



Appeal Decision

Site visit made on 14 May 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2024

Appeal Ref: APP/Z3825/C/22/3306691

**Land at Springfield, Spring Gardens, Washington, Pulborough,
West Sussex RH20 3BS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Andy Allan against an enforcement notice issued by Horsham District Council.
 - The notice was issued on 16 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, erection of a building in the approximate position shown edged and hatched green on the plan attached to the notice (the building) and use of this building as a gymnasium.
 - The requirements of the notice are: (1) Cease using the building as a gym and remove all associated equipment within one month of the date which this notice takes effect; (2) Demolish the building and remove all the resulting debris from the land; (3) Following step (2) above, restore the land to its original condition by levelling the ground and sowing it with grass seed to match the existing grass area to the north.
 - The periods for compliance with the requirements are: (1) One month. (2) Twelve months. (3) Sixteen months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.
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Decision

1. It is directed that the enforcement notice be:

- Corrected by substituting the plan attached thereto with the plan annexed at the end of this Decision and in paragraph 3 ('the matters which appear to constitute a breach of planning control'), deleting 'in the approximate position shown edged and hatched green on the attached plan'; and
- Varied by in paragraph 5 ('what you are required to do') deleting 'within one month of the date which this notice takes effect', also in paragraph 6 ('time for compliance') at (1), substituting '1 month' with '4 months.'

Subject to these corrections and 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 1990 act as amended.

Preliminary Matters

2. The Council requested that the plan attached to the enforcement notice be substituted by a plan relating to a smaller area of land around the building, which excludes the dwelling and residential garden of 'Springfield.' I am satisfied that the substitute plan more precisely specifies the boundaries of the land affected by the notice. Therefore, I shall exercise the power in s176(1)(a) of the Act to correct the notice by substituting the plan attached thereto with

that in the annex to this Decision, whilst also making a consequential correction to the description of the alleged breach. There would be no injustice to the appellant in doing so.

3. At s177(1)(a), the Act provides for the granting of planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, including for the whole or any part of those matters. The Act at s177(5) makes clear that the deemed planning application arising from the ground (a) appeal derives its terms directly from the wording of the allegation. Therefore, only development described in the allegation can form part of the matters to be considered in the ground (a) appeal.
4. The notice does not allege a mixed use of the building including agriculture. The appellant did not seek to argue that the use of the building prior to the issuing of the notice included agriculture. Besides, it is evident that the sole use of the building has been as a gym. Erection of a building for a mixed use including agriculture is a different development to that enforced against. The power in s176(1)(a) does not extend to correcting the notice to achieve a development different to that which has been accurately described in the allegation. Consequently, whether permission should be given for use of the building for agricultural purposes, either in association with the gym or as a standalone use, cannot form part of my deliberations.
5. This Decision takes into account the revised National Planning Policy Framework (the Framework), published on 19 December 2023.

Ground (a) appeal

Main Issues

6. The main issues in this ground of appeal are:
 - Whether the gym is in a suitable location, having regard to the Development Plan and national policy concerning sustainable rural development.
 - The effect on the character and appearance of the surrounding countryside.
 - The effect on European Protected Sites.

Reasons

7. The premises contain a steel frame building, the external walls and roof of which are finished with dark coloured profile metal sheeting. The building is in use as a gym. Apart from some toilets the ground floor interior is generally open, rubber matting is laid across the floor and exercise machines of varying types along with weightlifting equipment placed around the edges. A mezzanine floor includes an office and a massage room, as well as a leisure area with a fitted kitchenette including a sink and drainer, cabinets, a fridge and a coffee machine, along with a table and some chairs.

Policy context

8. The appeal premises are located in an area of countryside, outside a built-up area in the Horsham District Planning Framework (HDPF). Policy 10 of the HDPF encourages sustainable rural economic development and enterprise appropriate to a countryside location, where certain criteria are met. These include contributing to diverse and sustainable farming enterprises or to the wider rural economy and/or promoting recreation in and the enjoyment of the countryside, using either suitably located buildings appropriate for conversion

or, following that, new buildings that support sustainable economic growth towards balanced living and working communities.

