



Appeal Decisions

Site visit made on 11 July 2023

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal A: APP/P2114/C/23/3315702

Appeal B: APP/P2114/C/23/3315703

Land at 115 Station Road, Wootton Bridge, Ryde, Isle of Wight, PO33 4RG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeals are made by Mr Paul Gidley (Appeal A) and Ms Miriam Horstman (Appeal B) against an enforcement notice issued by the Isle of Wight Council.
 - The enforcement notice was issued on 23 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, and within the last 10 years the material change of use of the land from use ancillary to a dwellinghouse to the keeping of horses, and without planning permission and in the last four years the erection of a stable building and tack room shown in the approximate position hatched blue on the attached Plan A.
 - The requirements of the notice are:
 - 5.1 To cease the use of the land for the keeping of horses and to restore the land to use ancillary to a dwellinghouse
 - 5.2 To demolish and remove the stable building/tack room shown in the approximate position hatched blue on the attached Plan A and any associated materials from the land.
 - 5.3 To remove all associated paraphernalia from the land.
 - The period for compliance with the requirements is 6 months for (5.1) and 7 months for (5.2) and (5.3).
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c) (d), (f) and (g) of the Act. 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 proceeds on grounds (c) (d), (f) and (g) only.
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DECISION

1. It is directed that the notice be varied by:
 - in Section 5.1 deleting all of the words after the word “horses”; and
 - deleting all of Sections 5.2 and 5.3.
2. Subject to the variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

PROCEDURAL MATTERS

3. The stable and tack room referred to in the enforcement notice is a single building. I shall refer to it hereafter as the “building”.
4. Grounds (c) and (d) are legal grounds of appeal. In these grounds of appeal

the Courts have established that the onus of proof falls to an appellant¹, with the test of the evidence being on the balance of probabilities². Also, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict an appellant's version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted³.

APPEALS ON GROUND (c)

5. Section 55 of the Act defines "development" to include both building operations and the making of a material change of use. A breach of planning control is defined at s171A(1)(a) to include the carrying out of "development" without the required planning permission. An appeal on ground (c) is made on the basis that there has not been a breach of planning control.
6. In this case it is argued the keeping of up to 3 horses on the appeal site is an incidental or ancillary use to the primary residential use of the property at No. 115 Station Road, such that no material change of use has taken place, and, in connection with that use, the erection of the stables building benefits from the planning permission available for buildings within the curtilage of a dwellinghouse granted under the GPDO⁴ ("permitted development").
7. With regard first to the erection of the building as operational development, I note that planning permission was granted for the conversion of the main property from flats to two single dwellinghouses on 8 November 2018. Therefore **lawful** use of No. 115 as a single dwellinghouse could only have commenced on or after that date. If the stable building was erected earlier, in August 2018 as argued, there would have been no lawful use as a single dwellinghouse (No. 115) with its own curtilage. Hence, at that time the building could not have benefitted from Class E rights which do not apply to flats or to unlawful uses. Consequently, it could not have been erected as permitted development.
8. Furthermore, permitted development rights do not apply retrospectively and so the building could not have 'acquired' Class E status later when No. 115 became a single dwellinghouse with its own curtilage. I conclude therefore that the erection of the building was a breach of planning control. Whether the building became immune from enforcement action as operational development due to the passage of time is subject of the appeal on ground (d).
9. The use of the building is integrally part of the use of the land for keeping horses and so must be considered in that context. I turn to this matter next.
10. As set out in PPG⁵ there is no statutory definition of a "material change of use". Whether a material change of use has taken place is a matter of fact and degree to be determined on the facts and circumstances in any particular case. Critically, a material change of use incorporates a significant difference in the character of activity from what has taken place previously. Any off-site effects

¹ *Nelsovil v SSE* [1962] 13 P&CR 151

² *Thrasyvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

³ *Gabbittas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

⁴ Article 3 and Class E, Part 1, of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015

⁵ Planning Practice Guidance: Paragraph: 011 Reference ID: 13-011-20140306

can be material considerations in making such a judgment but are not definitive by themselves.

