



Appeal Decision

Hearing held on 4 June 2024

Site visit made on 4 June 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/C3430/C/23/3322739

Upper Hattons Stables, Upper Hattons Farm, Pendeford Hall Lane, Coven, Staffordshire WV9 5BD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Jayne Goodwin against an enforcement notice issued by South Staffordshire District Council.
- The notice was issued on 20 April 2023.
- The breach of planning control as alleged in the notice is without planning permission the partial construction of a stable block to accommodate tack rooms, washrooms and storage rooms situated around a central courtyard on the land.
- The requirements of the notice are to:
 - i) Demolish and remove the partially constructed stable block building located in the approximate position shaded blue on the Plan.
 - ii) Permanently remove all hardstanding and materials used to form hardstanding bases for the development from the Land.
 - iii) Remove all materials, refuse and demolition material resulting from the removal of the partially constructed stable block building as required by (i) and (ii) above.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), (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.

Summary of Decision: The appeal is dismissed and the notice is upheld with variations in the terms set out below in the Formal Decision. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The ground (d) appeal

1. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate that at the time the enforcement notice (the notice) was issued on 20 April 2023, it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (ie that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
2. The ground (d) appeal is made on the basis that a large portion of the concrete hardstanding on which the stables are constructed has been in situ for in excess of 4 years prior to the date the notice was issued.

3. Aerial photographs dating back to 2003 depict an area of hardstanding with structures sited on it in various different positions throughout that time. Surrounding the concrete area is dense vegetation. The appellant argues this vegetation was covering a substantial amount of waste and rubble that was stored on top of a wider concreted area than is depicted in the photographs. Only once this waste was cleared was the full extent of the concrete hardstanding apparent. It is argued that during the construction of the subject stables parts of the concrete hardstanding were repaired.
4. During my site visit, there were distinguishable sections to the concrete hardstanding. Parts of it appeared to be well-worn with the stone aggregate clearly visible on the surface, the likely result of being exposed to the weather over a significant period of time. These worn parts largely matched the area of hardstanding visible in the historic aerial photographs. Other parts appeared much more recently laid with a tampered ridged finish and plastic damp proof sheeting clearly visible between the concrete sections. These newer areas formed the flooring area for the building, whereas the older sections were generally contained within the central courtyard area.
5. Even if the concrete hardstanding did extend further to the north and east than depicted in the aerial photographs as alleged by the appellant, this appears to have been largely, if not entirely, replaced during the construction of the stables to create a new floor for the stables. It is inconceivable how the plastic damp proof sheeting could have been installed under this area of concrete without the old concrete being completely removed. Such works would go beyond what could reasonably be described as repair and maintenance.
6. Given the new section of concrete was constructed as part of the overall building to create the floor of the stables and the slab on which they sit, it forms part of the building rather than part of the central hardstanding area. Consequently, as the building has not been in situ for more than four years, the newer section of concrete is not immune from enforcement action.
7. Notwithstanding the above, I am satisfied that the area of concrete hardstanding outlined in yellow in the appellant's Exhibit JG12 has been in situ for in excess of four years prior to the date the notice was issued and is therefore immune from enforcement action.
8. As such, the ground (d) appeal succeeds insofar as it relates to the area of concrete hardstanding outlined in yellow in Exhibit JG12. I shall vary the requirements of the notice accordingly.

The ground (a) appeal and the deemed planning application

Procedural Matter

9. The matters alleged in the notice refers to the 'the partial construction of a stable block'. The existing building that has been constructed includes a concrete floor, solid block walls and timber roof joists have been installed. However, the roof has not been covered and doors, windows and guttering have not been fitted. Therefore, the alleged matters accurately describe the building as being partially constructed.
10. Section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) only allows the grant of planning permission in respect of matters stated in the notice as constituting a breach of planning control "whether in relation to the

whole or any part of those matters". The appellant requests that the ground (a) appeal includes the consideration of the alternative scheme of the building in its completed form, ie with the roof covered, walls finished and doors, windows and guttering installed. The Council raise no objection to this proposition. Whilst the building is only partially constructed, I am satisfied that the details of the roof, doors, windows, guttering and exterior wall finishes could be conditioned, in the event I allow the ground (a) appeal, without prejudice to any party or conflict with the allegation. Accordingly, the consideration of the alternative scheme would be permissible under s177(1)(a). I have had regard to the various authorities on this matter referred to me by the appellant.

