The Planning Inspectorate

Appeal Decision

Site visit made on 8 September 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/D0121/C/23/3316588
Field adjoining Bow Cottage, Gatcombe Lane, Flax Bourton, BS48 3QT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Bridget Mackwood against an enforcement notice issued by North Somerset Council.
- The notice, numbered 21/00017/UAW, was issued on 4 January 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of land from agricultural to a mixed use of agricultural and equestrian use including the construction of an all-weather riding arena, gravelled parking area and access track.
- The requirements of the notice are:
  1. Cease the use of the land for equestrian use.
  2. Remove the all-weather riding arena from the land and all miscellaneous materials associated with the construction and removal.
  3. Remove the white railings that enclose the all-weather arena, access track and gravelled parking area.
  4. Restore the land to its former condition before the breach took place.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellant submitted a statutory declaration in response to the Council's statement of case but this introduced new evidence out of time. I have therefore disregarded the declaration and determined the case on the evidence submitted by the parties within the normal time for doing so.

The site and relevant planning history

3. The appeal site is located in open countryside within the Bristol and Bath Green Belt and comprises a field, an access, an all-weather riding arena and gravelled parking area. The arena was erected in February 2021 and measures 60x25m and 300mm high. It sits on a structural raft comprising recycled plastic crates upon which a sand and fibre riding surface has been installed. It is enclosed on all sides by a 1m high white plastic safety railing. A 4m wide access track connects the arena to the highway where there is a small parking area.

4. A retrospective planning application for an all-weather riding arena and access track and change of use to a mixed use of land for agricultural grazing and keeping of horses was refused in October 2022 (21/P/1658/FUL). No appeal was made against the decision within the relevant appeal period.

5. A number of third party representations have been submitted in connection with this enforcement appeal but these deal largely with planning merits which are not being considered in the absence of a ground (a) appeal.

The appeal on ground (d)

6. An appeal on this ground is that it is too late to take enforcement action. As a legal ground of appeal the onus of proof rests with the appellant and the level of proof is on the balance of probability.

7. The appellant states that the use of the land for a mix of agricultural and equestrian purposes has taken place since 2009 and is lawful. The appellant states that had the Council had cause to doubt the evidence supplied in the supporting statement to the retrospective planning application they would have sought further information but did not do so. In the light of this, the appellant has not submitted any further evidence on this ground within time in support of the appeal.

8. Nor has the appellant submitted the supporting statement in connection with this enforcement appeal relating to the retrospective planning application although it is briefly referred to in the submitted statements. Accordingly, in the absence of such evidence, I cannot attach weight to it.

9. It appears that the appellant has placed undue reliance on it being believed that the use of the land had been accepted by the Council. This is not the same as the Council accepting that the use is lawful. Whilst the officers report on the refused retrospective application clearly states that no objection is raised in principle to the proposed change of use of the land to a mixed use for agriculture and for the keeping of horses, this is not a statement of lawfulness.

10. The Council consider that the land has been agricultural in character and that there is no evidence that the land has been used for equestrian purposes prior to the construction of the arena, or if it was, it was at a *de minimis* level. Reference is made to the absence of equestrian paraphernalia on aerial photographs and other images taken from 1991 onwards although it is acknowledged that these represent only a snapshot in time. The Council conclude that the primary use of the land has not been for equestrian purposes and point out that the grazing of sheep and horses is an agricultural use.

11. In the absence of any substantive evidence from the appellant to the contrary, I conclude on the balance of probability that a material change of use to mixed use of agricultural and equestrian use has not occurred and continued for a period of 10 years prior to the serving of the notice. The use is therefore not lawful through the passage of time.

12. The appeal on this ground fails.

The appeal on ground (e)

13. An appeal on this ground is that the steps to comply with the requirements are excessive and that lesser steps would overcome the objections.

14. Much of the appellant's case in support of the appeal on ground (e) relates to matters that are relevant to an appeal on ground (a).

15. In respect of the first requirement, the appellant considers that the cessation of equestrian use cannot be required as the use is lawful. However my conclusion on the ground (d) appeal shows this not to be the case.

16. The appellant's comments at paragraph 6(2) of the statement of case in respect of the removal of the arena are unclear due to a missing section of the paragraph.

17. The appellant considers that the requirement to remove the white railings is the main issue and that the Council would accept the painting of the railings to green and that the arena does not give rise to an adverse impact. However, the Council's position is that the main issue is the siting of the menage in an open and prominent position having an adverse impact on the pastural character of the land.

18. In respect of the restoration of the land to its former condition, the appellant claims that the arena is a temporary structure on top of the existing land. The structure is located on the site permanently and is of a considerable size being 30cm high and covering about 1,500 sqm. Its significant size and overall construction would not be capable of being moved as a whole but would require dismantling to achieve this. I consider that the arena represents a permanent structure for the purposes of s55 and constitutes development.

19. The appellant is also unclear about what the intended requirement is for the reinstatement of the parking area. However, I consider the requirement to be perfectly clear and unambiguous. The appellant will be aware of the condition of the land before the unauthorised development took place.

20. It is the appellant's case that the breach could be satisfactorily resolved through under-enforcement and be aimed at securing a suitable landscaping scheme and painting the means of enclosure. However, the appellant makes it clear that the previously submitted landscape plan is appropriate and sufficient and is not prepared to undertake additional planting requested by the Council as this would compromise the use of the land. Furthermore as there is no ground (a) appeal it is not possible to impose lesser steps to overcome the objections.

21. 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.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

P N Jarratt

INSPECTOR