



Appeal Decisions

Site visit made on 22 January 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal A Ref: APP/H1705/C/23/3314607

Appeal B Ref: APP/H1705/C/23/3314608

Faerie Meadows, 14 Hackwood Lane, Cliddesden, Basingstoke, Hampshire RG25 2NH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Basingstoke and Deane Borough Council. The appeals are made by Mr Yakeen Prabdia (Appeal A) and Mrs Adeshtha Ramsander-Prabdia (Appeal B).
- The notice was issued on 2 December 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from agricultural use to residential use together with associated paraphernalia including but not limited to:-
 - (i) Close boarded fencing (shown for indicative purposes only marked between points A and B on the attached plan);
 - (ii) Boundary treatment (comprising timber fencing and camouflage netting and domestic planting) (shown for indicative purposes only marked between points A and C on the attached plan);
 - (iii) Patios/hardstandings (shown for indicative purposes only edged red on the attached plan);
 - (iv) Outbuilding (shown for indicative purposes only edged green on the attached plan);
 - (v) Play equipment;
 - (vi) Zip line and associated structures;
 - (vii) Trampoline;
 - (viii) Pergola;
 - (ix) Open sided timber canopy structure; and
 - (x) Oil tank.
- The requirements of the notice are to:
 - (i) Permanently cease the residential use of the land;
 - (ii) Permanently remove all associated paraphernalia from the Land including but not limited to:-
 - Patios/hardstandings (shown for indicative purposes only edged red on the attached plan);
 - Outbuildings (shown for indicative purposes only edged green on the attached plan);
 - Play equipment;
 - Zip line and associated structures;
 - Trampoline;
 - Pergola;
 - Open sided timber canopy structure; and
 - Oil tank.
 - (iii) Permanently remove from the Land all close boarded fencing associated with the unauthorised change of use of the Land shown for indicative purposes only marked between points A and B on the attached plan; and
 - (iv) Restore the Land to the open agricultural character which existed prior to the unauthorised use taking place such restoration works to include the removal

of boundary treatment (comprising timber fencing and camouflage netting and domestic planting) shown for indicative purposes only marked between points A and C on the attached plan and to include the removal of trampoline and garden paraphernalia, infilling any holes and restoring a level ground surface of the land beneath the trampoline.

- The period for compliance with the requirements is: 6 months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), and (e) of the Town and Country Planning Act 1990 as amended. 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 is proceeding on the grounds set out in section 174(2)(b), (c), and (e) of the Town and Country Planning Act 1990 as amended.

Summary decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations, in the terms set out below in the Formal Decision.

The Notice

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (The 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellants or the local planning authority.
2. The enforcement notice (the Notice) alleges the material change of use of land. Various other matters are listed as being associated with that use. Those matters are described as “associated paraphernalia including but not limited to...”. The use of the word ‘including’ introduces uncertainty as it is, in effect, an open list. From the evidence, and my site visit, I am not aware of any other items that were on the land subject of the notice (the Land) that might have been associated with the use at the time the Notice was served. As such, there would be no injustice if I were to correct the Notice, in the interests of precision, such that the items were described in a closed list.
3. With the exception of the fences and boundary treatment, the items are similarly detailed in an open list in the requirements. Such could leave uncertainty as to whether more may need to be done to comply with the Notice. I shall, therefore, correct the Notice such that the requirements are also given as a closed list of definitive steps. I will, however, include a separate requirement to remove any other items associated with the material change of use, such that it is clear that any such objects that may occasionally be put on the Land should not be placed there. Again, as I do not believe there to have been any other items on the Land at the time the Notice was served, these corrections will simply add clarity and cause no injustice to either party.
4. In the interests of clarity, I will include removal of both boundaries within one single requirement so that the fourth requirement only relates to the condition of the land itself.
5. The fourth requirement also requires restoration of the land to an open agricultural character. Such description is imprecise and open to interpretation.

I shall, therefore, correct this to simply require a return to its previous condition. The levelling of the ground beneath the trampoline should remain for the avoidance of doubt. It is clear from the Notice and evidence that a return to the previous condition of the Land is the result that the Council seeks to achieve and so no injustice will arise to either party from these corrections.

