



Appeal Decision

Hearing held on 12 February 2024

Site visit made on 12 February 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Appeal Ref: APP/Y9507/C/23/3327360

Land at Bellows, Bramlands Lane, Woodmancote, Henfield BN5 9TG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
 - The appeal is made by Mr Ralph Gilbert against an enforcement notice issued by Horsham District Council on behalf of South Downs National Park Authority.
 - The notice was issued on 5 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the retention of an all-weather playing surface with fence surround, shown hatched in green on the attached plan.
 - The requirements of the notice are to:
 - (1) Remove the all-weather playing surface and fence surround.
 - (2) Remove from the land all materials and debris resulting from the compliance of the above steps.
 - (3) Restore the Land to its condition before the breach took place.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) 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.
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Decision

1. It is directed that the enforcement notice is corrected as follows:
 - i) In Section 3 (The matters which appear to constitute the breach of planning control), remove the word 'retention' and replace it with the word 'construction'; and
 - ii) In Section 3 and Section 5 (What you are required to do), after the words 'fence surround' add the words 'except for that section of fence benefitting from the planning permission granted for the tennis court (under appeal ref APP/Y9507/A/11/2165593, dated 20 June 2012)'.
2. Subject to these corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the construction of an all-weather playing surface with fence surround, except for that section of fence benefitting from the planning permission for the tennis court (under appeal ref APP/Y9507/A/11/2165593, dated 20 June 2012), shown hatched in green on the plan attached to the notice, and subject to the following conditions:

- 1) The all-weather playing surface hereby permitted shall be used only for purposes incidental to the use of Bellows as a dwelling house and shall not be used for commercial purposes.
- 2) No external lighting or floodlighting shall be installed without details having first been submitted to and approved in writing by the Local Planning Authority. Any lighting installed shall be maintained in accordance with the approved details.

Procedural matter

3. The appeal was made on grounds (a), (b) and (f). For the reasons set out below, the appellant raised matters relevant to an appeal on ground (c), which I have considered as a 'hidden' ground (c) appeal.

The notice

4. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. The allegation refers to 'retention' of an all-weather playing surface with fence surround. The notice would be more precise if 'retention' was replaced with 'construction'. This was discussed and agreed by the parties during the hearing. I have made a further correction relating to the fence, as discussed below under the appeal on ground (c). I am satisfied that I can correct the notice accordingly without causing injustice.

The appeal on ground (b)

5. An appeal on ground (b) is that the matters stated in the notice have not occurred. At the hearing, the Council and appellant agreed that the appeal on ground (b) relates only to a section of fence along one edge of the all-weather playing surface (the playing surface), which is shared with the tennis court. They also agreed that there is a fence in place and the matter raised focuses on whether the section of fence constitutes a breach, rather than whether it exists. Consequently, it was agreed that the matter would more appropriately be dealt with under an appeal on ground (c). I have proceeded accordingly.

The appeal on 'hidden' ground (c)

6. An appeal on ground (c) is that the matters alleged, if they occurred, do not constitute a breach of planning control. As set out above, this ground of appeal relates only to a section of fence shared with the tennis court adjacent to the playing surface. This tennis court was granted planning permission on appeal (ref APP/Y9507/A/11/2165593) in June 2012, including a fence surrounding its perimeter. The pre-existing fence around the tennis court consists of green wire mesh attached to green metal upright posts and this forms the fence along the majority of the southern side of the playing surface. An additional layer of green wire mesh has been added on the side facing the playing surface.
7. In so far as the section of the fence along the southern edge of the playing surface complies with the existing permission for the tennis court fence, it does not constitute a breach of planning control. The appeal on ground (c) succeeds to that extent. I will correct the notice, as set out in the decision, to remove reference to the section of fence which benefits from planning permission.

8. However, the fence has been extended for a few metres in length beyond the tennis court at one end. This extended section, which like the approved fence exceeds a height of 2 metres, is not covered by the existing tennis court planning permission and so does constitute a breach of planning control. It will be considered along with the fence along the other 3 sides of the playing surface under the ground (a) appeal.

The appeal on ground (a) and the deemed planning application

9. An appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation, as corrected. Hence, planning permission is sought for the construction of an all-weather playing surface with fence surround, except for that section of fence benefitting from the planning permission for the tennis court.
10. Any changes made to the development since the issuing of the notice, and any other works or uses which are not subject to the notice, cannot benefit from any planning permission which might be granted under an appeal on ground (a). Future changes to the development, including changes to the bund, would likely require separate planning permission and are not considered under this appeal.

