



Appeal Decisions

Site visit made on 20 March 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2023

Appeal A Ref: APP/D1265/C/22/3296499

The Croft, Burts Lane, Mannington, WIMBORNE, Dorset, BH21 7JX

The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr A Revel against an enforcement notice issued by Dorset Council.

- The notice, numbered ENF/20/0280 was issued on 10 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission, in the area edged red on the attached plan, unauthorised development consisting of the creation of a new detached dwelling with attached triple car port used for residential occupation and the creation of adjacent hardstanding.
 - The requirements of the notice are:
 - a) Permanently cease the use of the land for residential purposes.
 - b) Demolish and remove the residential building, attached car port, all attached services, and all resulting materials, hatched in green, from the land edged red on the attached plan.
 - c) Demolish and remove the associated hardstanding identified by the area hatched blue, by breaking it up and removing the resulting materials from the land edged red on the attached plan.
 - d) Following compliance with b) and c) above re-seed the areas hatched green and blue with a mix of meadow grass seed to restore the area to its former condition as pasture.
 - The period for compliance with the requirement is 6 months
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) 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.
-

Appeal B Ref: APP/D1265/W/22/3301750

The Croft, Burts Lane, Mannington, WIMBORNE, BH21 7JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr A Revel against Dorset Council.
 - The application Ref P/FUL/2022/01931 is dated 22 March 2022.
 - The development proposed is to retain and convert an unauthorised building to stables; retain adjacent hardstanding, and extend hardstanding.
-

Decisions

Appeal A

1. It is directed the enforcement notice be corrected by the deletion of the words 'the creation of a new' in the allegation. Subject to the correction the appeal is

dismissed, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is allowed and planning permission is granted to retain and convert an unauthorised building to stables, retain adjacent hardstanding and extend hardstanding at The Croft, Burts Lane, Mannington, Wimborne, BH21 71X in accordance with the terms of the application Ref P/FUL/2022/01931, dated 22 March 2022, and the plans submitted with it, subject to the following conditions:
 - 1 The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.
 - 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

DPS-22-0327- A3 Elevations and Layout;

DPS-22-0327- A2 Block plan;

DPS-22-0327- A1 Location plan
 3. This permission shall only permit the use of the stable, hereby approved, as a private facility for horses in connection with The Croft only, and for no other business use such as livery or for external commercial training or riding school purposes, unless otherwise agreed on application in writing to the Local Planning Authority.
 4. No external lighting shall be installed without prior permission in writing from the Local Planning Authority.
 5. Prior to first use, full details of any hard landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include hard surfacing materials and the proposed means of enclosure.

Preliminary Matters

3. In Appeal A the appellant originally did not wish to pursue ground (a) but sought to appeal on ground (f). However he recognised that an appeal on this ground cannot result in planning permission being granted. The appellant is not seeking permission for what is alleged in the notice but for 'retrospective planning consent for the retention of the timber stable block in the design shown on the approved drawings DPS-22-0327-A1, DPS-22-0327-A2 and DPS-22-0327-A3'. These are the drawings forming part of Appeal B.
4. The reference to 'retrospective planning consent' is misleading as no stable block exists on the site. What exists is a dwelling. However, as the alternative proposal is the subject of Appeal B, I shall determine the ground (a) appeal as far as it relates to the allegation and determine Appeal B separately, which will enable a more systematic and reasoned approach to be achieved.
5. The attention of the appellant is drawn to s180(1)(a) in respect of the enforcement notice remaining in effect indefinitely although its requirements

may be overridden by a subsequent grant of planning permission so far as inconsistent with that permission.

6. There is some degree of ambiguity over whether the appellant has withdrawn his appeal on ground (f) in the light of his recognition that success on ground (f) could not lead to planning permission. Notwithstanding this, I have considered the ground (f) appeal below.

Application for costs

7. An application for costs has been made by the appellant against the Council in respect of Appeal A. This is the subject of a separate decision.

