



Appeal Decision

Hearing held on 9 July 2024

Site visit made on 9 July 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 8 August 2024

Appeal Ref: APP/T3725/C/23/3318902

Nova Equestrian, Glasshouse Lane, Lapworth B94 6PZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Talib Khan against an enforcement notice issued by Warwick District Council.
 - The notice was issued on 22 February 2023.
 - The breach of planning control as alleged in the notice is Without planning permission the erection of an unauthorised building in the Warwick District Green Belt, in the approximate position marked with a Blue outline on Plan 1 attached to this Notice.
 - The requirements of the notice are to: (i) Permanently demolish the building outlined in blue on the attached plan from the Land (ii) Remove all waste and materials from the Land.
 - The period for compliance with the requirements is 4 (four) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. 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.

Application for costs

2. An application for an award of costs was made by Warwick District Council against Mr Talib Kahn. This application is the subject of a separate Decision.

Preliminary matters

3. The appeal was originally proceeding on grounds (a) and (d) of the 1990 Act. Ground (d) was withdrawn by the appellant prior to the hearing.
4. The development has been subject to a recent appeal decision that was decided by way of a Public Inquiry (APP/T3725/C/21/3287949). The appeal was allowed on ground (b) and the notice was quashed. Further enforcement action against the same building pursuant to S171B(4)(b) of the 1990 Act alters the breach of planning control to "the erection of an unauthorised building". The previous Enforcement Notice dated 19 October 2021 alleged "the erection of a new single storey dwelling".

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

Main issues

5. The appeal site falls within land designated as Green Belt. Therefore, the main issues are:
- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies and the purposes of including land within the Green Belt;
 - The effect of the development on the openness of the Green Belt; 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.

Reasons

Whether inappropriate development in the Green Belt

6. The breach of planning control as alleged in the notice is a new building in the Green Belt without planning permission. Planning permission was previously granted by notice dated 5 September 2013¹ (the 2013 PP) for a replacement stable block, and approval for a non-material amendment to that permission was granted in December 2014. However, the building has not been constructed in accordance with the permission and that permission is no longer extant.
7. The Government's approach to protecting the Green Belt is set out in Section 13 of the National Planning Policy Framework (the Framework). Its fundamental aim is to prevent urban sprawl by keeping land permanently open. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Any harm to the Green Belt should be given substantial weight. Policy DS18 of the Warwick District Local Plan 2011-2029 (WDLP) confirms that the Council will apply national planning policy to proposals within the Green Belt.
8. Paragraph 154 of the Framework provides that the construction of new buildings in the Green Belt should be regarded as inappropriate development unless they comply with stated exceptions. The appellant seeks to rely on exception (b) which allows for *the provision of 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.*
9. While the development of an equestrian building in the Green Belt can fall within the definition of outdoor recreation, paragraph 154(b) of the Framework specifies that as an exception to inappropriate development in the Green Belt, provision of facilities under this exception should be appropriate for the

¹ Planning Permission ref: W/13/0916

intended purpose, which I consider meaning reasonable and necessary to support the equestrian activities at the site.

10. The land measures approximately 2.3 hectares (5.7 acres) and there is no disagreement between the parties that the existing lawful use of the land is a riding school which was granted planning permission by notice dated 15 January 2014² (the 2014 PP). The use is stated as having commenced in 2014 and the manège which formed part of the development, was constructed in 2015.
11. The appeal building is single storey and L shaped with a pitched roof which has a low and wide overhang to each elevation. Materials used in its construction consist of blockwork, which is clad with horizontal timber, brickwork and a corrugated metal roof and the building is insulated and has a damp proof membrane. Within the 'long wing', the building provides two stables and a tack room. These are subdivided by stud walls and boarding and accessed by single doors. A tiled bathroom is also situated in this wing with internal access from the 'short wing' of the building. Within the 'short wing' there are two rooms that are furnished in a domestic manner: one room has a fully fitted kitchen with appliances such as a range cooker, a large fridge/freezer, dining table and chairs and breakfast bar; and the other is furnished with a large leather sofa. Both areas are fully plastered and painted with wood laminate flooring, decorative ceiling pendants, domestic windows and radiators.
12. The land is limited in area and is of a size that would support no more than 4 horses. The appellant says that they own three horses and at my visit I saw three horses in the paddocks. The 2014 PP for the riding school limited by condition the number of customers to a maximum of 3 undertaking riding lessons at any one time and only horses belonging to the riding school and stabled at the site could be used in association with the riding school use and manège use. It also prevented customers from bringing their own horses to the site to engage in riding lessons or use the manège. The reason stated was to protect the rural character of the area.
13. The manège is sited close to the appeal building and clearly has not been used for some time. The rest of the land is divided into small paddocks with post and rail fencing. Along the western boundary are four timber stables. The Council considers these to be the original stables that were 'temporarily' relocated when the appeal building was constructed. These are described as lawful structures by virtue of Section 171B of the 1990 Act.
14. Evidence concerning the use of the site as a riding school is scant and contradictory. The appellant's statutory declaration states that 4 staff were employed on a part-time basis prior to the pandemic in March 2020, but at the hearing, this was confirmed as 'some volunteers'. There are conflicting dates about when the riding school was operating and no indication as to how it was operating. Marketing appears to have been non-existent and I am told that the business relied on 'word of mouth' to generate custom.
15. Although registered for business rates and issued with a riding school licence between 2014 and 2018, this does not indicate that the business use was operating during this period. Had the riding school been operating on a business level, I would have expected to have been provided with evidence

