



Appeal Decisions

Hearing held on 19 July 2023

Site visit made on 19 July 2023

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 September 2023

Appeal A: APP/N0410/C/22/3309945

Land at east side of Crow Piece Lane, East Burnham, Buckinghamshire, SL2 3SD

- 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 Act").
- The appeal is made by Laura Sterling against an enforcement issued by the Buckinghamshire Council.
- The enforcement notice was issued on 8 September 2022.
- The breach of planning control alleged in the notice is without planning permission, a material change of use of the Land to a mixed use comprising agriculture use and for equestrian purposes (the Unauthorised Use) and integral to the unauthorised use, the undertaking of operational development comprising: the laying of hardstanding, construction of a menage, erection of fencing/gates, and construction/siting of buildings and metal containers (the Unauthorised Development).
- The requirements of the enforcement notice are:
 - (1) Cease the use of the Land (outlined by the thick black line on the attached plan) for equestrian purposes;
 - (2) Break up and remove the hardstanding (including under the buildings and containers) (shown stipulated in the approximate location on the attached plan and labelled A);
 - (3) Remove the menage, (shown cross hatched in the approximate location on the attached plan and labelled B);
 - (4) Remove the fencing/gates (shown dashed in the approximate location on the attached plan and labelled C);
 - (5) Remove and/or demolish all buildings and metal containers as shown on Appendix B, (Drawing/Plan 4421 submitted part of planning application PL/22/1472/FA shown hatched in the approximate position on the attached plan and labelled D);
 - (6) Remove all materials and debris resulting from complying with step 1-5 of this Notice, from the Land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on grounds set out in section 174(2)(a), (f) and (g) of the Act. As such, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision

Appeal B: APP/N4720/W/22/3309948

Land at east side of Crow Piece Lane, East Burnham, Buckinghamshire, SL2 3SD

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Laura Sterling against the decision of the Buckinghamshire Council.
- The application Ref: PL/22/1472/FA, dated 21 April 2022, was refused by notice dated

25 July 2022.

- The development proposed is change of use of land to create equestrian facility including siting of buildings associated with facility and laying out of ménage.

Summary of Decision: The appeal is dismissed.

Appeal C: APP/N4720/W/23/3322226

Land at east side of Crow Piece Lane, East Burnham, Buckinghamshire, SL2 3SD

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Laura Sterling against the decision of the Buckinghamshire Council.
- The application Ref: PL/22/4383/FA, dated 12 January 2023, was refused by notice dated 12 April 2023.
- The development proposed is change of use of land to create equestrian facility including siting of buildings associated with facility and layout out of manege.

Summary of Decision: The appeal is allowed.

PROCEDURAL MATTERS

1. Appeals A, B and C all relate to an equestrian based business located on land off Crow Piece Lane, East Burnham, within the Metropolitan Green Belt.
2. In Appeal A (against the enforcement notice) it was agreed with the parties at the Hearing that the alleged breach of planning control should more accurately refer to "equestrian use", rather than to a mixed use comprising agricultural use and equestrian purposes, as drafted.
3. It is now clear from the evidence before me, from case law¹, and from my own observations at the site visit, that all of the wider land area in Appeals B and C, used mainly (by area) for grazing, is not an independent separate grazing use that stands alone from the equestrian use. While the horses do graze this wider area they are mainly kept there for the purposes of riding, training and recreation, and are provided with supplementary feed and stabled and cared for in the main built-up part of the equestrian facilities when required. As a matter of fact and degree I find that the grazing is in reality an integral part of the overall equestrian use of the land.
4. As such, the land area in the notice plan affected by the alleged breach, and from which the ground (a)/deemed planning application flows, should be extended to include all of the same area of land for which planning permission for equestrian use is sought in appeals B and C.
5. Such corrections to the notice would not prejudice consideration of the parties' respective cases, and I am satisfied there would be no injustice to any party. I will therefore amend the description of the breach in the notice to "equestrian use" and substitute the plan attached to the notice with the one in the Annex to this Decision using powers available to me under s176(1) of the Act.
6. Following these corrections, the appeal on ground (a) in Appeal A mirrors the appeal against refusal of planning permission in Appeal B, while Appeal C is a revised layout of that in Appeal B. Since all three appeals relate to the same

¹ *Sykes v Secretary of State for the Environment* (1981) 42 P & CR 19
Fox v First Secretary of State (2003) EWHC 887 Admin

form of development and the same site area, I will deal with them all together as far as possible.