Main Issues

11. The main issues are:

- The effect of the development on the character and appearance of the site and the surrounding area, with particular regard to whether it would conserve the landscape and scenic beauty of the South Downs National Park; and
- Whether the site is a suitable location for the development, with regard to policy for development outside of settlement boundaries.

Reasons – Character and Appearance

12. Bellows is a large, detached dwelling set in spacious grounds. It is located on the edge of, but within, the South Downs National Park (the National Park). It is outside of any settlement, in a rural location characterised by dispersed dwellings and farms. Opposite the site is a residential caravan park.
13. The dwelling at Bellows is set well back from the road, accessed by a long driveway off a rural road. A substantial two storey ancillary building and large two storey garage sit to one side of the dwelling, with an extensive hard surfaced parking area in front. Forward of the parking area is the permitted tennis court. To the west of the driveway is an undeveloped field and to the east of the garage and parking area are stables, and a 'sand school' (permitted under ref SDNP/12/01028/FUL) is to the east of the tennis court. There are mature trees and a mix of other vegetation along the boundary with the road and a section of trees between the tennis court and the driveway.

14. The playing surface and fence subject to this appeal are located adjacent to the tennis court and between it and the road. The playing surface is permeable green Astro-turf and the fence consists of green wire mesh attached to green metal upright posts. The re-profiled bund is located between the playing surface and the trees along the road boundary.
15. The immediate context of the playing surface and fence is therefore residential, albeit part of the extensive residential use associated with a large dwelling and its private leisure activities. This residential context in front of the dwelling has clear and defined boundaries formed by the road, the driveway and the sand school. The area may have been part of a rural field in the past, but the context has been changed significantly, by being contained between the road and the set-back dwelling with its extensive hard surfacing, and later by the approval of the tennis court. Prior to constructing the playing surface and fence, the site was a modest and clearly defined parcel of land, containing an earth bund. This area did not have the character or appearance of open countryside and was visually associated with the residential use of Bellows (whether it was within the curtilage of the dwelling and/or approved for garden use is considered below).
16. Within this context, the development respects and responds appropriately to its immediate surroundings. The green colour of the playing surface and fence helps it blend in with the backdrop of trees and hedges and is not unduly urban. Given that the development is located within this residential context, and is complimentary to it, the playing surface and fence does not have a detrimental impact on the intrinsic character of the surrounding landscape.
17. Mature trees remain along the road boundary. I have been presented with no substantive evidence which would lead me to conclude that the development has had, or will have, a negative impact on trees, hedgerow or woodland. The screening provided by the trees, along with the bund, mean that the development is not visible from the road, other than brief glimpses of the top of the fence, which are likely to be fully screened in spring and summer. As evidenced by my site visit, and the information in the Landscape and Visual Appraisal (LVA) submitted on behalf of the appellant, other views from public perspectives would be at some distance and also screened by vegetation and the house itself. Overall, the development does not have a detrimental visual impact from public viewpoints.
18. On balance, I conclude that the development does not cause unacceptable harm to the character and appearance of the site or the surrounding area, and it conserves the landscape and scenic beauty of the South Downs National Park. Consequently, the development complies with Policies SD4, SD5 and SD11 of The South Downs Local Plan (2019) (LP); Outcome 1 of the South Downs National Park Partnership Management Plan 2020-2025, and Policies 1 and 3 of the Woodmancote Neighbourhood Plan 2016 -2031. Together, amongst other things, these policies seek to ensure that development, particularly within the National Park, is informed by and respects local landscape character, is of a layout which reflects the character and scale of the surrounding context, and conserves trees, hedgerow and woodland.

19. The development also complies with The National Planning Policy Framework (the Framework - paragraph 182 of the 2023 edition, previously 176) which states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks.