² Planning Permission ref: W/13/1484 Construction of manège, change of use of land and stable to a riding school

such as records of lessons booked, cost and timings of lessons, customer details, qualifications of lesson givers, financial income, insurance documents, registration information with a local veterinary practice, invoices for horse feed, hay and bedding and photographs of activities.

16. Nevertheless, the appellant submits that both Covid and the threat of demolition through enforcement action have prevented the re-commencement of the riding school use. Although the appellant has been unable to categorically state when the use ceased or became 'dormant', from the presented evidence I consider that this was no later than January 2016 as stated in the appellant's submissions to support their appeal³ against the refusal to grant consent for the change of use of the stable building to a cattery. The appeal was subsequently dismissed in June 2016. Furthermore, Council visits to the site in 2018, 2019 and 2020 make no record of Riding school activity and I note comments from neighbours who suggest that no activity has taken place during the past nine years. Thus, there was a significant gap between 2016 and the start of the pandemic in 2020 and the first enforcement notice which was issued on 19 October 2021.
17. Work to construct the building is stated as having commenced just prior to the expiry in September 2016 of the 2013 PP when the foundations were laid. Construction resumed in 2017 and building work continued for some time. Photographs show that it was not internally or externally complete in December 2018. From my observations and the Council's evidence, although the stables provide weathertight accommodation for the horses, there are elements that are not deemed appropriate for equine use. These include domestic style light switches within the stables, high and wide doorsteps to each stable and low overhanging eaves which come below the height of the stable doors. Furthermore, they lack kick boards and ceilings are not boarded. While I saw some elements of tack such as head collars and a saddle, the tack room is essentially a storage room for domestic items.
18. What has been constructed is a significant building with stables of questionable standards for the safe stabling of horses, and a sizeable floor area covering more than half of the building that is clearly used as separate domestic space. The appellant considers that the 'non-equestrian' part of the building is required to support the riding school by providing comfortable space for customers to relax and watch riding lessons taking place. It is also considered essential to provide office and reception space to deal with business administration and a bathroom for customers to shower and change. The 'high-spec' interior is said to be part of the appellant's passion to make the riding school a business that is '5 star' and 'really impressive'.
19. I acknowledge that the Inspector who quashed the previous enforcement notice considered that 'a business, such as a riding school, could reasonably be expected to provide accommodation in which staff and customers could change clothing, relax, prepare food and drink and bathe'. While that may be so, the comment is generalised and not specific to the appeal premises. Furthermore, in my view, although it may be nice to have such facilities, they would more likely be found at a riding school of a significant size where there would be a higher level of customer activity and more horses and staff.

³ APP/T3725/W/16/3142740

20. I also consider that the previous Inspector's findings on the ground (b) appeal are factual rather than focused on the facilities that have been provided within the building. Moreover, she makes no finding on whether the facilities were appropriate and there was no requirement for her to do so under the grounds of appeal presented against the previous notice. While the Inspector refers to similarities between the appeal building and the building granted under the 2013 PP and non-material amendment, the comments refer to the internal layout of the space and the external appearance rather than the facilities that have been provided.
21. While I accept that the 2013 PP is a material consideration, due to the passage of time, I give it limited weight. Notwithstanding this, I observed that there are several discrepancies between what has been constructed and the 2013 PP, such as the bathroom in place of the largest stable, large domestic window openings and French doors, a significant over-hang of the eaves on every elevation, internal access between the three domestic rooms and an enlarged footprint, height and roof span. Although there are similarities, the differences are materially significant.
22. The appellant states that they intend to re-commence the riding school use and provide an 'up-market' establishment. In February 2024 Nova Equestrian Riding School Limited was registered with Companies House as a private limited company. However, there is no further information before me to support their proclaimed ambitions. There is also an absence of evidence to demonstrate that the riding school was previously operating on a level that would have required the space provided by the appeal development. A riding school with 3 or 4 horses would be restrictive regarding the number of customers that could attend during each day and with the horses needing rest, the number of lessons would be very limited. At this level I consider it unlikely that customers or staff would require a shower or the use of a fully fitted kitchen and I am not satisfied that the riding school use would operate at such a level to justify such substantial development as presented.
23. Overall, I find that the evidence that has been supplied by the appellant does not satisfy me that the appeal development is an appropriate facility for the equestrian use of the land. The development before me is a permanent building set up to stable two horses and to provide storage, with the building predominantly providing accommodation for humans in the form of a kitchen, bathroom and living room. Accordingly, I consider that the appeal development is inappropriate development in the Green Belt, which is by definition harmful. As such, the development does not fall within the exception set out in paragraph 154(b) of the Framework.

