



Appeal Decision

Site visit made on 19 July 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 JULY 2023

Appeal Ref: APP/R1038/C/22/3302566

**Land approximately 200 metres to the north east of Norwood Chase,
Rotherham Road, Killamarsh S21 2DS**

- 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 Mr Jeremy White against an enforcement notice issued by North East Derbyshire District Council.
 - The enforcement notice, numbered 18/00102/OD, was issued on 31 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, material change of use of Land to a use for the stabling, keeping and exercise of horses including operational development carried out to facilitate that use, namely: building operations comprising the erection of block work stable building and two timber stables (shown shaded black on the attached plan) and laying of an all-weather riding surface (shown shaded green on the attached plan).
 - The requirements of the notice are a) cease the use of the Land for the stabling, keeping and exercise of horses; b) demolish the blockwork stables and the two timber stables buildings, take up any concrete foundations and/or hardstanding, and remove all resultant materials from the Land; c) remove from the land all post and rail fencing erected to facilitate the use of the Land for the stabling, keeping and exercise of horses; d) Remove from the land materials deposited to form the all-weather riding surface; and e) reseed any areas of disturbed ground following compliance with steps b) and d) above with an agricultural grass seed mix sown at a rate of 25g/m².
 - The period for compliance with the respective requirements is a) one month; b) two months; c) two months; d) two months; and e) during the first seeding season after the completion of steps a) and b) above. A seeding season is between 1 February and 30 April or 1 October and 30 November each year during a period of no ground frost or areas of standing water.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. It is directed that the enforcement notice be corrected by deleting the word 'Metes' from paragraph 2 and replacing it with 'Metres', and varied by deleting 'one month' from paragraph 5 a) and replacing it with 'two months' and deleting 'two months' from paragraph 5 b), c) and d) and replacing it with 'three months'. Subject to this correction and variations, the appeal is dismissed and 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.

The Notice

2. There is a typographical error in paragraph 2 of the notice (i.e., the land to which the notice relates) in so far that it refers to 'Metes' and not 'Metres'. There is a plan attached to the notice that suitably identifies the land that is the subject of the notice and so this error is not fatal. I am satisfied that no injustice would be caused to any of the main parties if I corrected paragraph 2 of the notice by deleting the word 'Metes' and replacing it with 'Metres'. This change is reflected in the decision above.

Reasons

Ground (d) and (f) appeals

3. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
4. The appellant claims that the blockwork stable building was completed on 16 September 2016 and occupied from 1 October 2016. The Council does not dispute this or continuous use thereafter. Construction and occupation are corroborated in terms of the sworn witness statements from the builder, joiner and first tenant.
5. In respect of the two timber stables, the appellant does not consider that they amount to operational development in so far as stating that *'the timber stables which are in fact moveable structures on the site'*. As a matter of fact and degree, I find that these structures have a degree of permanence and have not been constructed with a view to being moved around the site. One is positioned on a concrete base and the other is not. It is not clear from the evidence that is before me how they are attached to the ground. However, attachment to the ground is not, in this case, a decisive matter and I find that the two stables are buildings.
6. The appellant contends that as the blockwork stable building has been in situ for more than four years it is immune from enforcement action and, in this regard, it is lawful in operational development terms. In this respect, the appellant also claims that the steps in the notice are excessive, from the point of view of requiring this building to be removed from the land.
7. The notice is directed at a material change of use of the land for the stabling, keeping and exercise of horses including operational development *'carried out to facilitate that use'*. While I acknowledge that the evidence is that the blockwork stable building was built more than four years ago, the evidence is that it has been constructed to facilitate an unauthorised material change of use of the land for the keeping of horses. Furthermore, the evidence is that the fencing on the land has also been erected to facilitate the unauthorised use of

the land, particularly for the purposes of providing enclosed paddocks in association with the keeping and exercising of horses.

8. The Courts¹ have held that a material change of use enforcement notice can require the removal of facilitating operational development even if such elements would not, in themselves, be the subject of planning control. In this case, I find, as a matter of fact and degree, that the operations comprising the erection of a blockwork stable building, two timber stables, the laying of an all-weather riding surface and fencing are all of a nature and scale that do not exceed that which is truly integral to the material change of use of the land.
9. The appellant does not dispute that a material change of use of the land has taken place for the stabling, keeping and exercise of horses. There is no objective evidence before me to indicate that such a use is lawful based on ten or more years continuous use.
10. Consequently, I conclude that when the notice was issued it was not too late to take enforcement action in respect of the breach of planning control. Furthermore, the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control. Therefore, the ground (d) and (f) appeals fail.