The site and relevant planning history

8. The appeal site is an area of about 6.6 ha located within an area of scattered housing and countryside with mainly agricultural and grazing uses. It is within the South East Dorset Green Belt. Buildings within the site include the main dwelling known as The Croft, a barn in mixed agricultural and business use, a building having an Lawful Development Certificate for residential occupation and the building subject to the notice. The remainder of the appeal site is in agricultural use with a pond in the north-west part of the site.
9. At the time of my site inspection, the building subject to the notice was occupied as a dwelling by the appellant's elderly in-laws. It is single-storey, timber-clad building with a pitched and gabled slate roof and built to a high standard. Although originally 'L-shaped' the part of the building used as a car port has been demolished and the remaining structure made good sometime after the serving of the notice. At the rear of the building is an oil tank and boiler which serves the dwelling. The works were substantially complete and the building occupied in April 2019 according to information provided by the appellant in response to a Planning Contravention Notice.
10. There is a solid hardstanding along the front of the dwelling, a concrete base to the demolished carport and a large, gravelled area as shown on the plan attached to the notice.
11. Relevant recent planning applications include a refusal in March 2022 of an application to retain and convert the unauthorised dwelling and car ports to stables, retain adjacent hardstanding and extend hardstanding (3/21/1245/FUL).
12. Appeal B is similar to this refused application albeit that it relates to a smaller rectangular building which excludes the carport. The appellant's submissions refer variously to three and to four stables although drawing DPS-22-0327-A3 shows three stables, feed/tack store and internal walkway.
13. It is understood that permission has been recently granted to demolish The Croft and replace it with another dwelling (P/FUL/2022/00925), for the occupation of the elderly in-laws of the appellant.
14. An appeal against a decision to refuse the siting of six fishing pods is the subject of a separate decision (APP/D1265/W/22/3308355).

Appeal A: the appeal on Ground (b)

15. An appeal on this ground is that the breach of control alleged in the notice has not occurred as a matter of fact. The onus of proof rests with the appellant and the standard of proof is on the balance of probability.
16. The appellant claims not to have created a detached dwelling with triple car port attached as alleged in the notice but a purpose-built, timber stable designed, manufactured and erected for the purpose of housing horses, which was then converted to a dwelling and car port.
17. Evidence to support the appellant's claim comprises a reference to its use for the holding of sheep following the completion of construction works in autumn 2018 and a very small undated photograph submitted with the appellant's final comments showing the building with three 'stable' doors and a carport.
18. The appearance of the building now, however, is residential and domestic in design, purpose, and intention, as shown by the photographs attached to the Council's statement and from my own observations.
19. As the Council points out, whether the use is for residential or equestrian purposes, the building would still represent development requiring planning permission.
20. If I accept on the balance of probability that the building was originally erected as a stable (albeit never used for horses) and was subsequently converted into residential accommodation, such that the allegation is worded slightly incorrectly, I am able to get the notice in order, which is what I am required to do. I have the power under s176(1)(a) to correct any defect, error or misdescription in the notice, so long as this would not lead to any injustice to the parties or that the notice is a nullity. I can do this very simply by removing the words 'the creation of a new' from the allegation, which is what I propose to do in order to meet the appellant's concerns. I am satisfied that the correction is minor in nature, nor would it come as a surprise to the parties.
21. To be a nullity as suggested by the appellant, the notice must be defective on its face, and be so hopelessly ambiguous and uncertain that the appellant could not tell in what respect it was alleged that he had carried out a development without permission. That is not the case here.
22. Subject to a correction of the notice, the alleged development has occurred as a matter of fact and the appeal on this ground fails.

Appeal A: the appeal on Ground (a)

23. The main issues are:
 - (i) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - (ii) The effect of the proposal on the openness of the Green Belt.
 - (iii) The effect of the proposal on the Dorset Heathlands
 - (iv) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

24. The Framework at paragraphs 149 and 150 sets out the exceptions where new development is not considered inappropriate in the Green Belt. The development subject to the allegation is not one of these exceptions and it is therefore inappropriate development which is harmful to the Green Belt, to which I attach substantial weight.
25. The Framework seeks to keep Green Belt land permanently open but the unauthorised dwelling, because of its bulk and massing, together with activity associated with the residential use, reduces its openness and this adds to the harm to the Green Belt found by the development being inappropriate.
26. The appellant indicates that the work to create living accommodation was not intended to be permanent but only for as long as required by the appellant's in-laws who are largely dependent upon the appellant. The appellant is seeking a personal and temporary permission for his in-laws to remain living in the 'stables' until the accommodation is no longer required by them. The appellant has submitted a draft s106 agreement to the Council to control this, but such controls could be satisfactorily imposed by way of planning conditions if I considered that permission should be granted.
27. The development is contrary to Policy KC2 of the Christchurch and East Dorset Core Strategy which sets out a presumption against development outside identified settlements and to paragraph 80 of the Framework which identifies the circumstances where isolated homes in the countryside would be supported.
28. The site is within 400m of Holt and West Moors Heath SSSI. The SSSI is part of the Dorset Heaths Special Area of Conservation, Dorset Heathlands Special Protection Area and Ramsar site. In accordance with advice from Natural England no new residential development should be permitted within 400m of protected European and internationally protected heathlands as additional residential development is likely to have a significant adverse effect upon the designated site, either alone or in combination with other developments. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires an appropriate assessment of a scheme that is likely to have a significant effect on a European site. No such ecological assessment or mitigation proposals have been submitted.
29. I conclude that the dwelling and hardstanding represents inappropriate development in the Green Belt creating substantial harm to its openness and to the purposes of including land within it. Furthermore, it is contrary to the Core Strategy and Framework and is likely to have an adverse impact on a European wildlife site for which no mitigation is available, contrary to paragraph 180 of the Framework.
30. 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.
31. The appeal on this ground fails.