Ground (e)

6. Ground (e) is that copies of the Notice were not served as required by section 172 of the 1990 Act. Section 172(2) states that a copy of an enforcement notice shall be served – (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. The onus of proof (as also on grounds (b) and (c) later) is on the appellants and the standard of proof required is on the balance of probabilities.
7. The appellants have explained that the fence between points A and B on the plan attached to the Notice (the Plan) was erected by the neighbouring land owner and, therefore, suggests that they have an interest in the Land. However, the location of the boundary is in dispute and the Council has previously been advised by the appellants that the fence was believed to be on their own land. The location of the boundary is not a matter before me.
8. There is no substantive evidence that the Land is not wholly owned by the appellants or that, other than having erected the fence, the neighbouring landowner would have any other material interest in the Land. Moreover, the Notice alleges a material change of use of the Land with the other items, including the fence between points A and B, described as being 'associated' with that use. There is no suggestion that the alleged breach of planning control, being the material change of use, has been undertaken by anybody other than, or involves land not owned by, the appellants.
9. Therefore, I find it more likely than not that the breach of planning control alleged in the Notice relates entirely to the appellants' land and that all those with an interest in it have been served a copy of the Notice. Accordingly, I find that the appeal on ground (e) should fail.

Ground (b)

10. Ground (b) is that the matters alleged in the Notice have not occurred. There are two main limbs to the appellants' case, the first being that the land was not previously in agricultural use.
11. In support of this claim, the appellants have demonstrated that a Certificate of Lawful Existing Use or Development (LDC) was issued in 2010 for the non-compliance with an agricultural occupancy condition on the dwelling at the appeal site. However, that only shows that those residing in the dwelling had not been employed in agriculture and says nothing compelling about the use of the surrounding land, including the appeal site.
12. It is also said that the surrounding land was historically used for the keeping of horses. A further LDC was issued to that effect in 2016, but the land identified in that LDC excludes the appeal site. While it may be that the site was used in connection with that surrounding, equestrian, land there is no substantive evidence to support the appellants assertion that it was taken out of agricultural use along with the other land subject to the LDC. Statutory

declarations that I have been provided with from the time, refer somewhat imprecisely to the 'land at Bellaire Grange', being the former name of the dwelling at the site, and that horses have always 'been on the land', which could mean that they were kept, grazed, or there for some other purpose.

13. While the Land has, and may have had for some time, a different appearance to other actively farmed land in the vicinity of the site, in the absence of substantive evidence to the contrary, I find it more likely than not that the allegation in the Notice is correct in stating the former land use to be agricultural.
14. That said, it is not necessary for an enforcement notice to state the former land use and I have the power to correct the Notice to remove this from the allegation. Importantly in this case, there is no dispute that the new residential use alleged has taken place as a matter of fact. It is clear that the purpose of the Notice is to remedy that breach of planning control and the former use is of little consequence, particularly in light of my earlier decision to correct the requirements of the Notice by removing reference to the former agricultural character of the land. The Notice could, therefore, be further corrected, without causing injustice, to remove the former land use from the allegation.
15. The second limb of the appeal on ground (b) is that part of the Land, namely a narrow sliver alongside the dwelling, was already in lawful residential use. It is said that the previous domestic boundary was positioned away from the end wall of the garage and not on a line directly abutting that garage, which is the extent of Land identified by the Notice. In essence, it is said by the appellants that the Land overlaps the lawful domestic garden.
16. The extent of the alleged breach shown on the Plan, directly abutting the garage at the appeal site, reflects plans submitted with applications made in 2021 (the 2021 applications) to secure planning permission for the matters alleged in the Notice. However, older applications made in respect of the appeal site identify the extent of that site beyond the end wall of the garage.
17. It may be that the historic site plans did not necessarily define the extent of the original residential plot accurately. However, until 2021, they appear to have been drawn consistently. In photographs provided by a Council officer in relation to a retrospective application for the garage, a hedge can be seen alongside the garage. While it could be that the inside of that hedge was the boundary of the domestic garden, it is also possible that the hedge was planted on garden land and the outside edge was the true boundary. The photograph does not, therefore, assist in this issue.
18. As the 2021 site plan was drawn in connection with a retrospective application, there would have been no features on the ground at that time on which to base the site plan. I, therefore, give less weight to that plan than the historic plans. Given this, I find that it is more likely than not that the Plan does include land that was part of the pre-existing garden to the house and, so, the breach of planning control alleged in the Notice has not occurred insofar as it relates to that narrow sliver of land.
19. The vast majority of the land outlined on the Plan is outside the former garden. There is no dispute that the use of that wider land for residential use is a breach of planning control, so it may be possible to redraw the Plan to reflect the correct boundary. However, there are further implications for the Notice

arising from this, concerning the associated paraphernalia that is described in the Notice. The appellant suggests that the pergola, patio on which it stands, open sided timber structure, and the oil tank are all on the land that was historically lawful garden land.