11. The parties refer to earlier appeal cases at other sites involving the keeping of horses and whether such uses were incidental or not to residential use. While they are material considerations which I take into account, I do not know all of the details and circumstances of those cases and they do not individually or in combination set any precedents. Taken together, however, they do illustrate that each case must be assessed on its own particular facts and circumstances as I have previously set out.
12. Following its sub-division from the larger property and conversion from flats, No. 115 is now a large semi-detached house on Station Road with garden areas to the front, side and rear. The long 'L' shaped rear garden adjoins the side and rear garden boundaries with No. 113 to the east, and the side/rear boundary with No. 117 to the west. The southernmost part of the garden, to the rear of No. 113, is the area where the stables building is located. There is a separate access from the rear garden gate onto Packsfield Lane, which is a single track bridleway (N6) and provides access to other residential properties. The appellants have access to a separate field for grazing purposes further to the east along Packsfield Lane.
13. The longer range views of the wider area to the south of No. 115 are mainly rural in character. However, given the property's location between other dwellings either side and to the rear, and its contextual relationship within the built up area of the Wootton settlement to the west and to the north of Station Road, I find overall that it lies within an area which is predominantly residential in character.
14. The appellants state that up to 3 family owned horses are kept at the property, for their personal and private enjoyment, and not for any livery or other commercial use. As such, it is argued, the keeping of horses is incidental to the residential use of the dwellinghouse.
15. While I note third party support for the appeal, some comments received from neighbours living closest to the horses have referred to noise and odour problems. In my view such effects would not normally be associated with typical domestic use at properties in an area that is predominantly residential in character. Also, given the scale of the equestrian use and its likely effects, I find it to be out of character in the context of a semi-detached house in a mainly residential area.
16. Although it is said that the horses have sometimes been in the main part of the rear garden and have grazed the rear lawn, the stables building and yard area are enclosed and separated by fencing and a gate from the rest of the garden. This it is said is for reasons of domestic practicalities, such as the need to control the maintenance of lawn areas and separation of the appellants' dogs, and that such separations between different areas in a domestic garden are commonplace without resulting in separate uses and planning units.
17. However, notwithstanding the appellants' arguments, I consider the size of the building, the degree of fencing and separation of the building from the rest of the residential property, and the overall extent of use of the land, results in a purposely physically separate and distinct area occupied for equestrian use, being a substantially different purpose to residential use. Also, while the rear

gateway onto the rear bridleway may also serve the use of the dwellinghouse it seems to me, on balance of the evidence before me, that its main purpose is to serve the keeping of horses on the land and their movement to and from the bridleway and the field to the east.

18. Taking account of all the relevant factors before me, and having regard to case law in *Burdle*⁶, there is no convincing evidence which, on the balance of probabilities, points either to an incidental equestrian use within the appellants' wider property as a single residential planning unit, or as a mixed primary use. Rather, I find there to be two separate uses and planning units, one residential, one for the keeping of horses.
19. To conclude; while I acknowledge that keeping a horse or more than one horse at a residential property is capable of being an incidental use, I do not find that to be the case here. In my consideration the keeping of 3 horses goes beyond being incidental to the residential use of this semi-detached house. As a matter of fact and degree there has been a significant change in the character of the use of the land from previously, thereby resulting in a material change of use amounting to "development" as defined in the Act. Since planning permission has not been granted for the change of use it constitutes a breach of planning control.
20. The appeals on ground (c) therefore fail.

APPEALS ON GROUND (d)

21. The appeal on ground (d) is that the stable building (as operational development) is immune from enforcement action due to the passage of time from when it was substantially completed, being more than 4 years before the enforcement notice was issued; hence before 23 December 2018.
22. In response to a PCN⁷ questionnaire the appellants state the current building was "reconstructed" in January 2018 prior to their purchase of the property. However, there is some ambiguity between the PCN response and their submitted Statutory Declarations (SD) which state the building was started later in August 2018 and completed in November 2018.
23. A further SD from the contractor, SPJ Improvements, also states construction was carried out between August and November 2018. But this has its own ambiguity, having an attached undated photograph showing the building under construction and referred to in his SD as being taken in "early 2018". I do not readily associate "early" 2018 with August to November 2018.
24. The Council's aerial image⁸ is said to have been taken in June 2018. However, it is without any certification to prove its integrity as being taken on that date. Assuming it was from June 2018 it would not be inconsistent with the appellants' claim of construction commencing two months later in August.
25. A third party (Nihell) email response to the appeal dated 6 March 2023 states: "As far as I am aware the said stables and tack room have been in place longer than 4 years". However, the email contains no reference to the relevant date of 23 December 2018, and 4 years prior to the email date would be 6 March