Appeal A: the appeal on Ground (f)

32. An appeal on this ground is that the requirements of the notice are excessive and lesser steps would overcome the objections. The appellant sets out his arguments based on the merits of a stable being acceptable, and that the

personal circumstances of his in-laws justify temporary use of the building as residential which could be controlled by a s106 agreement.

33. In *Ioannou*¹ v SoSCLG it was held that ground (f) appeals cannot be relied upon to bring about a grant of deemed consent for an alternative scheme, which in this case is a reduced stable block which is a different development to which the notice relates and not a proposal in existence at the time of the notice.
34. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
35. The appeal on this ground fails.

Appeal B

36. The appeal drawings indicate a 6.00m x 18.45m single-storey, timber-clad building with a simple hipped roof with no openings other than on the west facing elevation comprising four barn doors. It would contain three stables, a tack room and a feed/tack store. The existing hardstanding is proposed to be retained but it was unclear at the site inspection how extensive the proposed extended hardstanding would be. Other than a change to the openings on the west elevation, the removal of the small openings at the rear and a change in the roof form where it was previously attached to the carport, the scale and general form would be similar to that existing at present.
37. The main issues are:
- (i) Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
 - (ii) The effect of the proposal on the openness of the Green Belt.
 - (iii) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.
38. The parties disagree on whether the stables would represent inappropriate development in the Green Belt. Paragraph 149(b) of the Framework allows new buildings for the provision of appropriate facilities for outdoor sport and recreation but subject to the facilities being in connection with the existing use of land or a change of use; the facilities preserving the openness of the Green Belt and not conflicting with the purposes of including land within it.
39. The siting of the proposed stables is on land having a lawful agricultural use although the application site is tightly drawn around the building currently in use for residential purposes. Whilst the Council is strictly correct on this point and that a change of use of the wider site for equine purposes does not form part of the application, the fact is that the appellant's land can be used for the grazing of the horses. The appellant states the land is already being used for horse grazing but evidence of this was not drawn to my attention at my site inspection. Notwithstanding this, I am satisfied that the proposal meets the

¹ *Ioannou v SoSCLG* [2014] EWCA Civ1432

requirement to be in connection with a proposed change of use of land, which, on the basis of the information available, would not be a material use of land requiring planning permission.

40. Despite the reduction in the size of the building, and having regard to the appellant's corrected dimensions, it still has a considerable volume and footprint which with the associated hardstanding, has some affect on the openness of the Green Belt, as would most buildings. However, in my judgement, this would only be to a modest degree and not to an extent that it would threaten the overall openness of the Green Belt or be significant in the context of paragraph 149, particularly having regard to the siting of the proposed stables in proximity to other development.
41. The building would not unduly impact on visual amenity of the area or harm rural character due to its size and location.
42. The Council refers to the Saved South-East Dorset Local Plan Policy CSIDE8 regarding the criteria for the control of the use of land and development of buildings for equestrian uses and expresses concern that the size and scale of the proposed stables is above the scale generally expected for private stabling. However, the Council does not identify any dimensions it may consider to be acceptable. The appellant contends that the size of the stable block is similar to other blocks of stables permitted elsewhere, but these have not been identified, and that their size is proportionate to the land being served. However, it seems to me that the appellant's proposals are not unreasonable.
43. I note the appellant's reference to the previous uses on the site and that the hardstanding already existed when the stables were constructed but I attach little weight to this. The Framework defines previously developed land for policy purposes and states that it excludes land that is or was last occupied by agricultural buildings.
44. In referring to the land already being used for horses, the appellant states that mobile field shelters could be deployed without planning permission which could have a greater effect on openness. Whether the appellant is suggesting this is a realistic fallback position is not clear, but he would not be prevented from doing what he is lawfully entitled to do.
45. I conclude that the proposed stables do not represent inappropriate development in the Green Belt as it is one of the exceptions identified in the Framework. I therefore propose to allow the appeal and grant planning permission subject to conditions.
46. The conditions are necessary and relevant to ensure that the development is acceptable in all respects. Condition 1 is the standard time condition and Condition 2 identifies the relevant approved drawings for the avoidance of doubt. Condition 3 is necessary to ensure the stables remain as a private facility in the interests of protecting the character of the Green Belt. Condition 4 is necessary to protect the night sky from unnecessary light pollution and Condition 5 is necessary to identify the extent of the hardstanding.

Conclusions

47. For the reasons given above, I conclude that **Appeal A** should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant

planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

48. For the reasons given above, I conclude that **Appeal B** should be allowed.

P N Jarratt

INSPECTOR