20. While it is difficult to discern on site where the side boundary would have previously met the rear boundary, I note that that the historic plans do not show it parallel to the side wall of the garage. Rather, it has been shown tapering away from the house towards the rear of the site. On that basis, I find it more likely than not that the above items are within the former garden and outside the Land as it should be redrawn. The appellants accept that a small part of the patio around the oil tank would remain on the Land. The trampoline, outbuilding, play equipment, zip line and associated structures are clearly in the area where a breach of planning control remains in respect of the use.
21. As I have already said, the Notice is drafted such that the alleged breach of planning control is stated as a material change of use with various other items listed as being associated with that. The appellants' submissions suggest that the Notice should be quashed in respect of those matters they consider to be within the lawful garden. While, procedurally, I am not able to quash part of a Notice, I take this to be acceptance that I could exercise my powers to vary its terms and remove the items from the lists.
22. Although the cumulative corrections that I have described would result in a somewhat different Notice to the one issued by the Council, I am satisfied that its overall purpose would be the same, such that neither party's submissions in respect of the ground (a) appeal would be prejudiced. Therefore, no party would suffer injustice if I were to further correct the terms of the allegation and requirements to remove reference to the items that fall within the area that I have found should be excluded from the Land identified on the Plan.
23. I shall correct the Notice to remove reference to the former land use, correct the Plan to show the boundary that, on the balance of probabilities, I have found to be the correct one and, consequentially, remove the items no longer within the Land from the allegation and requirements. The ground (b) appeal, therefore, succeeds in part, but the Notice will otherwise be upheld.

Ground (c)

24. In response to the Notice and the appeal on ground (b), I have so far corrected the Notice such that it now alleges (in summary) a material change of use of land to residential use, together with the following associated paraphernalia: close boarded fencing between points A and B; boundary treatment between points A and C; Patios/hardstandings (insofar as they relate to the area around the oil tank that strays onto the Land); outbuilding, play equipment, zip line and trampoline.
25. Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. Insofar as the above matters remain, the appellants claim that the boundary structures detailed in the allegation, being below 2m in height, are not breaches of planning control and that the trampoline is not development. As discussed above, the allegation is not for operational development, rather that any structures, including the boundaries and trampoline, are associated with the material change of use.

26. The trampoline does not appear to be fixed to the ground, but it does sit over what appears to be a purposefully excavated pit such that it has been installed with its surface at ground level. Whether or not the trampoline and pit are operational development in their own right, it is clearly paraphernalia associated with the alleged material change of use. As such, the trampoline being listed as an item associated with the material change of use does not mean that the matters alleged are not a breach of planning control.
27. Similarly, even if the boundary structures would be 'permitted development' in their own right, they are also not listed separately to the material change of use. Indeed, the Council has confirmed its position that they have only been installed on the land to facilitate the breach of planning control. Whether requiring their removal goes beyond that reasonably required to remedy the breach of planning control, would be a matter relevant to an appeal on ground (f), albeit that such an appeal has not been made in this case.
28. In conclusion, the breach of planning control alleged is clearly a material change of use of land. Other matters, including the trampoline and boundaries are described therein as being associated paraphernalia, rather than separate breaches. Therefore, the matters alleged in the notice do represent a breach of planning control and the ground (c) appeal should fail.

Appeal A – Ground (a)

29. Ground (a) is that planning permission should be granted for the matters alleged in the Notice. The main issue on this ground is the effect of the development on the character and appearance of the area.
30. The dwelling is part of a group of dwellings in a rural location. A ribbon of dwellings, of varying styles but generally regularly spaced, extends to the west of the site along Hackwood Lane. However, the site and a handful of other dwellings and buildings are separated from this ribbon by the appeal site and an adjoining field/paddock, and stand in a visually separate cluster.
31. The appeal development has resulted in a wider plot that is not dissimilar to some of the larger ones in the cluster around the site, especially in respect of the width of their road frontage. There are some other, wider, plots on a group of houses that run back from Hackwood Lane at the far end of the ribbon. To that extent, the development does not appear wholly out of place in this general area.
32. However, even if the now wider garden at the appeal site was said to reflect some of those nearby dwellings, the wider garden has resulted in a reduction in the gap between the separate cluster of dwellings and the ribbon of housing that extends further along Hackwood Lane. Its domestic appearance and use has eroded the rural character of the site, regardless of whether that was previously in agricultural or equestrian use.
33. Two previous appeals against the 2021 applications have been considered. While planning officers may have originally recommended that they received planning permission, they were ultimately refused and the appeals dismissed. I now have an analysis of plot widths and some other information that I understand was not before the previous Inspector, but that Inspector nevertheless found that the development eroded the gap between properties and consolidated the ribbon development to the detriment of the character and

appearance of the area. The individual plot widths have little to do with that so there is no clear reason that I should disagree with that overall assessment.