9. To protect the rural character and undeveloped nature of the countryside, HDPF Policy 26 requires that development outside built-up areas be essential to a countryside location and to either support the needs of agriculture or forestry, enable the extraction of minerals or the disposal of waste, provide for quiet, informal recreational use or enable the sustainable development of rural areas. Such development is also required, amongst other things, to not significantly increase the overall level of activity in the countryside.
10. HDPF Policy 40 requires development to promote non-car modes of transport to access jobs, homes, services and facilities and to be located in areas where there are or will be a choice in the modes of transport available, along with minimising the distance people need to travel.
11. Policy ASH1 of the Ashington Neighbourhood Plan (NP) sets out the overall spatial strategy for the village and seeks to restrict development outside of the built-up area unless it represents an appropriate use in the countryside or the appropriate provision of new commercial business.
12. The above Development Plan policies reflect the Framework. At paragraphs 88 and 89, the latter encourages the sustainable growth and expansion of rural businesses through converting existing buildings and well-designed new buildings, along with agricultural diversification and sustainable leisure development which respects the character of the countryside, whilst also stressing the importance of ensuring that new rural businesses not located within or adjacent to settlements should, amongst other things, exploit opportunities for improving access by walking, cycling or public transport.

Whether a suitable location

13. My understanding is that the gym is operated by two elite-level athletes, who are also qualified coaches, to provide personal training sessions on a one-to-one basis and to conduct small instructor-led classes, as well as to meet their own individual training requirements. According to the appellant, all visitors to the gym are by prior arrangement, with no visitors being able to access the facilities outside of these sessions. I am given to understand that the gym was set up during COVID-19 to provide a source of income for the operators, who are related to the appellant. The gym is likely to make a modest contribution to local employment. The focus on conducting training sessions, as opposed to where individuals can also visit to use the equipment at other times, distinguishes how the gym operates from similar facilities.
14. Be that as it may, there is little clear and convincing evidence which indicates how the gym assists in diversifying the appellant's farming enterprise, or that it is appropriate or essential for the gym to occupy a countryside location. Provision of the gym has involved erecting a new building. There is nothing to suggest that any prior consideration was given to re-using a suitably located rural building, or detail of how the gym contributes towards balanced living and working communities. There is also little firm evidence that the gym promotes recreation and enjoyment of the countryside, or that it provides for quiet informal recreational use. Use as a gym is primarily an indoor activity. Whilst a rural setting might be seen as desirable, the gym could equally be located in premises within a settlement. Although some aspects of the training might take place outdoors, that does not make it necessary for the gym to occupy a countryside location. In any event, the scale of outdoor activity associated with the gym is unclear and is likely to be weather dependent.
15. Moreover, the premises occupy a relatively remote location within the countryside, a significant distance from the nearest settlements. There is a

general absence of opportunities to access the gym conveniently and safely by either walking, cycling or public transport. As a result, there is a failure to minimise the distances that people need to travel, visitors to the gym being almost entirely reliant on private motor vehicles.

16. The appellant described the gym as a 'low-key' use. It was also suggested that there are currently as few as three classes per week. No session was taking place or had recently finished when I visited, nor was a session starting shortly. Nevertheless, the typical number of daily visitors to the premises is unclear and there are few details of the overall number of training sessions being undertaken. An extract from the gym website suggests that up to six people can attend some classes. With opening hours of 0600-2000 on Mondays to Fridays, there is ample scope for several training sessions to take place on any given day. This makes it entirely possible that there could on occasions be a considerable number of visitor comings and goings to and from the premises. The resulting levels of car-borne activity run counter to promoting sustainable patterns of travel, as well as contributing to an increase in the overall level of activity in the countryside.
17. In reaching the above findings, the presence of commercial uses in the vicinity of the premises, as well as in the surrounding countryside, some of which are considerably greater in scale than the gym, is acknowledged. Nevertheless, in the absence of any details concerning the evolution of those uses it is difficult to draw meaningful comparisons with the gym. For example, there is little to indicate that any of those uses originated following a recent grant of planning permission. From my own observations, the local commercial uses generally inhabit existing buildings and have not involved erecting substantial new structures. In any event, the mere existence of commercial uses in the locality does not weigh in favour of granting permission, as this could be repeated.
18. Therefore, the gym is not in a suitable location; it is a use neither appropriate nor essential in the countryside which is largely inaccessible by modes of transport other than the private car and is not a sustainable rural development. This is in conflict with HDPF Policies 10, 26 and 40 as well as NP Policy ASH1 referred to above and is inconsistent with the Framework. Since NP Policy ASH8 concerns new community infrastructure, it is of limited relevance to this appeal, which relates to a private facility.