Reasons – Locational Policy

20. The site is located outside of any settlement. Policy SD25 of the LP is a strategic policy which aims to focus development within settlements and promote sustainable development. However, exceptionally, it allows for development outside of settlement boundaries. As has been set out above, the development complies with relevant policies in the LP, responds to the context of the area and conserves the special qualities of the National Park. On the basis of the evidence available to me, the development is not within an area which has permission for use as residential garden, or an established lawful use as such. Following discussion at the hearing, the appellant and the Council agreed that this was the case.
21. Policy SD25 also requires consideration of whether a site is 'previously developed', but the LP does not define the term. The Framework is a material consideration and it defines previously developed land as 'land which is or was occupied by a permanent structure, including the curtilage of the developed land'. The parties disagree about whether the area subject to the appeal is within the curtilage of the dwelling.
22. Interpretation of the word curtilage is a judgment for the decision-maker, and a matter of fact and degree. I have considered the various plans and aerial images made available to me, alongside my observations during the site visit. Given the size of the wider Bellows site, the uses and enclosures of the various areas within it, the separation from the dwelling and the planning history presented to me, I do not consider the development to have an intimate association with the dwelling. Consequently, I conclude that it is not within the curtilage of the dwelling. This reflects the finding of the inspector who granted the tennis court permission who noted that 'the residential curtilage to the house has been set relatively tightly around the house compared with the overall extent of the land within the ownership of the appellant' and concluded that the 'tennis court would not be within the existing residential curtilage'. The playing surface is located beyond the tennis court.
23. Even though I do not consider the development to be within the curtilage of the dwelling, prior to the development subject to this appeal the site could not be described as undeveloped or open countryside. As set out above, the site had the character and appearance of developed land associated with a residential use and I have considered it as such.
24. Consequently, on balance, I conclude that the site is a suitable location for the development. I do not find any significant conflict with Policy SD25 of the LP and the policy aims are not undermined. I find that the playing surface and fence complies with the development plan as a whole.

Other Matters Relating to Ground (a)

25. The permission for the tennis court included an earth bund between it and the road. It is unclear whether the bund was implemented in accordance with the permission, but I have been presented with evidence showing there was a bund on site, between the tennis court and the road, prior to work starting on the development subject to the notice. Both parties acknowledge that changes were made to the pre-existing bund to implement the playing surface and fence. Notwithstanding this, the breach of planning control alleged in the notice relates only to the playing surface and fence, and not to the bund. During the hearing the Council confirmed that the notice did not seek any changes to the bund, just removal of the playing surface and fencing.
26. The appellant states that the pre-existing bund had been used as a quadbike track and was a poorly managed and unattractive area. This situation was considered as the baseline in the LVA. On this basis, the appellant argued that the development has resulted in improvement of the site. However, any such quadbike use did not benefit from planning permission. I have been presented with no substantive information which would lead me to conclude that, should this appeal fail, there is a greater than theoretical possibility that the pre-existing bund would be reinstated and quad bike use resumed. Indeed, both would likely require planning permission which is not currently in place. Therefore, on the evidence before me, I do not consider the reinstatement of the previous bund and resumption of the quad bike use to represent a valid fallback option. Hence, I have given it no weight in favour of the development.
27. From my site visit it was evident that the fence around the playing surface exceeds a height of 2 metres. This height exceeds what would be allowable under permitted development rights. However, the impact of the fence on the character and appearance of the site and the surrounding area is not significantly different to the impact that would result from a similar fence which did not exceed 2 metres. I have taken this into account in reaching my conclusion.

Conditions

28. The Council suggested conditions, in the event the appeal on ground (a) succeeds. These conditions were discussed at the hearing, with the appellant indicating willingness to accept them. I have considered and amended the suggested conditions as necessary in the interests of precision and clarity, in order to comply with advice in the Planning Practice Guidance.
29. It was agreed that a plans condition was not necessary as the plan attached to the notice is sufficient and clearly specifies the location of the development. Conditions have been added to prevent any commercial use of the development, and to ensure that no external lighting is added without details having first been approved by the Council. Commercial use could result in unacceptable levels of noise, disturbance and traffic generation. Lighting could result in unacceptable levels of light pollution which might impact on the character and appearance of the National Park, as well as the living conditions of neighbours and wildlife. These conditions are reasonable and necessary to ensure that the development does not have an unacceptable impact on the amenity of the area.

Conclusion on ground (a) and the deemed planning application

30. The appeal on ground (a) succeeds and planning permission is granted, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, subject to conditions, as set out in the decision.

The appeal on ground (f)

31. The appeal on ground (f) is that the steps required by the notice exceed what is necessary. As the appeal on ground (a) succeeds and I shall grant planning permission for the development described in the notice, ground (f) therefore does not fall to be considered.

H Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phil Rowe – Agent
Nick Harper – Landscape Architect
Ralph Gilbert - Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jenifer Baxter – Horsham District Council Officer
Tamara Dale - Horsham District Council Officer

INTERESTED PARTIES:

Mike Croker – Ward Councillor