



Appeal Decision

Hearing held on 11 June 2024

Site visit made on 11 June 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal Ref: APP/Y9507/C/23/3333876

Land adjoining Whiteflood Farmhouse, Owslebury, Winchester also known as Stables, Whiteflood Meadows, Belmore Lane, Owslebury, Hampshire SO21 1JW

- 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 Nick Edwards against an enforcement notice issued by Winchester City Council on behalf of the South Downs National Park Authority.
- The notice was issued on 17 November 2023.
- The breach of planning control as alleged in the notice is:
Without planning permission:
 - (i) The material change of use of the land to equestrian;
 - (ii) The erection on the land of buildings to facilitate the unauthorised use in (i).
- The requirements of the notice are:
 - (i) Cease the use of the land for equestrian purposes;
 - (ii) Remove from the land all operational development facilitating the change of use outlined in (i) including the two stables and one field shelter (approximate location shown hatched blue on the attached plan);
 - (iii) Reseed the land to grass;
 - (iv) Remove from the Land all materials, rubble, rubbish and debris arising from steps (i) to (ii).
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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 ("the DPA").

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. Winchester City Council ("the Council") acted on behalf of the South Downs National Park Authority ("the LPA") at the Hearing.
2. The Notice states there were five substantive reasons for its issue. The third and fourth reasons arose following comments from Hampshire County Council ("HCC"), acting in relation to public rights of way ("PROW"), regarding a planning application for development which included the alleged breach of planning control.
3. HCC subsequently acknowledged that the access track leading to the Land was in fact an unclassified adopted unmetalled road, over which public access and motorised vehicles and horses are permitted. They have therefore withdrawn

their PROW objections, and the LPA no longer pursue that aspect of their case. The appeal therefore proceeds on the basis of the first, second and fifth substantive reasons, which relate to landscape and ecology, and highway safety matters.

4. Reference is made by the LPA to a planning application for a similar, but more extensive, development submitted by the appellant in 2020¹. That application was refused by the LPA, but I have considered the development subject to this appeal on its own merits.

The Notice

5. I am required to ensure the Notice is in order, considering Section 173 of the Act, which relates to the content and effect of an enforcement notice.
6. In Section 1, the Notice states it was issued in relation to a breach of planning control falling within paragraph (b) of Section 171A(1) of the Act. Paragraph (b) relates to failing to comply with any condition or limitation subject to which planning permission has been granted. However, I have been advised of no planning permission relating to development alleged and, read as a whole, it clearly relates to the carrying out of development without the required planning permission. The Notice should therefore have referred to paragraph (a) of Section 171A(1). Since no other reference is made to failing to comply with any condition or limitation, neither party would be prejudiced were I to correct the Notice accordingly.
7. In relation to operational development, the alleged breach of planning control, in Section 3 of the Notice, relates to the erection of buildings. Section 5 of the notice indicates those buildings are two stables and a field shelter. Although no appeal has been formally made on ground (c)², the appellant considers the stables and field shelter are not buildings, being on skids, and that planning permission was not required for them. I must therefore consider whether the breach of planning control alleged in the Notice has occurred, and if so, whether it constitutes a breach of planning control.
8. Section 55 of the Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(1A) states that "building operations" includes other operations normally undertaken by a person carrying on business as a builder. The definition of a building in Section 336(1) of the Act includes any structure or erection.
9. In terms of whether the stables and field shelter are buildings, the crux of the matter is whether they should be considered buildings on the basis of their size, permanence and attachment.
10. Regarding size, the stables each contain three loose boxes and are 10.8m in length, 3.6m in depth and 2.9m in height. The field shelter is 7.2m in length, 3.6m in depth and 2.9m in height, and contains 2 bays. They are therefore each of a size capable of being considered a building.

¹ Planning application reference: SNDP/20/04445/FUL for the 'Change of use of land to private equestrian comprising the siting of 2 x mobile stables and 1 x field shelter; removal of the top surface of the ground and laying hardstanding (part retrospective)'.