APPEAL A – GROUND (a), APPEAL B, APPEAL C

Main Issues

7. The main issues are:

- (i) Whether the development is inappropriate development in the Green Belt having regard to the effect on openness and the purposes of the Green Belt;
- (ii) the effect on the character and appearance of the area; and
- (iii) if inappropriate development, whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Main Issue (i) - Whether inappropriate development

- 8. The appellant operates an equestrian facility within the approximately 11.7Ha area of land subject of the appeals, and within which approximately 20 or so horses of various breeds, sizes and ages are kept for recreation purposes. There is no Council planning policy or other requirement for an applicant to demonstrate a need for such a facility, however I heard that it is popular and well used with the majority of users being children, some of whom have special needs, and find the facility enjoyable and beneficial in terms of their overall health and well-being.
- 9. Other than the open land within the wider site there is a small area to the south of the site which forms the main fenced and gated compound area. This built-up area comprises hardstanding and single storey structures formed from a mixture of re-purposed storage containers, and other constructions. Together they provide 4 stable boxes, a covered wash-off area, secure storage for tack and other equipment, hay and feed storage, an office, and a shelter room for lunch breaks and welfare. At the time of my visit to the appeal site all of these facilities had been laid out in a compact linear manner, consistent with the proposed layout plans in Appeal C. To the west of these facilities, adjoining the hardstanding area, part of the open land has been fenced and covered with woodchip to form a manege.
- 10. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. The PPG² reflects the findings of the Courts in *Turner*³ and *Samuel Smith*⁴ which held that perceptions of openness can be visual as well as spatial, and that matters relevant to openness in any particular case are a matter of planning judgement, rather than a matter of law.

² Planning Practice Guidance, para.001, Ref: 64-001-20190722, MHCLG, 22 July 2019

³ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 h

⁴ *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3e

11. Policy GB1 of the South Buckinghamshire District Local Plan (1999) (LP) is not wholly consistent with the more recent Green Belt policy set out in National Planning Policy Framework (2021). Accordingly, I attach greater weight to the Framework.
12. Other than types of development listed as exceptions within the Framework, development within the Green Belt is generally regarded as “inappropriate development”, which is by definition harmful to the Green Belt and should not be approved except in very special circumstances.
13. Exceptions to inappropriate development, set out at paragraphs 149 and 150 of the Framework, include buildings which provide appropriate facilities for outdoor sport and recreation, engineering operations, and material changes in the use of land for outdoor sport and recreation. For these exceptions a qualifying proviso is that the development must also preserve the openness of the Green Belt and not conflict with the purposes of including land within the Green Belt.
14. Having regard to the form and purposes of the previously described structures I am satisfied that together they constitute *appropriate facilities* for the purposes of paragraph 149, and that the appellant’s equestrian use of the land comprises a material change of use for outdoor sport or recreation for the purposes of paragraph 150.
15. In terms of preserving openness and avoiding conflict with Green Belt purposes there was some debate as to how paragraph 149 and 150 should be properly interpreted. In my consideration the overriding intention of these paragraphs is primarily to allow for the provision of qualifying buildings and uses, as listed therein.
16. With the above in mind I accept that, in the case of buildings for example, any new building, even of a small size, is likely to result in some degree of reduction in openness (spatially if not visually). However, it cannot be that the qualifying requirements to preserve openness and for there to be no conflict with Green Belt purposes then acts to exclude all listed exceptions. If that were the case paragraphs 149 and 150 would be otiose. I am reinforced in this view by paragraph 145 which states that local planning authorities should plan positively to enhance the beneficial use of Green Belts such as looking for opportunities to provide access and to provide opportunities for outdoor sport and recreation. Consequently, therefore, I consider that for the purposes of paragraphs 149 and 150 a balanced judgement needs to be made with regard to the openness and purposes of the Green Belt having regard to all of the particular facts and circumstances of each individual case.
17. Following on from the above, I consider that all of the previously described facilities are small single storey scale units and together are no more than is reasonably required for the purpose of the appellant’s equestrian use of the land. The associated activity on the site, in terms of visitor parking and movements of people to and from the site, is also relatively small scale and self-limiting by the scale of the business and its facilities. The manege, hardstanding and post and rail fencing are also very minimal in terms of their effect on openness, both spatially and visually. All of this development is located in a compact small area to the south of the site with the stables, office, and other units located closely in front of the tall tree and hedgerow boundary to the rear. The Council acknowledge, and I agree, there is little

visibility of any of the development from anywhere outside of the appeal site, including during winter months.

18. To conclude on this first main issue, and having regard to all of the features of the development in these appeals, either singly or in combination, I find there would be no significant spatial or visual reduction of Green Belt openness and no conflict with the Green Belt purpose of safeguarding the countryside from encroachment. The equestrian use with its associated paraphernalia, parking, and movements of people to and from the site, together with the operational development and engineering operations therefore constitute exceptions within paragraphs 149 and 150 of the Framework and are not inappropriate development within the Green Belt.