34. Indeed, while the retained roadside hedge maintains many of the visual qualities of the lane, limits public views and provides a screen for the development along much of the frontage, there are gaps and it is still possible to appreciate the large domestic garden and structures therein, despite their distance from the road and the use of a timber finish, typical of many outbuildings. The development has led to a spread of domestic activity into a gap with an otherwise rural character that separates different groups of houses, leading to a harmful change to the character and appearance of the area, whether or not permitted development rights were removed to prevent further development of the Land.
35. I understand that there may be other locations where the Council has granted permission for a change from equestrian use to residential use. However, even if that were the pre-existing use at this site, the acceptability of such proposals is likely to be very site specific and there is nothing before me to suggest that it should always be accepted. Nor is there any substantive evidence that this case is directly comparable to other ones that have previously been permitted.
36. The extended garden has provided a safe environment for the appellant's children to play and such may well bring health benefits for these family members. However, while it has been possible to provide enhanced and large-scale play opportunities and facilities within the enlarged garden, there is no particular evidence that similar benefits could not be achieved in the pre-existing garden, which is still of a fairly substantial size. Having due regard to the public sector equality duty outlined in the Equality Act 2010, I, therefore, see no reason that the appellant's children, who share a protected characteristic of age, would suffer discrimination or inequality in opportunity from the loss of the area for garden space, compared to those who do not share the protected characteristic. Nor has it been shown that the space is required in the best interests of the children and, so, I give very little weight to this matter.
37. It has been suggested that without the change to residential use, the site would be redundant. However, that claim is not supported by detailed evidence, nor is the suggestion that wildlife has been encouraged through the landscaping that has taken place. I, therefore, give very little weight to these matters.
38. With regard to the above, I find that the residential use of the Land conflicts with those aims of Policy EM1 of the Basingstoke and Deane Local Plan 2011-2029 (LP) that seeks to ensure that development respects, enhances, and is not detrimental to, the character or visual amenity of the landscape. The Council's reason for issuing the Notice also refers to LP Policy EM10, but that appears to, primarily, relate to the delivery of high quality built development. I find no particular conflict with that policy but, nevertheless, the conflict with Policy EM1 brings the development into conflict with the development plan, read as a whole. There are no other material considerations that indicate that a decision should be taken other than in accordance with the development plan.
39. Therefore, I find that planning permission should not be granted for the matters alleged in the notice and the appeal on ground (a) should fail.

Conclusion

40. For the reasons given above, some correction to the Notice is required in the interests of precision and certainty, and due to the partial success on ground (b). However, overall, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

41. It is directed that the Notice is corrected by:

- Delete Section 3 (the breach of planning control alleged) in its entirety and replace with:

THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission, the material change of use of the Land to residential use together with the following associated paraphernalia:

- (i) Close boarded fencing (shown for indicative purposes only marked between points A and B on the attached plan);
 - (ii) Boundary treatment (comprising timber fencing and camouflage netting and domestic planting, shown for indicative purposes only marked between points A and C on the attached plan);
 - (iii) Patio (insofar as it encroaches onto the Land in the approximate position marked D on the attached plan);
 - (iv) Outbuilding (in the approximate position marked E on the attached plan);
 - (v) Play equipment;
 - (vi) Zip line and associated structures; and
 - (vii) Trampoline.
- Delete Section 5 (what you are required to do) in its entirety and replace with:

WHAT YOU ARE REQUIRED TO DO

- (i) Permanently cease the residential use of the Land and remove any items taken onto the land in connection with that use;
- (ii) Permanently remove the following associated paraphernalia from the Land:
 - Patio (insofar as it encroaches onto the Land in the approximate position marked D on the attached plan)
 - Outbuilding (in the approximate position marked E on the attached plan);
 - Play equipment;
 - Zip line and associated structures; and

- Trampoline.
- (iii) Permanently remove from the Land all close boarded fencing shown for indicative purposes only marked between points A and B on the attached plan, and boundary treatment comprising timber fencing and camouflage netting and domestic planting shown for indicative purposes only marked between points A and C on the attached plan.
- (iv) Restore the land to its former condition, prior to the breach of planning control, infill the ground beneath the trampoline and restore the ground levels to that which existed prior to the material change of use taking place.
- Remove the Plan attached to the Notice and replace with Plan 1 annexed to this Decision.

42. Subject to the corrections, the appeals are dismissed, 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.

M Bale

INSPECTOR



The Planning Inspectorate

Annex – Plan

This is the plan to be attached to the enforcement notice, pursuant to my Formal Decision

M Bale BA (Hons) MA MRTPI

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