² That the matters alleged (if they occurred) do not constitute a breach of planning control.

11. In terms of permanence, the stables and field shelter were each assembled on the land on a steel frame bearing skids, with attachment points which would allow them to be dragged. The appellant advises they were erected there, so that's where they stayed, but he also advises they have been moved a couple of times due to flooding, although I have not seen that evidenced. The stables and shelter are positioned in a courtyard style, within a fenced area, and the land has been levelled at this end of the field to facilitate the stables in this location³. A planning application made to the Council in 2020 indicated an intention to establish the built elements of the development in its current location, in the vicinity of the access and with the current layout. Any movement which may occur or may have occurred is therefore likely to be/have been within that limited area, and relocation for functional use elsewhere is limited by the sloping topography of the land.
12. In relation to attachment, they are placed on the ground without foundations. Nevertheless, the stables in particular, but also the field shelter, are of a weight that would require significant force to move them on their skids. Turning them using the skids would also be difficult in a field of this scale, particularly for the central stable, which is orientated east-west across the narrowest part of the site. The appellant advises they could be moved by a 4x4 vehicle, but could also be moved by tractors. The skids themselves are low in profile, the structures sit close to the ground and soft or uneven ground could make it very difficult to move them without heavy equipment. The stables and shelter are also fitted with gutters and downpipes, some of which enter the ground to drain elsewhere, even if they are not connected to formal drains.
13. Considering all these matters together, in my judgement the stables and field shelter are buildings for the purposes of section 336 of the Act.
14. Section 57 of the Act requires planning permission for the carrying out of development on land. The definition of development in Section 55 includes building operations, and there is no evidence before me that any of the exemptions apply to the development alleged in the notice. Section 171A states that carrying out development without the required planning permission constitutes a breach of planning control.
15. I have not been advised that any planning permission or Lawful Development Certificate has been issued for any part of the development. Neither have I seen any evidence that the development was 'permitted development', such that planning permission had been granted by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015. The development is therefore development without planning permission, as alleged in the Notice, and constituted a breach of planning control.
16. In Section 5 of the Notice, 5(ii) requires removal of all operational development facilitating the change of use. As the only operational development alleged in Section 3 is the erection of buildings, the words 'all operational development' should be deleted and replaced with the words "the buildings" for clarity, and to reflect the breach of planning control alleged in Section 3. Neither party would be prejudiced were I to correct the Notice accordingly.
17. Although no appeal has been formally made on ground (g), the appellant advises that swallows or house martins are nesting in one of the stable

³ Although the levelling is not development subject to the Notice.

buildings, and that appeared to be the case at the site visit. Nesting season is typically May to September, and the time period for compliance with the Notice is 3 months. In the event that I dismiss the appeal, the period for compliance should therefore be varied to 4 months to ensure works of dismantling or removal could take place after the nesting season.

18. The appellant also states that bats have made their home in one of the shelters, but I have not seen that evidenced. Should the appellant encounter bats while removing the buildings, and finds he is unable to comply with all the requirements of the Notice in the time period specified, then it is open to him to seek a relaxation of the time period for compliance from the Council under Section 173A of the Act.

Reasons

19. Appeals on ground (a) are made on the basis that planning permission ought to be granted for the matters alleged to have occurred in the breach of planning control. In this case that is set out in Section 3 of the Notice.

20. The main issues are:

- whether the development conserves and enhances the natural beauty of the South Downs National Park;
- the effect of the development on highway safety; and
- whether the development conserves and enhances the wildlife of the South Downs National Park.

Landscape and scenic beauty

21. The Land is located within the South Downs National Park (SDNP). Section 245 of the Levelling-up and Regeneration Act 2023 ("the LURA Act") requires me to seek to further the purposes of (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the area; and (b) promoting opportunities for the understanding and enjoyment of the special qualities of the area by the public. The National Planning Policy Framework ("the Framework") also requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks.
22. The special qualities of the national park are its diverse, inspirational landscapes and breathtaking views, tranquil and unspoilt places, and rich variety of wildlife habitats including rare and internationally important species.
23. The Land is within the South Winchester Downland Mosaic (Enclosed) landscape character area, of arable land and woodland, but I have been provided with only very limited information regarding its characteristics and distinctiveness.
24. It is part of a larger field which is laid to grass, adjacent to a residential garden and to a byway⁴ of a type often described as a green lane, within a sparsely occupied area of woodland and arable farmland and equestrian grazing. It is located south of Belmore Lane, a tree-lined rural lane, separated from it by a residential garden, and accessible only via the byway.

⁴ Described above by the Highway Authority as an unclassified adopted unmetalled road

25. The Land is not part of a landmark view, or subject to views from within, to or from settlements. There may be some visibility in distant views from a small number of gaps in hedgerows along Baybridge Lane to the south, but at my visit I saw no significant views of the development, except those at very close range along the byway.
26. The LPA are concerned about the loss of hedgerow arising from a new opening onto the byway providing access to the development. But the Enforcement Notice plan clearly excludes the entrance and the land over which the hedgerow once extended, and its loss is not part of the matters before me.
27. The opening up of the gap in the hedgerow nevertheless provides greater visibility of the Land from a short stretch of the byway immediately opposite. The byway is at a lower level than the Land, but its users experience passing partial views of one of the stable buildings and the field shelter, seen against the backdrop of rising grassland and a belt of trees on the horizon. Users of the byway who approach the field gate will see all three buildings together, which increases their overall scale in the view on account of their close proximity to each other and the courtyard style layout.
28. It is not unusual to see small field shelters or stables in the rural landscape, even in national parks and, in the principal views in which the buildings are visible, they are relatively small elements within a wider landscape. Additional native landscaping, which could be required by planning condition, could further reduce visibility of the buildings from the byway, and in longer distance views from the south, but would need to be carefully designed in order to respect the character and form of the landscape.
29. The development is of a scale and intensity of use compatible with the landscape, and the buildings are located on the lowest part of the surrounding land, adjacent to residential development. To a large extent, the development would therefore conserve the amenity value and tranquillity associated with views from the byway and the surrounding area, and the landscape and scenic beauty of the National Park.
30. However, I have not seen evidence that the development enhances the natural beauty of the SDNP or makes a positive contribution to the character and appearance of the area. Or that it would do so with appropriate planning conditions. At best, it is a neutral feature in the landscape, and does not enhance it.
31. In conclusion, the development would not conserve and enhance the natural beauty of the South Downs National Park. It would conflict with the relevant provisions of the South Downs Local Plan 2014-2033 (2019) (SDLP) Policies SD4, SD5, SD6, SD20 and SD24, which require development to conserve and enhance landscape character, the amenity value and tranquillity and views from public rights of way, and make a positive contribution to the character and appearance of the area.

Highway safety

32. Belmore Lane is a tree-lined rural road without kerbs, and with soft verges where vegetation is set back sufficiently to allow them. There are no footways, and vegetation is close enough to have been shaped by passing traffic along

much of its route. The Lane is part of a series of 60mph rural roads which link the M3 with the A32.

33. Access onto the Land is from Belmore Lane, then around 35m along the byway, to the entrance to the Land. The byway is unsurfaced and uneven and, at its junction with Belmore Lane, traffic accessing the lane has eroded the land adjacent to the metalled ramp, exposing and degrading the carriageway edge on its eastern side. There is an informal layby opposite on Belmore Lane which can accommodate one or two cars.
34. Just over 90m to the west of the byway Belmore Lane takes a sharp turn. HCC acknowledges that the bend does act to slow vehicles approaching from the west, but visibility splays of 215m are normally required in both directions, and the bend itself is less than half that distance from the byway. Furthermore, a mature tree close to the carriageway severely restricts visibility to the left for vehicles exiting the byway onto Belmore Lane to a minimal and dangerous level, and even visibility as far as the bend requires a driver to be positioned along the carriageway edge, with their vehicle in the road. There is therefore no safe way to exit right onto Belmore Lane from the byway.
35. Vehicles stationed in the eastbound carriageway waiting to turn into the byway would be a hazard to motorists having just navigated the bend travelling east. However, it is possible that such vehicles may wait in the informal layby if it is unoccupied, and long or towing vehicles may use the layby as turning space in any event.
36. Visibility to the right is restricted by the hedgerow on the southern side. No measured speed survey has been provided, but HCC consider traffic speeds not to be significantly lower than the speed limit. At the time of my site visit in the summer month of June, visibility to the right from 2.4m from the carriageway edge was very low, increasing to around 140m close to the carriageway edge. That remains significantly below the required 215m. Although passing traffic itself will prevent vegetation from extending over the carriageway, the appellant has no control over the growth of the hedgerow over the verge, and therefore has no means by which the visibility can be improved. Even if that were possible, it would require regular and constant maintenance for the lifetime of the development.
37. I note there is a warning sign for motorists travelling west alerting them to the upcoming bend. But at that point the stretch of road containing the byway access is clearly visible and at the bottom of a hill, with clear road beyond it, and I anticipate any significant slowing would occur just after the byway as vehicles climb the hill. The byway access is not at all clear at that point, and I have seen no evidence that motorists would expect turning movements from that location.
38. Local drivers, familiar with the road, will know there are residential accesses onto Belmore Lane close to and on the bend but, even for those who know the road, the byway is some distance ahead of them and in a dark area covered by heavy vegetation. They may also know this point accommodates a bridleway on one side of the road and a byway on the other, but horses usually wait for a break in the traffic before crossing, and riders would benefit from greater visibility.

39. Considering all these matters, there is no safe way for vehicles to exit from the byway to the right (east) onto Belmore Lane. Visibility from the right is poor without entering the carriageway, and slow-moving vehicles exiting to the left (west), and towing vehicles in particular, would also be a hazard to vehicles travelling west.
40. Grazing could occur from any agricultural land, but the vehicle movements expected from such a use, or an agricultural one, would likely be lower than those from an equestrian use with stables. The two stable buildings could accommodate up to 6 horses, even if the appellant advises only 4 are likely to be kept there. Stabling also typically requires regular attendance, which the appellant advises would be daily, even if the appellant only intends horses to be kept there over the winter months.
41. I note the appellant normally parks in the informal layby opposite, but I have seen no means by which that could be a requirement. He also refers to removal of manure from the site, the need for vet and farrier visits, and the delivery of hay and supplies. The appellant also advises that he can exit to the left while towing without entering the opposite carriageway, but that would not be possible in all vehicles. Even in the event that I considered left turning movements could be tolerated, any condition requiring that is likely to be unenforceable in this rural location.
42. I have also considered whether access could be gained to the Land from the other end of the byway. But although the byway is legally open to all traffic, it is largely impassible for most vehicles on account of its soft and uneven surfacing and heavy overhanging vegetation.
43. I also note that upholding the appeal may result in agricultural use of the land, and use of the access by large agricultural vehicles could occur. That is likely to result in less frequent use, and would not be sufficient justification for the development.
44. In conclusion, the development would be harmful to highway safety, and would conflict with the relevant provisions of SDLP Policy SD21, which only permits developments where they protect and enhance highway safety.