Main Issue (ii) - Effect on character and appearance

19. The character and appearance of the area is largely derived from the restored natural countryside appearance of the appeal site. And it follows that a significant element of that comes from the wide and open vistas across the site being free from development. In this regard I refer to the site being open in terms of the character and appearance of the landscape in the context of LP Policy R5, rather than in terms of the effect on the openness of the Green Belt.
20. The appearance of horses in the fields within the appeal site does not result in any harm to the character and appearance of the countryside. However, the nature of the re-purposed containers and other structures which form the line of stable boxes, office and other facilities are a form of built development which is not a natural landscape feature.
21. In this regard the Council acknowledged⁵ that the appeal proposals do not harm the character or appearance of the area unacceptably and was described in the Hearing as "negligible". I agree with that finding in respect of Appeal C and subject to there being no significant increase in lighting on the site than currently exists. However, in Appeals A and B the facilities would occupy a greater floorspace and are more spread out than as proposed in Appeal C. Consequently, I find the proposed development in Appeals A and B result in a greater degree of harm to the more open and natural character and appearance of the landscape in conflict with the requirements of LP Policy R5.

Main Issue (iii) - Other considerations

22. I have found the proposed development in the appeals to not constitute inappropriate development in the Green Belt. Hence, there is no need for me to consider whether other considerations argued in support of allowing the appeals amount to "very special circumstances".

Other matters

23. In addition to the main issues discussed above, the Farnham Royal Parish Council raised their concern with regard to noise and disturbance to local occupiers emanating from the use of the site. In this regard there is no evidence before me of any noise complaints being made to the Council while the use has been operating. Also, this matter did not form any part of the Council's reasons for issuing the enforcement notice or refusing planning

⁵ Doc 1 - Statement of Common Ground

permission. Overall, I am satisfied that the location of the appeal site and its facilities is sufficiently distant from residential properties such that there would be no unacceptable impact on the amenities of those occupiers.

Planning Balance and Conclusion

24. The appellant's undisputed evidence is that the proposed development is a viable community asset with associated recreational, health and wellbeing benefits.
25. I have found the development in all three appeals would not constitute inappropriate development. That notwithstanding, the effect on openness would be minimised in Appeal C. Additionally, I have identified a level of harm to the character and appearance of the area in Appeals A and B in conflict with LP Policy R5, but which is not significant in Appeal C. Consequently, for these reasons I conclude that the appeal on ground (a) in Appeal A, and Appeal B, should not succeed and will be dismissed, but Appeal C will be allowed subject to planning conditions.
26. Since Appeal A will be dismissed the enforcement notice will be upheld. However, s180(1) of the Act provides that where planning permission is granted after the issue of an enforcement notice for any development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the planning permission granted. Thus, the planning permission overrides the notice to the extent that the permission authorises what is being enforced against.

Appeal A - ground (f)

27. The enforcement notice requirements go no further than remedying the breach of planning control and hence they are not excessive requirements. The appeal on ground (f) therefore fails.
28. That notwithstanding, the effect of s180 of the Act set out previously should be noted.

Appeal A - ground (g)

29. The ground of appeal is that the 6 month period of time for compliance with the notice requirements falls short of what should reasonably be allowed.
30. I consider that 6 months is a reasonably generous period of time in which to comply with the notice requirements, and there is no convincing evidence before me to justify extending the compliance period further.
31. The appeal on ground (g) therefore fails. That notwithstanding, the effect of s180 of the Act set out previously should be noted.

FORMAL DECISIONS

APPEAL A

1. It is directed that the notice be corrected by:
 - in Section 3 deleting the words "mixed use comprising agriculture use and for equestrian purposes" and substituting instead the words: "equestrian use"; and

- substituting the plan attached to the enforcement notice with the one at Annex A to this Decision.
2. Subject to the corrections 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.