Main issue

11. The main issues are:

- Whether the development would be inappropriate development in the Green Belt, including having regard to its effect on openness of the Green Belt and the purposes of including land within it;
- The effect of the development on the character and appearance of the area; and,
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Inappropriateness

12. The appeal site is located within the Green Belt. Paragraph 154 of the National Planning Policy Framework (the Framework) confirms the construction of new buildings in the Green Belt should be regarded as inappropriate development unless they comply with stated exceptions. Exception (b) allows appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
13. Policy GB1 of the South Staffordshire Core Strategy Development Plan 2012 (the CSDP) states that development acceptable within the terms of national policy set out in the Framework will normally be permitted subject to it being one of a number of listed types of development, including appropriate small-scale facilities for outdoor sport or recreation, which preserves the openness of the Green Belt and does not conflict with its purposes.
14. The existing lawful use of the site is for a riding school and livery stables. The appellant confirms that the stables would be occupied by her own personal horses and are intended to be solely used for therapy/educational lessons for children, many of which do not attend mainstream school. The educational lessons also include English and Maths lessons. During the Hearing it was confirmed that there could be between 4 and 20 children attending the site for educational purposes five days a week during school term. The stables would not be used for livery purposes. There is no evidence that the therapy/educational use of the site is lawful.

15. The proposed use of the stables for the therapy/educational use would not meet any of the exceptions to inappropriate development listed in paragraphs 154 or 155 of the Framework. However, the matters alleged in the notice only refer to operational development, ie the partial construction of the stables. It does not allege a material change of use. As I have already set out above, I can only determine the ground (a) appeal in respect of matters stated in the notice as constituting a breach of planning control “whether in relation to the whole or any part of those matters”. The consideration of the use of the stables for therapy/educational purposes would go beyond those matters. Consequently, I cannot consider the use of the stables for the proposed therapy/educational use as that would fail to accord with the provisions of s177(1)(a).
16. I acknowledge the appellant’s argument that as the lawful use of the site is a riding school, the therapy/educational use should fall within this. However, the nature of the therapy/educational is materially different to the riding school use, notably due to the provision of English and Maths lessons.
17. S75 of the Act states that in granting planning permission for the erection of a building, if no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed. As the building is clearly designed to be stables, in the event I allow the ground (a) appeal, planning permission would be granted for its use as stables.
18. In light of the above, in accordance with exception (b) of paragraph 154 of the Framework, the stables would be an appropriate facility in connection with an existing use of land for outdoor recreation, ie the riding school and livery stables. I now turn to whether they would preserve the openness of the Green Belt and the purposes of including land within it.
19. The Framework indicates that openness is an essential characteristic of the Green Belt with a key objective being to keep land permanently open. Openness has both a visual and spatial dimension and the absence of visual intrusion does not, in itself, mean there is no impact on the openness of the Green Belt.
20. The stables are located to the north of the existing complex of buildings that includes a large barn comprising stables, tack rooms, horse washing area, welfare facilities and an indoor riding school; an open barn; a barn used for a separate commercial use; and, a number of dwellings, including the appellant’s dwelling.
21. In terms of the visual dimension of openness, the stables are well screened from both public and private views. They are on a significantly lower ground level than the fields to the north and the land to the east, resulting in it having a low profile within the immediate landscape. Moreover, its proximity to the existing building complex helps it assimilate into the wider built-form of the site rather than appear as an obtrusive form of incongruent development. Overall, I find that the development does not represent an unacceptable visual intrusion.
22. The site on which the stables have been constructed has been used for the siting of movable stables and structures over the years, as depicted on the numerous aerial photographs. The appellant confirms these moveable stables

were relocated around the wider site on a regular basis. In addition, the site has had a large concrete hardstanding for many years.