Character and appearance

19. The premises are close to a cluster of small-scale rural buildings. Groups of maturing trees are adjacent to three sides of the building, beyond which are open fields, scattered residential and commercial development, as well as the A24 dual carriageway. Two lattice masts supporting telecommunications equipment are within the adjacent woodland. Accordingly, the building occupies a secluded, predominantly rural setting. My views in this respect are reinforced by the Council's Landscape Character Assessment, which includes reference to the locality having an undulating mixed farmland landscape retaining a rural character, with localised incidences of visual intrusion including from small-scale industrial uses.
20. In general, the simple form of the building and muted colours of its external finishes echoes characteristics of a modern agricultural building. However, the extensive glazing in the elevations, in particular the substantial size and overall design of the glazed doors and windows in the north-facing elevation, are untypical of an agricultural structure, normally being associated with built forms that are more commercial in character. The extent of glazing in the elevations therefore contributes to the building having an appreciably more commercial or 'industrialised' appearance.

21. The solid timber outrigger doors fitted to the north-facing elevation do not entirely cover up the extensive glazing and in any event, these are likely to be left open when the building is in use. It is also entirely possible that the presence of such extensive glazing has led to significant amounts of light emanating from within the building, especially when the gym is in use. Given that artificial sources of light in the surrounding countryside are likely to be limited, this contributes to further visual intrusion, particularly during the winter months. Therefore, the building has an appearance that is at odds with the largely countryside setting and is viewed as an alien feature in the surroundings.
22. Additionally, there is a definite likelihood of a number of vehicles associated with visitors to the gym being parked in the vicinity of the building at times. The angular profiles and shiny, metallic finishes of the vehicles are noticeably different to the softer, naturalistic shapes and more muted colours that are characteristic of the surrounding countryside. Individually and in accumulation, such vehicles therefore appear as incongruous features in the largely rural setting, serving to reinforce the adverse visual consequences of the gym. Whilst there are limited public views of the premises, that is not a good reason for permitting otherwise unacceptable development as it could be repeated, leading to further visual harm.
23. Therefore, the gym significantly and harmfully erodes the character and appearance of the surrounding countryside. This is in conflict with HDPF Policy 25, which requires development to conserve the character of the landscape. For a similar reason, there is also conflict with HDPF Policy 26 in this respect. By not complementing the locally distinctive character of the area or conserving the natural environment, including by ensuring that its appearance relates sympathetically with the landscape, the gym conflicts with HDPF Policies 32 and 33. Also, by not being demonstrably sympathetic to the landscape setting and the intrinsic character and beauty of the countryside, the gym conflicts with NP Policy ASH5, as well as being inconsistent with chapters 12 and 15 of the Framework, which seek to achieve well-designed and beautiful places and to conserve and enhance the natural environment.

European Protected Sites

24. The premises are located within the Sussex North Water Supply Zone, which is sourced from groundwater abstraction points that include the Arun Valley Special Protection Area/Special Area of Conservation and Ramsar site.
25. Natural England have stated that they are unable to conclude that existing abstraction in the supply area is not having an adverse effect on the integrity of the above areas of nature conservation. New developments in the supply area are therefore required to not add to this adverse effect by demonstrating water neutrality, i.e., that the use of water before the development is the same or lower after the development.
26. No strategy to demonstrate the required water neutrality, either through the incorporation of on-site measures and/or by appropriate offsetting actions capable of achieving water neutrality, was supplied. As a result, there can be no reasonable certainty that the gym does not contribute to the existing adverse effect on the areas of nature conservation.
27. For the above reasons, the gym conflicts with LP Policy 31, which seeks to resist development with an adverse impact on sites or features for biodiversity. Furthermore, the gym contravenes the Conservation of Habitats and Species Regulations 2017 and is inconsistent with the Framework at chapter 15.