⁶ *Burdle & Williams v SSE* [1972] 1 WLR 1207

⁷ Planning Contravention Notice - questionnaire responses – dated 23 February 2022

⁸ Council's Appendix L

- 2019, hence less than 4 years before the notice was issued. Additionally, the qualification of "As far as I am aware..." falls short of being an assured affirmation of factual matters. Overall, it is too vague and imprecise for me to attach to it any significant weight in support of this ground (d) appeal.
26. In response to an earlier application submitted by the appellants to the Council a close neighbour stated that the construction of the building started in May 2019⁹. This directly conflicts with the appellants' evidence. It would also be consistent with the Nihell email if the email date (6 March 2023) relates to the relevant 4 year period as previously described.
27. Although there are SDs from the appellants and the contractor there is no supporting documentary evidence relating to the timing of construction, for example in the form of receipts or invoices for materials or work carried out. While such documentation is not a prerequisite in establishing immunity, and absence of it by itself does not make the appellants case less credible, it does not make the ambiguities I have highlighted any clearer.
28. Further ambiguity arises from the block plans¹⁰ submitted by the appellants as part of applications to the Council in August 2019 and July 2021 which show no stable building present or the current 'L' shape plot layout. While it may be the case that pre-existing plans have inaccurately been re-used in later applications, perhaps for example for reasons of economy and/or convenience, they nonetheless now add further ambiguity to the appellants' evidence in this appeal.
29. Having regard to all of the evidence before me, and to case law in *Gabbittas*¹¹ I find overall that the appellants' evidence is not sufficiently precise and unambiguous, and is also contradicted by the Council's evidence. As such, the appellants have failed to show, on the balance of probabilities, that the building is immune from enforcement action.
30. The appeal on ground (d) fails.

APPEAL ON GROUND (a)/DEEMED APPLICATION FOR PLANNING PERMISSION

31. This ground of appeal is that planning permission should be granted for the use of the land for keeping horses and the retention of the stable building.

Main Issue

32. Having regard to the Council's reasons for issuing the enforcement notice I consider the main issue is the effect of the development upon the living conditions of occupiers of neighbouring properties with particular regard to noise, odours and outlook.

Reasons

33. The Council states it has received complaints of noise disturbance and odours via its planning and environmental health departments. It is not clear to me why they have not been submitted in evidence (even the times, dates and details of the complaints could have been submitted). However, there is no

⁹ Council's Appendix J

¹⁰ Council's appendices E and F

¹¹ *Gabbittas v SSE & Newham LBC* [1985] JPL 630

compelling evidence before me to cause me to doubt that such complaints were made. Moreover, third party comments have been submitted directly in response to this appeal from neighbouring occupiers complaining of noise and odour problems. The council also refer to an objection¹² relating to these matters from a neighbour in response to an earlier application.

34. Contrary to the appellant's view, I consider the use of the land and building for keeping horses is of a significant scale in the context of what one might reasonably expect at residential properties and their gardens when located in close proximity to one another. While I acknowledge the appellant has considerable experience and expertise in keeping horses and would seek to limit any adverse noise and odour impacts to a minimum, that may not always be possible given that occupiers and horses could change over time.
35. I accept that statutory nuisances can be controlled under Environmental Protection law, however lower (non-statutory) levels of nuisance, for example low level or intermittent noise, can nonetheless still be very harmful to residential amenity, particularly so when in close proximity to other dwellings and gardens, and which cannot easily or effectively be controlled or mitigated by way of planning conditions. I find that to be the case here.
36. While I note the benefits of the appeal site, giving very close access to the network of bridleways, and the added security resulting from stabling the horses close to the house, these do not outweigh the harm I have identified.
37. I also note the health and well-being benefits in the Framework¹³ referred to by the appellant. However, that part of the Framework relates more generally to provision of, and access to, community-based recreational and social facilities, rather than the use of domestic gardens for non-residential uses. Given the context of the surrounding residential land use in this appeal I consider that paragraph 130(f) of the Framework is more relevant, relating to achieving well-designed places which promote health and well-being "...with a high standard of amenity for existing and future users". The development conflicts with this policy.
38. For these reasons I find the use of the land for keeping horses would result in significant harm to the living conditions of existing and future occupiers of nearby properties in respect of noise and odours. It thereby conflicts with the requirements of Policy DM2 of the Island Plan Core Strategy (2012) which, amongst other matters, requires all new development to respond to a clear understanding of physical and environmental context.
39. The Council argue the outlook for occupiers of No. 113 would be visually harmed. However, the stable building and yard area is a considerable distance from the first floor windows of that house, and at ground level there is tall boundary fencing which divides the gardens of the two properties. Given that there is no "right to a view" I find no harm results to the neighbours' outlook from their house or garden since no part of the development, in terms of size and scale, would block visibility or otherwise be oppressive.
40. That aside, I accept the appearance of the stable building, when considered as part of the use for keeping horses (rather than by itself in isolation) is of a