23. Nevertheless, the appeal building is considerably larger in both volume and floor area than the stables that were previously sited on the land. Moreover, it is of a solid construction as opposed to the lightweight design of the moveable stables. Consequently, the erosion of three-dimensional space arising from the introduction of the larger building has resulted in the diminishment of the openness of the Green Belt.
24. With regard to the purposes of including land within the Green Belt, due to it being well related to the existing built-form of the wider site and sited on land that previously contained development, ie the concrete hardstanding and moveable structures, I do not consider that the building represents an unacceptable encroachment into the countryside. Therefore, it does not conflict with the purposes of including land within the Green Belt.
25. Overall, whilst the stables do not represent a visual intrusion, it diminishes the spatial aspect of the openness of the Green Belt. I conclude therefore that the development would unacceptably harm the openness of the Green Belt. I make this finding in relation to both the building as existing and the proposed alternative scheme. I find therefore, the erection of the stables does not meet the requirements of exception (b) of paragraph 154 of the Framework, or any of the exceptions listed in paragraph 154 or 155 of the Framework or Policy GB1 of the CS. Therefore, they are inappropriate development in the Green Belt, which, by its very definition, is harmful to the Green Belt and should not be approved except in very special circumstances.

Character and Appearance

26. The appeal site is located within the open countryside, characterised by open agricultural fields interspersed with sporadic dwellings, farmsteads and small clusters of development.
27. As I have found above, the development assimilates well into the existing building complex, appearing as a logical extension of it. In addition, it is well screened by the adjacent large barn and set below the surrounding land levels, ensuring its low profile minimises its visual effect on the surrounding landscape. As a result, it is not readily visible from public or private vantage points, only from within the site itself.
28. Its construction on a well-established concrete hardstanding, which has been used for the siting of moveable stables and structures over a significant period of time, means it is not read as an incongruous encroachment into the open countryside.
29. In terms of its proposed external finish, the existing buildings on the site comprise a mixed palette of materials, including brick, painted concrete block, painted metal sheeting and timber cladding. It is proposed that the building would be finished with a grey metal sheet roof, the sheets of which were present on site during my site visit. These appeared to be appropriate and sympathetic to the existing colour and materials found within the building complex. In terms of the exterior wall, doors, windows and guttering, I am satisfied that suitable materials and colours could be secured by way of an appropriately worded condition, in the event I allow the appeal.

30. I find therefore, the building does not harm the character and appearance of the area. As such, it complies with Policies EQ4 and EQ11 of the CS, which seek to ensure the siting, scale and design of new development takes full account of the nature and distinctive qualities of the local landscape and local character. In addition, it also complies with Policy EV7 of the CS, insofar as it is sympathetic to the rural character of the area.

Other Considerations

31. Paragraph 153 of the Framework states that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from the inappropriate development in the Green Belt through the erosion of its openness and so as to provide the very special circumstances required to justify a grant of planning permission.
32. I acknowledge the extensive evidence and the appellant's heavy reliance on the use of the stables for therapy/educational purposes to justify the development. However, as I have already set out, in accordance with s177(1)(a) of the Act, I cannot take into consideration these matters. Accordingly, I cannot attribute them any weight in favour of the appeal.

Other Matters

33. I have had regard to the appeal decisions¹ referred to me by the appellant relating to stables elsewhere. However, in each of these cases, either the Inspector found that the stables would not harm the Green Belt or there were other considerations that amounted to the very special circumstances necessary to outweigh the harm to the Green Belt. The consideration of such development is very much a matter of fact and degree based on the specific circumstances of each case. In this case I have found harm to the Green Belt and I shall now go on to consider whether there are other considerations that amount to the very special circumstances necessary to outweigh that harm.