Openness and Green Belt purposes

24. Paragraph 142 of the Framework notes that the Government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence. Openness requires consideration of both spatial and visual aspects and consideration of the impact or harm, if any, wrought by the change.
25. The openness of the Green Belt is clearly evident in the vicinity of the appeal site, with largely open fields around the appeal site. Although there may be

limited views from outside the appeal site from along the rural public highway, the development is still capable of affecting openness.

26. Whether a development is modest or small scale in terms of openness is a matter of judgement. Prior to the building being erected, the original stable building as shown on the drawings and photographs, was of a simple rustic form, constructed of timber with a lower ridge height, substantially smaller roof form and a more contained footprint. It was a building of materially less physical bulk and covering less ground, it would have been visually less conspicuous. Aerial images provide a comparison of the buildings, and it is apparent to see the significant difference which arises from the increased dimensions of the appeal development. This is particularly accentuated by the roof form which has added substantial bulk to this permanent building.
27. The appeal development, when compared to what was previously on the land, is a more physically imposing structure by reason of its materials, and its increase in height, footprint, volume and mass. In this context, I consider that the development is prominent, and spatially and visually it reduces the openness of the Green Belt. I also find that the appeal development conflicts with one of the purposes of including land within the Green Belt, that is to assist in safeguarding the countryside from encroachment. While the harm caused is localised in extent and is moderate, the development by its very nature as additional built form reduces the openness of the Green Belt and this is harmful when considered against the provisions of the Framework.

Other considerations

28. I turn now to address other considerations brought forward by the appellant that, potentially, might clearly outweigh the identified harm so as to provide the very special circumstances required to justify a grant of planning permission.
29. While the appellant relies on the fact that they consider the building to fall within one of the exceptions for new development in the Green Belt, they have offered to demolish the timber stables situated along the western boundary. During the hearing, the question arose concerning where horse feed and bedding would be stored as there is no space allocated for such purposes in the appeal building. This prompted the appellant to consider that unit 2 which measures 27m² in floor area and 71m³ in volume, as indicated on drawings 6985-D-200 and 6985-D-301, should be retained. The removal of these buildings would be positive with regard to openness within the Green Belt, and I afford this moderate weight.

Green Belt balance

30. Overall, I have found that the appeal development constitutes inappropriate development in the Green Belt and moderate harm has been caused to the openness. The development represents encroachment, conflicting with at least one purpose for designating land inside the Green Belt, which is a serious planning objection. These are matters to which substantial weight is given. Inappropriate development is by definition harmful and should not be approved except in very special circumstances. These will not exist unless the harm to the Green Belt, by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.

31. I have considered the appellant's suggestion concerning the demolition of the original stables sited along the western boundary. However, this would not clearly outweigh the substantial weight that I give to the harm to the Green Belt arising from the appeal development, by reason of inappropriateness, the harm to openness and one of the purposes for including land within the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist.
32. As such, the development conflicts with policy DS18 of the WDLP and fails to accord with the Framework which aims to keep land within the Green Belt permanently open and prevent encroachment into the countryside.

Conclusion on ground (a) and the deemed planning application

33. For the reasons set out above and having considered all other matters raised, I conclude that the appeal on ground (a) should not succeed, and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

S A Hanson

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Andrew Murphy	Stansgate Planning
Mr Talib Kahn	Appellant
Mr Aamir Kahn	Friend of the Appellant
Mr Adil Kahn	Friend of the Appellant

FOR THE LOCAL PLANNING AUTHORITY (LPA)

Mr Alex Williams	Self-employed barrister instructed by Sue Mullins, Solicitor, Stratford District Council and Warwick District Council in-house legal team
Mr Neill Whittaker	Ivy Legal
Mr Will Holloway	Planning Enforcement Manager, Warwick District Council
Ms Peta Roberts	Fellow of the British Horse Society

INTERESTED PARTIES

Mrs Sheila Cooper
Mr Alan Palmer
Ms Khanique Mahmood
Ms Ellie Wallace
Ms Camelia Petrescu

Documents submitted at the Hearing:

Appellant's response to the LPA's application for costs