¹² Council's Appendix J

¹³ National Planning Policy Framework (2021) Chapter 8: *Promoting healthy and safe communities*

scale and level which taken together would be incongruous¹⁴ with the domestic residential character and appearance of the rear gardens in this residential area. This harm to the character and appearance of the area is not greatly significant by itself, although it does add a further degree of weight against allowing the appeal.

41. For all these reasons the appeal on ground (a) fails. However, for reasons set out under ground (f) the notice requirement for the building to be demolished will be removed.

APPEALS ON GROUND (f)

42. Section 173 of the Act states there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
43. Given that the notice (as drafted by the Council) requires the unauthorised use to cease and the removal of the stable building, it is clear the purpose of the notice lies within s173(4)(a) since it seeks to fully remedy the breach of planning control.
44. As such, the notice requirement at 5.1 to “restore the land to use ancillary to a dwellinghouse” is excessive and unnecessary as it would prevent any other lawful use of the land and goes beyond simply requiring the unauthorised use to cease. I will therefore vary this requirement by deleting this element.
45. Also, “associated paraphernalia” in 5.3 is unclear. It does not tell any person who needs to comply with the notice what they need to do with reasonable precision and clarity. The keeping of saddles and other equipment at home, for use away from the property, is excessive. Accordingly, I will delete this requirement.
46. Following these amendments the requirements to cease the use of the land for keeping horses and to demolish and remove the stable building cannot be excessive requirements as they go no further than remedying the breach.
47. However, the Council acknowledge¹⁵ that the building could reasonably be used for incidental residential purposes once the use for keeping horses has ceased. As I set out earlier in ground (c) it could not acquire “permitted development” status retrospectively, but it would nonetheless be compatible with the size and other limitations and conditions of Class E of the GPDO. Indeed, if the notice were fully complied with, the appellants would then be able to construct an identical building under Class E rights for purposes incidental to the enjoyment of the dwellinghouse.
48. In light of these factors the Council have indicated that the requirement to demolish the building could be removed. I will therefore vary the notice accordingly by removing the requirement but will leave the allegation at Section 3 of the notice as drafted. The notice will simply require the use of the land (which includes the use of the building) for keeping horses to cease. This will have the effect of under-enforcing the breach and granting a deemed consent for the building via s173(11) and 73A of the Act. The deemed consent

¹⁴ Council’s statement, paras. 7.3.2.4, 7.2.8

¹⁵ Council’s statement, para.7.4.3

is only granted and effective once all other requirements of the notice have been complied with.

49. The appeal on ground (f) therefore succeeds to the extent I have set out above, but otherwise fails.

APPEALS ON GROUND (g)

50. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice (as varied) requires the use to cease within 6 months. The appellant seeks a period of 9 months.
51. There is no convincing evidence before me to support the appellants' case that there is a significant shortage of (temporary or permanent) alternative livery for the horses, such that 6 months would be an insufficient period of time for the use to cease. Against that I must take into account that the breach, and the harm that arises from it, should be remedied as soon as reasonably possible. I am also mindful that if any compelling evidence of a shortage does exist, even for a temporary period, the Council have their own powers to extend the compliance period should they consider it expedient to do so.
52. On balance therefore I consider that 6 months does not fall short of what should reasonably be allowed.
53. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR