before me indicates that, prior to the built development I viewed on the site visit, the site was undeveloped. The aerial photographs provided and the site photograph at figure 10 of the officer's report show an absence of development on the site. For this reason, the site would have made a contribution to the openness of the Green Belt in this area.

20. The built development on site that is the subject of the application includes a complex of buildings set around and within a stable yard area. Whilst all of the buildings are single storey, they are spread across a sizeable area of the site. As such, they have a substantial presence. Although the location of the complex is set back within the site, some distance off the highway, the site has a fairly open frontage. As such, there are clear views of the development from public vantage points, and the buildings are prominent when viewed from the highway and the entrance to the site.

21. The sandschool did not appear to have been complete on my site visit. Nevertheless, its surfacing contrasts with that of the former undeveloped green field and it also covered a large area of the site. Being close to the entrance of the site, it is also a visible form of development when viewed from the public highway. When complete with the proposed post and rail fence, the sandschool is likely to have a greater presence on site and would be more

visually prominent. However, I acknowledge that the proposed enclosure would be fairly open and that this, together with the loose sandschool surfacing, would have a limited effect on the openness of the Green Belt in this location.

22. A large part of the site around the buildings and between the site entrance and the building complex has been laid with a hard surfacing. This extent of hard surfacing is not indicated on the annotated block plan submitted with the application. A stable yard and informal parking area is shown on this plan, but it is not clear if this indicates that hard surfacing is intended for these locations. If it is, then this hard surfacing contrasts with the former undeveloped green field. Hard surfacing in the location of the informal parking area would also be visually prominent, adding to the spread of built development on the site. Although I acknowledge that hard surfacing does not create volume in the same way as the buildings on site, it is still a substantial area of formal development where formerly there was none.

23. Considered all together, the scheme subject of the appeal before me is a substantial encroachment of built development that fails to preserve the openness of the Green Belt and conflicts with the purposes of including land within it. For this reason, I conclude that the Framework's paragraph 149 b) exception does not apply in this case and that the scheme before me is inappropriate development in the Green Belt. I also conclude that the development causes harm to the openness of the Green Belt in this location.

Living Conditions

24. There are two residential properties close to or adjoining the appeal site, with further residential properties in the near vicinity. The concerns of interested parties and the Council relate to the matter of noise and disturbance generated by the use of the appeal site, as well as comings and goings to the site.

25. The details submitted with the application indicate that the site is used to keep horses, some of which have been rescued and are looked after by 2 members of staff who visit the site daily. The site is also used on a livery basis, for individuals to come to the site to look after their own horses kept on site. I have seen reference to livery for 4 or 5 horses. Up to 4 events are to be held at the site to raise money for the charity who occupy the site. The site is also visited by people with autism for therapeutical reasons.

26. There is limited information before me with regard to existing and/or anticipated traffic movements. That said, if the site is used in the manner indicated above, there are likely to be numerous vehicular movements to and from the site on a daily basis. Activities on the site might well include the sound of vehicles arriving and parking, car doors closing and people going about the site. I acknowledge that such activity might generate noise and disturbance where formerly there was none. However, there is a degree of separation between the appeal site and the vast majority of residential properties in the area.

27. Part of the boundary of the site is shared with Acorn Cottage; the dwelling itself is close to the site entrance and the informal parking area. Whilst noise and disturbance generated by activity on the site might be most notable from this property, I am not persuaded that this would be so significant as to warrant the refusal of planning permission. Furthermore, whilst the animals

kept on the site might be a source of noise, such noise is typical in a rural location. I cannot, therefore, conclude that the daily activity on the site is likely to cause an unacceptable degree of detriment to the occupiers of nearby properties.

28. I acknowledge that events at the site might generate a greater degree of noise and disturbance, the evidence before me indicates that such events would be infrequent. I am also mindful of the permission granted for the temporary use of land under The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

29. Although the matter of privacy and overlooking is not referred to in the reasons for refusal, I noted the mature vegetation along the site boundary with the adjoining properties. This screens to a degree views from the site into the adjoining land. I cannot, therefore, conclude that the development has an unacceptable effect on the outlook and privacy of the adjoining occupiers, particularly as conditions could be imposed to reinforce and retain the vegetation along this boundary.