Wildlife

45. I must further the purpose of conserving and enhancing the wildlife of the area in accordance with my statutory duty under Section 245 of the LURA Act. The Framework also requires great weight to be given to the conservation and enhancement of wildlife in National Parks.
46. The matters before me relate only to equestrian use of the land and the erection of the buildings. It does not relate to the removal of the hedgerow or the levelling of the land. Neither does it relate to other matters proposed in the recent planning application, such as a hardstanding area.
47. A 'Baseline Assessment Checklist' was completed by the appellant in October 2020 in relation to his recent planning application. Although completed around three years before the Notice was served, the checklist identified no priority habitats (including grassland), geological or wildlife designations, protected species, or locally important geological or wildlife sites. In these circumstances, the checklist states there is no need to undertake further work such as specialist surveys. I therefore consider that survey, and the appellant's appeal

- submissions, to be sufficient to meet the requirement for an ecosystem statement, and in relation to the protection and support of priority species.
48. To a large degree the LPA relies on the comments of the Council's ecologist and Biodiversity Officer in relation to the planning application. Much of that response does not apply to this development, which is less extensive than that proposed in the planning application. At the same time, reference is made to the presence of Stinking Hellebore within 100m of the Land, and to the mature hedgerow along the byway being suitable for protected species such as bats, reptiles, birds, dormice and hedgehogs.
49. With the information I have before me, Stinking Hellebore is not in itself a protected species, but is considered to have wider ecological benefits. There is no evidence it is present on the Land but, if it is, it may be harmful to horses. The grazing of the Land could take place in any event on agricultural land without the need for planning permission, and the evidence before me is that it was grazed by horses before the development occurred, and the adjoining land is also grazed. Although stables on the land are likely to result in more intensive use of the land by horses, it could be grazed even if I uphold the Notice requiring the equestrian use to cease and the stables to be removed.
50. It is not surprising that the byway provides a suitable habitat for protected species, given its thick vegetation and dark corridor. The construction of the buildings has already occurred and is complete, and I am aware of no conflict between equestrian use itself and the protected species which may be found in the area. I saw no lighting on the Land at the time of my visit, but with a suitable planning condition lighting could be prevented, or limited to that which is suitable for its environment.
51. Birds were nesting in one of the stable buildings at the time of my visit, and the appellant advises wildflowers have been planted. Use of the Land and the field associated with it for grazing has also facilitated more natural habitats than would have occurred had the land been put to an active agricultural use, and particularly so were pesticides to be used for arable farming. An ecological management condition could ensure the development has positive ecological effects overall and enhances the biodiversity of the area.
52. In conclusion, with appropriate planning conditions, the development would conserve and enhance the wildlife of the South Downs National Park. It would also accord with the relevant provisions of SDLP Policies SD2 and SD9, which requires up-to-date ecological information to be provided which demonstrates developments protect and support recovery of rare, notable and priority species, require development to conserve and enhance biodiversity and geodiversity, and have an overall positive impact on the ability of the natural environment to contribute goods and services.

The planning balance

53. I have found that, with appropriate planning conditions, the development would conserve and enhance the wildlife of the South Downs National Park, gaining support from development plan policies relevant to that issue. I attribute significant weight in favour of the development accordingly.
54. However, I have also found that the development does not further the purpose of conserving and enhancing the natural beauty of the South Downs National

Park and is harmful to highway safety. I attribute substantial weight against the development to these matters, including the conflict with the statutory duty, and with development plan policies which give rise to conflict with the development plan read as a whole.

55. The matters against the development therefore outweigh those in its favour, and there are no other material considerations that require a decision to be made other than in accordance with the development plan. Planning permission should therefore not be granted for the development.

Conclusion

56. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Decision

57. It is directed that the enforcement notice is corrected and varied by:

- The deletion of the words "paragraph (b)" and their substitution with the words "paragraph (a)" in Section 1;
- The deletion of the words "all operational development" and their substitution with the words "all buildings" in Section 5(ii); and
- The deletion of the words "3 months" and their substitution with the words "4 months" in Section 6.

58. Subject to the correction and variations, 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.

Peter White

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Hunt Appellant's agent/Land Manager
Claire Mitchell

FOR THE LOCAL PLANNING AUTHORITY:

Madeline Clavey Principal Enforcement Officer – Team Leader
Lisa Booth Principal Planning Officer- Team Leader

DOCUMENTS SUBMITTED AT THE HEARING:

1. Photographs submitted by the appellant
2. Photographs submitted by the Council