APPEAL B

3. The appeal is dismissed.

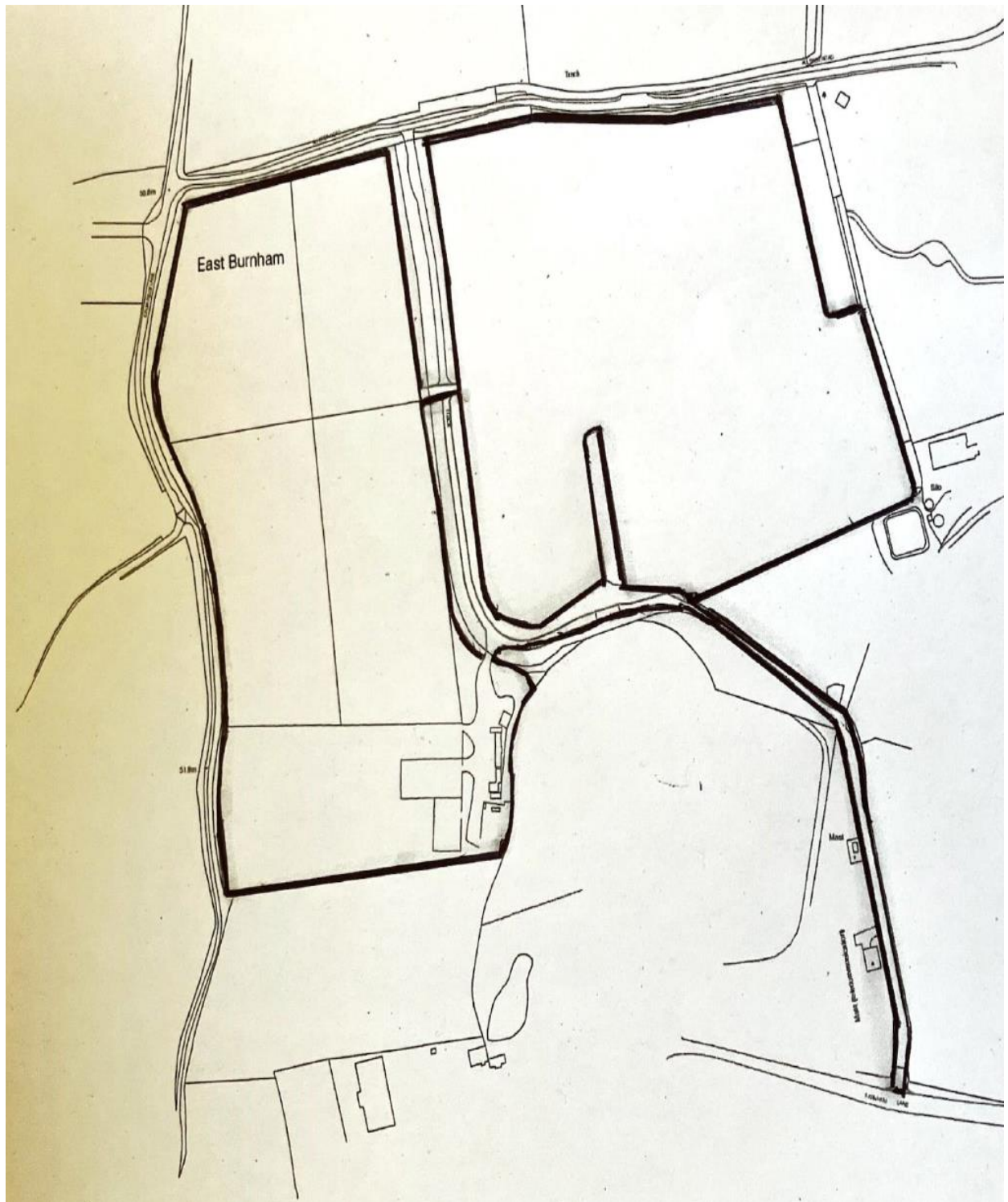
APPEAL C

4. The appeal is allowed and planning permission is granted for the change of use of land to create an equestrian facility including siting of buildings associated with the facility and layout out of a manege at land at east side of Crow Piece Lane, East Burnham, Buckinghamshire, SL2 3SD in accordance with the terms of the application Ref PL/22/4383/FA, dated 12 January 2023, subject to the following conditions:
- 1) The development hereby permitted shall be carried out in accordance with the approved plans: A1/4421/PLA/1.02, KCC3370/02 12/22cb, KCC3370/01 12/22tk, KCC3370/03 12/22cb, KCC3370/04 12/22ec.
 - 2) There shall be no additional lighting anywhere on the site other than in accordance with details which shall have first been submitted to and approved in writing by the Council.

Thomas Shields

INSPECTOR

ANNEX A – ENFORCEMENT NOTICE PLAN



APPEARANCES

FOR THE APPELLANT:

Stephanie David of Counsel	39 Essex Chambers
Tony Kernon BSc (Hons), MRAC, MRICS, FBIAC	Director, Kernon Countryside Consultants Ltd
Laura Sterling	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Hugo Woodley	Planning Officer, Buckinghamshire Council
Billy Johal	Senior Planning Enforcement Officer, Buckinghamshire Council
Alex Armour	Senior Planning Officer, Buckinghamshire Council

INTERESTED PERSONS:

Marilyn Rolfe	Farnham Royal Parish Council
Josh Lawford	Supporter
Lisa Aistle	Supporter
Tracy Veah	Supporter
Shelley Wilcox	Supporter

DOCUMENTS SUBMITTED AT THE HEARING

DOC 1	Statement of Common Ground
DOC 2	Email (Palmer) from appellant
DOC 3	Letter (Khokar) from appellant