Other Matters

28. Granting a temporary permission for the gym, together with imposing other planning conditions to limit the scale of the use, would not satisfactorily address the planning harm identified above. In any event, conditions which for example made permission personal to the appellant and restricted visitor numbers are unlikely to pass the tests of reasonableness and enforceability in paragraph 56 of the Framework. Nor would it be reasonable to impose a condition requiring removal of the building, which is intended to be permanent, at the end of the temporary period specified in any permission.

Conclusion-Ground (a) appeal

29. The gym is not a sustainable rural development, having regard to its unsuitable location and there is unacceptable harm to the character and appearance of the surrounding countryside as well as adverse impact on the areas of nature conservation, all in conflict with the Development Plan, taken as a whole. There are no material considerations, including the Framework, which indicate that this decision should be made other than in accordance with the Development Plan. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

30. The ground of appeal is that the requirements of the notice are excessive.
31. An enforcement notice can have the purpose of remedying the breach of planning control, including by requiring land to be restored to its condition before the breach took place. Alternatively, the notice can have the purpose of remedying any injury to amenity caused by the breach.
32. Although the notice does not state as such, its purpose must be to remedy the breach and not solely to remedy an injury to amenity. By ceasing the use as a gym and demolishing the building, the premises would be restored to its condition before the breach took place. Set in that context, any step which stopped short of requiring the use of the gym to cease together with the demolition of the building would result in part of the breach being sustained and so would not achieve the purpose of the notice.
33. Since the building was erected as a gym, anything less than total demolition would fail to restore the land to its condition before the breach took place and the purpose of the notice would not be achieved. Whether a different development (i.e., an agricultural building) might be acceptable has a limited bearing on this ground of appeal. No other alternative to the requirements set out in the notice was suggested and to my mind, nothing short of those requirements would remedy the breach.
34. Therefore, the notice requirements are proportionate, being the minimum necessary to remedy the breach. The ground (f) appeal fails.

Ground (g) appeal

35. The ground of appeal is that the time for complying with the notice requirements falls short of what should reasonably be allowed.
36. The one-month period specified for ceasing the gym use would afford limited time to the operators for searching and securing alternative premises. It is entirely possible that this would lead to the cancellation of bookings at short notice and would create considerable uncertainty for the business whilst other premises are sought and the gym relocated. Whilst it has been some time since the issuing of the notice, during which time the gym has continued to operate, the appellant is entitled to assume that their appeal will succeed.

37. Consequently, I shall exercise the power in s176(1)(b) of the Act, to vary the notice by extending this part of the period for compliance to four months. There would then be a more appropriate balance struck between remedying the planning harm identified above as soon as is practicable, whilst also seeking to minimise the adverse effects on the operators of the gym of having to move to different premises as far as possible.
38. Having regard to the twelve-month period specified in the notice for demolition of the building, there would still be ample time available in which to undertake those works; the demolition works would be a reasonably straightforward matter for a suitably experienced contractor, taking no more than perhaps a couple of months at most. There would also be plenty of time within the overall period for compliance to search for and secure a contractor to carry out the required works.
39. Additionally, there would be sufficient opportunity within that twelve-month period for the appellant to make a further planning application to the Council in respect of an agricultural building and for that application to be determined. In this respect, I note that in the Council's written submissions there is reference to a lack of objection in principle to erecting an agricultural storage building on the appellant's holding.
40. The ground (g) appeal therefore succeeds to the limited extent set out above.

Conclusion

41. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Stephen Hawkins

INSPECTOR



The Planning Inspectorate

Annex

Corrected Plan

This is the plan referred to in my decision dated: **31 May 2024**

by Stephen Hawkins MA, MRTPI

**Land at: Springfield, Spring Gardens, Washington, Pulborough, West Sussex
RH20 3BS**

Reference: APP/Z3825/C22/3306691

Scale: Not to scale