30. Whilst I note the third party objections that refer to outdoor lighting and odour, the Council has not refused the development on the basis of such matters. Indeed, I have no reason to conclude that such matters could not be adequately controlled by way of condition. As such, I do not find the development unacceptable with regard to these matters.

31. All things considered, I conclude that the effect of the development on the living conditions of nearby residents is acceptable, particularly with regard to noise and disturbance. For this reason I do not find the development to be in conflict with policy ENV22 (General Development Control Criteria) of the Mole Valley Local Plan adopted 12 October 2000, as it does not (and would not) significantly harm the amenities of the occupiers of neighbouring properties. Neither do I find conflict with any particular part of the Framework.

32. I note reference in the second reason for refusal to Policies CS1 (Where Development will be Directed (A Spatial Strategy)) and CS14 (Townscape, Urban Design and the Historic Environment) of the Mole Valley Local Development Framework Core Strategy adopted October 2009. These are, however, of limited relevance to the matter of the effect of the development on the living conditions of nearby residents. The first of these is a spatial strategy, setting out the Council's approach to the delivery of sustainable development. The second of these policies relates more to the matter of urban design. I am unable to find any conflict with these policies.

Other Considerations

33. The evidence indicates that the site is used as a means of therapy for the elderly and for adults and children with autism. I also note that the site is used by disabled riders. Accordingly, I am mindful of Article 3(1) of the United Nations Convention on the Rights of the Child, which provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Furthermore, under the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, I must have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.

34. Whilst I note reference to a disabled rider visiting the site on a daily basis, I have limited information with regard to the frequency or number of people visiting the site for therapy. That said, I do not underestimate the value of the site to those who visit it. I note the local support for the development, and that the value of the charity and its work is acknowledged by the Council. I am mindful that, for the children visiting the site, their best interests are at the forefront of my determination of this appeal. I am also mindful of my duty with regard to the visitors to the site that share a protected characteristic. It is likely that dismissing the appeal would take away an outlet and means of therapy for these individuals.

35. I acknowledge the efforts of the appellant to secure alternative accommodation and note the outcome of this was that their options are limited. Aside from the matters set out above, I also note the support for the development as a means to provide accommodation to rescued animals or animals that can no longer be looked after by their owners.

36. Having regard to all of the above, weight is clearly attributed in favour of the development, particularly having regard to the use of the site by children and those with protected characteristics. However, the weight I can attribute to these benefits is tempered as I have limited information with regard to the frequency or numbers of those who visit. I also do not know whether the facility is unique, or whether there are other similar charities or facilities in the wider area.

37. I have had regard to the appeals decision that has been brought to my attention by the appellant and note the conclusions of the Inspector in that case, that the development before him was an 'appropriate' use of the Green Belt. However, I have limited information about the development subject of those appeals. I also note that this decision pre-dates the current Framework and Green Belt policies by a considerable number of years. It is, therefore, difficult to draw any informed comparisons with that case and the case before me.

38. Some policies of the development plan might support the development subject of this appeal. However, this has a neutral effect on the planning balance.

Green Belt Balance

39. I have not identified any conflict with the development plan policies that have been drawn to my attention. Nevertheless, I have concluded that the development is inappropriate development which is, by definition, harmful to the Green Belt.

40. I have acknowledged that there are clear benefits to the development and I have attributed appropriate weight to these. However, these are balanced against the harm I have identified in this case. The Framework informs that substantial weight is given to any harm to the Green Belt. In view of this, harm to the Green Belt in this case is not clearly outweighed by other considerations. Very special circumstances referred to in the Framework do not, therefore, exist. I have considered whether conditions would overcome the harm caused in this case, but conclude that they would not. Accordingly, the appeal should fail.

Conclusions

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

Formal Decision

42. The appeal is dismissed.

J Moss

INSPECTOR