Ground (a) appeal and the deemed planning application

Main issue

11. The appeal site falls within land designated as Green Belt. Therefore, the main issues are: -
 - whether the development is inappropriate development in the Green Belt including its effect on openness and the purposes of the Green Belt,
 - the effect of the development on the landscape character of the area,
 - whether intentional unauthorised development has taken place, and,
 - if the development is inappropriate in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development.

Whether inappropriate development in the Green Belt

12. In respect of development in the Green Belt, the relevant policy in the adopted 2021 North East Derbyshire Local Plan 2014-2034 (LP) is policy SS10. While this policy does not refer to material changes of use, it is nonetheless consistent with policy in paragraphs 149 and 150 of the National Planning Policy Framework 2021 (the Framework). I therefore afford the policy significant weight in decision making terms although more weight is afforded to the Framework as a material planning consideration.
13. The material change of use of the land, as outlined in the breach of planning control, falls to be assessed against paragraph 150 (e) of the Framework which states that '*material changes in the use of land (such as changes of use for*

¹ Murfitt v SSE & East Cambridgeshire DC (1980) and Kestrel Hydro v SSCLG & Spelthorne Borough Council (2016)

outdoor sport or recreation, or for cemeteries and burial grounds)' is not inappropriate development in the Green Belt *'provided it preserves its openness and does not conflict with the purposes of including land within it'*.

14. In respect of the buildings that are referred to in the enforcement notice (this would include the fencing on the basis that a structure is by definition a building having regard to s.336 of the Act), the evidence is that these have been constructed to facilitate the material change of use and, in this regard, this part of the development also falls to be considered against paragraph 149(b) of the Framework which states that the provision of appropriate facilities in connection with a change of use for outdoor recreation is not inappropriate development in the Green Belt *'as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it'*. As can be seen above, whichever way you consider the deemed planning application development, it is necessary to consider its effect on openness and the purposes of the Green Belt.
15. The evidence, including aerial photography, is that prior to the material change of use taking place on the site, the land was open and undeveloped. In spatial terms, the breach of planning control, including facilitating operational development, comprises a form of development which has eroded the previously open and undeveloped land. While the appeal site is adjacent to the settlement boundary, it previously represented a visually open transition between the existing settlement and the more rural and less developed character of the area. I accept that in visual terms, long distance views of the development are limited in extent owing to boundary landscaping.
16. Views of the site are much more localised in extent from adjacent fields and from the access road leading to the site and other sites from Rotherham Road. The Council claim that there may be views of the development from the public right of way alongside the canal, particularly if this area was improved and existing vegetation cleared. However, I walked this route as part of my site visit and owing to land levels the appeal development was not conspicuous from this public right of way.
17. The Council claims that the land immediately to the north of the appeal site that appears to include storage and/or retail development is not authorised and hence my assessment should be based on this site being undeveloped. It is not reasonable or indeed possible for me to reach a finding on the planning status of this land as part of this appeal. For the purposes of my assessment, I have therefore assumed that the adjacent development is authorised. Furthermore, I am aware that the land immediately abutting the southern boundary of the appeal site is allocated for housing in the LP. At some point, this land will include housing development. The allocated site is on the very edge of the identified settlement in the LP. There is the potential for views from new dwellings towards the breach of planning control even accounting for the existing boundary vegetation.
18. In the context of the above, I find that the development has caused moderate harm to the openness of the Green Belt. While this conclusion differs from that of the appellant, even he accepts that there would be a *'negligible'* adverse impact. Even if one were to agree with the appellant, the breach of planning control still fails to meet the requirement in the Framework to *'preserve'* the openness of the Green Belt. The development as a whole urbanises the

countryside, particularly the blockwork stables which are experienced as having a very domestic character and appearance. The unauthorised use has the potential to cause further harm to the openness of the Green Belt, from the point of view of intermittently parking vehicles and the positioning of horse related equipment on the land. While the latter was not apparent on my site visit, it nevertheless remains a real possibility.