Planning Balance

34. The development has harmful implications for the Green Belt in terms of inappropriate development and the erosion of its openness. Whilst the overall loss of openness would be moderate, the Framework establishes that substantial weight should be given to any harm to the Green Belt.
35. Whilst I have found no unacceptable harm with regard to the effect on the character and appearance of the area, this is a neutral effect that neither weighs in favour of nor against the appeal. Consequently, it does not outweigh the harm to the Green Belt.
36. I find therefore, the very special circumstances required to clearly outweigh the harm to the Green Belt have not been demonstrated. Consequently, the proposal conflicts with Policy GB1 of the CS and the objectives of the Framework to protect the Green Belt. As it would conflict with Policy GB1 of

¹ Appeal decision references APP/R1038/W/19/3229777, APP/X0415/W/18/3197409, APP/C3430/A/13/2207380, APP/M3645/W/20/3254198

the CS, it would also conflict with Policy EV7 of the CS, which requires equine related development to be consistent with other local planning policies.

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

37. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to the ground (a) appeal against the enforcement notice and deemed planning application.

The ground (f) appeal

38. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
39. As I have found in my consideration of the ground (d) appeal, the area of concrete hardstanding outlined in yellow in Exhibit JG12 is immune from enforcement action and therefore I shall vary the requirements of the notice to exclude this area, with only the remaining area (outlined in black and red in Exhibit JG12) to be removed.
40. In respect of the alternative scheme, I have found this to be unacceptably harmful to the Green Belt, with no very special circumstances to outweigh this harm. Therefore, I do not find that there are lesser steps that would remedy the injury to amenity.
41. Therefore, the ground (f) appeal succeeds insofar as it relates to the area of concrete hardstanding outlined in yellow in Exhibit JG12. I shall vary the requirements of the notice accordingly.

The ground (g) appeal

42. This ground of appeal is that the period for compliance is unreasonably short.
43. The time for compliance with the requirements of the notice is four months. The appellant argues this is not sufficient as the demolition works would have to be carried out at times when the activities taking place on site are at a minimum to minimise disruption to the horses. A nine-month period is requested.
44. During the Hearing, the appellant confirmed the stables were constructed during the normal working week over a period of 12 months. Due to the contractors having other work commitments elsewhere, they were not able to complete the works over a single period of time. For the construction of the stables, they utilised a cement mixer and a jackhammer.
45. The business operates Tuesdays-Thursdays and Saturdays-Sundays. There is no evidence that the horses were unduly disrupted during the time the stables were constructed, which would have likely involved the delivery of materials such as the concrete blocks, timber joists and concrete during the day when the site was in use.
46. It is reasonable to conclude that demolition works could generate more noise than the activities associated with the construction of the building. However,

the demolition works would likely be capable of being carried out in a significantly shorter period of time. Through appropriate site management, disruption to the use of the site could be kept to a minimum.

47. There is no evidence of how the demolition works could not be completed within the four month period but yet they could be within nine months. Either way, there is likely to be disruption to some extent to the use of the site. It has not been demonstrated how this would be materially less over a nine month period than a four month period.
48. If find therefore, the compliance period of four months is not unreasonably short. The ground (g) appeal fails.

Formal Decision

49. It is directed that the enforcement notice is varied by the deletion of requirement ii) in paragraph 5 and substituting "ii) Permanently remove all hardstanding and materials used to form hardstanding bases, excluding the area outlined in yellow on the plan attached to this decision, for the development from of the Land."
50. Subject to the variation, the appeal is 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.

A Walker

INSPECTOR

Plan

This is the plan referred to in my decision dated: []

by A Walker MPlan MRTPI

Land at: Upper Hattons Stables, Upper Hattons Farm, Pendeford Hall Lane, Coven, Staffordshire WV9 5BD

Reference: APP/C3430/C/23/3322739

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

Ian Kilby – Planning Agent

Jayne Goodwin – Appellant

Lauren Russel – Yard Manager

FOR THE LOCAL PLANNING AUTHORITY:

Mark Bray – Consultant on behalf of South Staffordshire District Council

Laura Moon – Senior Planning Officer, South Staffordshire District Council

INTERESTED PARTIES:

Lesley Steer – Neighbouring resident

David Proctor – Neighbouring Resident