19. I find that the breach of planning control also conflicts with the purposes of the Green Belt. While the harm caused is localised in extent, the development has nonetheless failed to safeguard the countryside from encroachment. Furthermore, the development has led to the sprawl of a large built-up area and this harm would be compounded when dwellings on the allocated housing site have been built out. In turn, the breach of planning control would depart from an otherwise necessary and suitable visual transition between the very built-up part of the identified settlement and the more open and rural character afforded to the countryside.
20. I do accept that there are other stables and riding schools in this part of the countryside. However, I do not know when these developments were constructed and, in any event, there can be no doubt that the breach of planning control has eroded the openness of the Green Belt and that harm has been caused to its purposes. I therefore conclude that the breach of planning control constitutes inappropriate development in the Green Belt failing to accord with the Green Belt requirements of policy SS10 of the LP and paragraphs 149 and 150 of the Framework.
21. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. As the breach of planning control constitutes inappropriate development in the Green Belt, and harm has been caused to it, this is a matter to which I afford substantial weight in the planning balance considering paragraph 148 of the Framework.

Effect on landscape character

22. The appeal site falls within a landscape character area that is undulating, where there is sporadic built form and where the land is mainly undeveloped, open and of pastoral character with dense tree planting in some parts. It falls within the Nottinghamshire and Derbyshire Coalfield Landscape Character Area and within Wooden Farmlands Landscape Character type.
23. As detailed above, I cannot be certain of the planning status of the land to the north of the appeal site. Even if I were to assume that this development was lawful, the breach of planning control has resulted in some localised harm to the otherwise more open, rural and undeveloped landscape character of the countryside. In particular, the concrete hardstanding, 'L' shaped masonry built stable building, sub-division of fields with fences, exercise arena finished in an out of keeping black material, and potential for horse related paraphernalia and vehicles, has introduced a harsh, intrusive and more urban character to the countryside setting. Furthermore, prior to the unauthorised material change of use occurring, I do not doubt that the area had, in relative terms, a more tranquil character. I find that the character of the area has been diminished to some limited extent given a likely increase in comings and goings and general activity on the land.

24. I accept that the harm caused to landscape character is not noticeable from long distance views. Nonetheless, unacceptable localised harm has been caused to the landscape character of the area and hence I conclude that the breach of planning control does not accord with the landscape character requirements of policy SDC3 of the LP.

Whether intentional unauthorised development

25. The Department for Communities and Local Government policy statement, dated 31 August 2015, introduced planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals from 31 August 2015.
26. In this case, the Council comment that the appellant would have known that planning permission was needed for the breach of planning control '*having sought consent from the Council for other development in the District*'. I have little information before me to substantiate this point and the appellant does not address this matter in his statement of case. I cannot be certain if the appellant was in fact aware of the need for planning permission in respect of the breach of planning control. Therefore, on the evidence that is before me, I have not afforded intentional unauthorised development any material weight in considering the deemed planning application.

Other considerations

27. Use of the land for recreational purposes is a benefit for those members of the public that want to engage in the keeping and exercise of horses. This is therefore a positive matter to weigh in the overall planning balance.

Planning balance and conclusion

28. The breach of planning control constitutes inappropriate development in the Green Belt. Moderate harm has been caused to the openness of the Green Belt and there is conflict with its purposes. Furthermore, harm has been caused to the landscape character of the area. This harm would be more significant if development to the north were found to be unauthorised, and hence removed, as part of enforcement investigations. However, for the purposes of my assessment, I have assumed that this development is lawful. I have not afforded any material weight to intentional unauthorised development for the reasons outlined.
29. In this case, and, on balance, I conclude that the harm to the Green Belt by reason of inappropriateness, and the other identified harm, is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development. Therefore, the ground (a) appeal fails.

Ground (g) appeal

30. An appeal on ground (g) makes the claim that the period specified in the notice in accordance with s173(9) of the Act falls short of what should reasonably be allowed.
31. The appellant makes the claim that the land is occupied by a tenant and that the tenancy agreement requires that he give a two month notice period to vacate the stables. Furthermore, he states that a longer period is needed to

comply with the steps in the notice as it would be difficult to source a contractor to undertake the required works. The appellant has indicated that the period for compliance with all the steps in the notice should be twelve months.

32. The appellant has not provided me with a tenancy agreement to support the claim above. However, in this instance I am aware that the land is being used for the stabling of horses. In this regard, one month to cease using the land and hence to find alternative accommodation for horses is a short period of time. For this reason, I shall vary requirement 5 a) (i.e., cease the use of the land for the stabling, keeping and exercise of horses) from one month to two months.
33. Given the above, I shall in turn vary requirements 5 b), c), and d) from two months to three months. This will allow reasonable time for the appellant to secure a contractor to undertake all the required works.
34. For the above reasons, I conclude that the ground (g) appeal succeeds.

Conclusion

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR