



Appeal Decision

Hearing Held on 22 October 2024

Site visit made on 22 October 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Appeal Ref: APP/Y9507/C/23/3323866

The Boneyard, Drove Road, Brighton & Hove BN2 6AJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Roger Rowell against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice was issued on 11 May 2023.
 - The breach of planning control as alleged in the notice is:
 - i. Without planning permission and within the last 10 years, the material change of use of land from agricultural to equestrian and the placement and residential occupation of 1 mobile home on site. In addition, the material change of use of land from agricultural to the storage of lorry bodies and other storage containers.
 - ii. Without planning permission and within the last 4 years, the construction of a 7 bay stable to the south of the site.
 - iii. Without planning permission and within the last 4 years, the construction of a 2 bay stable block adjacent to the entrance gate.
 - iv. Without planning permission and within the last 4 years, the construction of a 3 bay stable block to the south of the site.
 - v. Without planning permission and within the last 4 years, the construction of stables to the north east of the Stable Barn.
 - vi. Without planning permission and within the last 4 years, the construction of a Hay store.
 - vii. Within the 4 years, without planning permission extensive engineering works to the site including; new road surfaces and car park, sand school, bunds.
 - The requirements of the notice are:
 - i. Cease the use of the land for equestrian use, storage and residential occupation. Remove the mobile home and associated residential paraphernalia from the site, labelled Dwelling in Plan 235.22.20. Remove all lorry bodies and other storage containers that have been placed onto the land for storage, labelled (A), (Q), (S), (O1), (O2), (G), (B1), (B2), (T), (J), (I), (U) in Plan 235.22.20.
 - ii. Dismantle and remove the 7 bay stable, labelled (H) in Plan 235.22.20.
 - iii. Dismantle and remove the 2 bay stable, labelled (K) in Plan 235.22.20.
 - iv. Dismantle and remove the 3 bay stable, labelled (L) in Plan 235.22.20.
 - v. Dismantle and remove the stables to the north east of the Stable Barn, labelled (C) in Plan 235.22.20.
 - vi. Dismantle and remove the Hay Barn, labelled (M) in Plan 235.22.20.
 - vii. Restore the simple slope of the downland landform. Permanently remove the bunds by redistributing the material to the excavated areas to the north of the site. Sow the entire area from where the bunds are removed and the entire area where the material was spread with grass seed.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Application for Costs

2. An application for costs was made by Mr Roger Rowell against South Downs National Park Authority. This application will be the subject of a separate Decision.

The Enforcement Notice

3. The allegation relating to an equestrian use is broad and imprecise. At the Hearing the appellant confirmed that he operates a commercial equestrian business use for livery and the breeding of showjumping horses. The parties agreed this form of wording could be used to correct the notice without injustice. It is then not necessary to refer to the previous use of land in the allegation, and therefore the reference to agriculture can be dispensed with.
4. The alleged storage of lorry bodies and other storage containers then connotes a separate storage use. It was confirmed during the Hearing that this was not the Park Authority's intention, and neither is the appellant undertaking such an activity as the structures are used to provide for storage in connection with the commercial livery and breeding use, which I also observed during my site visit. This can therefore be omitted from the allegation.
5. The requirements of the notice can then be corrected to relate to the corrected mixed use enforced against.
6. The notice also alleges a sand school. This is however currently an area of hard standing and it was agreed this can be corrected without injustice.
7. The notice makes reference in section 5 to Plan 235.22.20 which is then not attached to the notice. The parties agree that injustice does not arise from correcting the notice to attach it.
8. The notice then relates to an area of land amounting to approximately 2.5ha. The entirety of the appellant's holding amounts to approximately 5ha. The parties agreed during the Hearing that the notice could be corrected by means of a substitute plan to cover the entirety of the appellant's holding. An updated Land Registry search was then provided which demonstrates on the balance of probabilities that no additional parties with an interest in the land would be prejudiced. Whilst this makes the notice more onerous, in light of the Land Registry search and the appellant and Park Authority's agreement, injustice would not arise from accepting this substitute plan.

The ground (d) appeal

9. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action.
10. The appellant contends that the site has a lawful equestrian use. However, as noted above, reference to an equestrian use is broad and imprecise. This is because there are different equestrian uses, many of which are of a materially different character. The mere keeping of horses, for example, would be a

materially different use to a commercial equestrian business use for livery and the breeding of showjumping horses, given the clear difference in the character of those respective uses.

11. I raised the Statutory Declaration of Mr Moore, sworn on 17 July 2023, during the Hearing, albeit he was not in attendance to assist. Whilst it is stated that he ran a horse livery business from the site, no precise dates are given. There is also contradiction as reference is then made throughout to only the keeping of horses. The declaration then concludes with the statement: *'To my certain knowledge, the buildings and paddocks at The Old Boneyard have been continually used for the keeping of horses since my involvement in the late 1980s to the present day.'*
12. It was put to me during the Hearing by the appellant that the site was used by Mr Moore as an overflow to the nearby Ingleside stables. This seems highly likely, but that does not automatically translate into a livery and breeding use having taken place continually for a relevant period at the appeal site. The evidence of Mr Moore does not demonstrate this, and it is clear the term keeping of horses is repeated on multiple occasions.
13. The declaration also makes reference to a planning application made in 2010 to develop the site into a riding school and livery yard, which was refused. The planning statement for this is also before me. Whilst this demonstrates some equestrian use of the site, it does little to assist in demonstrating the use enforced against is lawful owing to the passage of time. It also not a sworn document and so I can only afford it limited weight. Furthermore, that a planning application was submitted either indicates the site was not in use as a livery in 2010, or that it was not in lawful use owing to the passage of time. It therefore cast significant doubt in my mind.
14. A local resident of some 45 years spoke during the Hearing to advise they have always known there to be horses at the site as well as jumps at times, albeit they have only physically been onto the site within the last year. It is however not disputed that horses have been grazed or kept at the site, and the local resident was unable to demonstrate there had been a livery use. I accordingly have very limited evidence to demonstrate on the balance of probabilities that it was too late to take enforcement action against a commercial equestrian business use for livery and the breeding of showjumping horses.
15. The Park Authority indicated there may have been unauthorised intervening uses at the site in respect of scaffolding storage in 2016 and a traveller's site in 2018, albeit no enforcement notices were issued. The appellant has limited knowledge of this, and in light of my findings I do not consider these to be determinative for the purposes of my assessment.
16. The evidence from the appellant therefore principally relates to the use of the site for the keeping of horses. Whether or not such a use has accrued lawfulness owing to the passage of time, it was incumbent upon me to correct the notice to that of a commercial equestrian business use for livery and the breeding of showjumping horses, because that is how the appellant is using the site.
17. Table 2 appended to the Statement of Common Ground then provides confirmation from the main parties that the buildings enforced against and

portacabins and lorry bodies that are required to be removed are not immune from enforcement action.

18. The appeal on ground (d) accordingly fails.

The ground (a) appeal

Main Issues

19. The main issues are:

- whether there is an essential need for a caravan to accommodate a rural worker; and,
- the effect of the development on the character and appearance of the area.

Reasons

20. The site extends to approximately 5ha. accessed from Drove Road. It comprises a range of barn and stable buildings, lorry bodies and a residential mobile home, served by various areas of hardstanding. The site is situated on a ridge that is demarcated by Drove Road and which runs along the edge of the settlement of Woodingdean.

21. The development relates to the mixed use as a commercial livery and breeding of showjumping horses and for the placement and residential occupation of one mobile home, as well as for 3 stables buildings, a stable barn, hay store and engineering works for new road surfaces, car park, hardstandings and bunds. The appellant confirmed during the Hearing that a temporary planning permission of 3 years is sought in respect of the mixed use.

Essential need

22. For the purposes of the South Downs Local Plan 2019 (the LP), the site is located outside of any settlement boundary. Policy 25 of the LP identifies that, exceptionally, development will be permitted outside of settlement boundaries where it complies with relevant policies in the LP, and, where there is an essential need for a countryside location. Policy 32 of the LP is then concerned with new agricultural and forestry worker's dwellings, but this is not applicable as the case of the appellant relates to a commercial livery and showjumping breeders, which thus does not constitute an agricultural use.

23. The parties agreed during the Hearing that the Park Authority's approach to residential development within the National Park was then broadly consistent with the housing approach set out in the National Planning Policy Framework (the Framework).

24. The appellant operates a commercial equestrian business for livery and the breeding of showjumping horses. They had previously run this business for almost 20 years on 30 acres of nearby tenanted land, with 40 stables, an indoor riding school and residential mobile home. This tenancy ceased in September 2021, which had prompted the appellant to secure the appeal site as an alternative location.

25. However, the appeal site is approximately half the size, and currently comprises stabling for around 15 horses¹, most of which are unauthorised. There is no indoor or outdoor riding school. The size of the business, which is thus governed by the size of the site and availability of land, buildings and other infrastructure, is accordingly considerably smaller than the previous site.
26. An update to the business plan² was provided for the Hearing. It essentially outlined why an earlier business plan had not been followed as the appellant's had decided to hold in abeyance their intentions pending this appeal. The appellant has instead proceeded with a DIY livery model and had to sell 3 competition horses.
27. Whilst I have sympathy that the appellant felt the need to hold matters in abeyance, the update to the business plan merely explained the current position and intention to largely revert to the original business plan (the plan). However, this is not the case, as the plan states that the cornerstone of the business will continue to be the provision of assisted livery services. During the Hearing, it became clear that particular emphasis was now being placed on the breeding of competition horses and their value. The figures given to me during the Hearing were then significantly higher than cited in the plan.
28. Moreover, a full livery model along with those competition horses was now sought to be pursued, but the plan is based upon 14 horses with an assisted livery model as well as 4 competition horses. Furthermore, during the Hearing, the appellant indicated a willingness to accept a planning condition restricting the total number of horses to 15, which is thus further inconsistent with the plan.
29. This all culminates to cast considerable doubt in my mind as to the appellant's actual intentions. This is highly relevant because a different number of horses, form of livery and therefore business model, will have different fixed costs, different incomes and different outgoings and requirements, for example labour. The plan indicates a Standard Man Days (SMD) labour requirement of 840 days for the assisted livery alone, which is approximately 3 workers. There is then very little evidence in the plan to account for labour costs or what wage or income the appellant would be taking. During the Hearing I was then given an SMD figure for 11 horses in DIY livery and 4 competition horses of 1.3 workers. This is obviously different to the plan and based upon a number of horses that is in variance with both the plan and number of loose boxes at the site.
30. The plan also outlines what it describes as significant investment in improvements to the site, which include developments integral to the livery and breeding use. However, the plan does not explain how this expenditure was funded or how it is to be repaid. There are also limited profit and loss projections for the business, for example, over the 3-year period for which planning permission is sought.
31. Whilst the appellant relocated from the previous site, I remain unclear as to how that translates into a viable business model that would now have to be followed, given the smaller size of the site and number of horses. There is little

¹ During the Hearing I was advised there were 15 stables, but during my site visit it was evident there were at least 18 loose boxes.

² Financial Statement, October 2024

- evidence of accounts, either for the business that subsisted at the previous site, or projections for the appeal site, to demonstrate that it can operate on a sound financial basis. The absence of prior accounts also casts considerable doubt into my mind about the viability of the proposed venture, given it is approximately half the size of that which existed previously.
32. The business plan and intentions for the site and business therefore appear to be either lacking in detail and financial rigor or are unresolved. This is further problematic for the appellant because in seeking a 3-year temporary permission, it would then be necessary to measure the success of the business against its objectives when consideration is given to a permanent permission. It is currently not possible to do so based upon the evidence provided. For all these reasons, I am therefore not persuaded that a temporary planning permission is appropriate based upon the evidence before me.
33. I accept there is likely a sight and sound argument given the number of horses at the site, the value of the competition horses and expectations of owner's placing their horses if a full livery model is pursued. However, given the very close proximity of Woodingdean, there remains insufficient evidence as to why one of those properties could not be occupied, which are a matter of minutes away by car or foot. I appreciate there is a risk of fire, and whilst I am extremely sympathetic to this, this is not unique or exacerbated by the presence of horses.
34. I appreciate the site is not an isolated one, but it is located outside of a settlement boundary, in a National Park. This appeal is then not concerned with making an effective use of land to deliver homes, but rather is predicated upon there being evidence of an essential need for a rural worker.
35. I conclude there is not sufficient evidence to demonstrate that the business has been planned on a sound financial basis and that there is therefore an essential need for a caravan to accommodate a rural worker. The residential use therefore unacceptably contravenes Policy SD25 of the LP and the housing objectives of the Framework.

Character and appearance

36. The site is accessed via the Drove which is a narrow byway and which forms part of the local public rights of way network (the PRoW). It is set at an elevated level on a ridge in an expansive landscape setting. It is identified as being within the A2 landscape character area³.
37. The appellant's Landscape and Visual Appraisal (the appraisal) identifies that historically the site consisted of a collection of buildings surrounding a central area of hardstanding. The site is then classed as having a high sensitivity due to being located within the National Park.
38. A number of adverse effects as well as a moderate/large adverse effect is then identified by the appraisal. It is considered these can be addressed by a suite of measures. However, whilst there is an annotated aerial photograph, there is little evidence of a detailed landscaping scheme or drawings to demonstrate what such a scheme would deliver, which casts significant doubt in my mind. Moreover, I am not persuaded that planting hedgerows along bunds is characteristic of the area.

³ South Downs Landscape Character Assessment 2020

39. During the Hearing I questioned whether it would ordinarily be recommended to site lorry bodies and portacabins within a site such as this, in a National Park. I was advised this would not be the case, yet the mitigation does not seek the removal of what I could see during my site visit were a considerable number of lorry bodies and portacabins located in various different parts of the site. No planning condition had been suggested by the appellant to secure their removal either.
40. I again appreciate the appellant's intentions for the site have been held in abeyance pending the outcome of this appeal, and that there was intention to apply for planning permission for a barn to provide adequate storage. However, this appeal did not preclude the appellant from seeking permission for a barn or providing me with a detailed landscaping scheme of their intentions. Moreover, given neither the mitigation nor suggested conditions related to the removal of the lorry bodies and portacabins, I am not persuaded there was an intention for them to be removed.
41. The various buildings and structures have then resulted in a significant spread of development, as well as large areas of engineering works for hardstanding. This is clearly at-odds with the historical layout of the site. Whilst I do not find the historical layout needs to be rigidly adhered to, the developments undertaken appear to have been done in an ad hoc manner, and I was advised during the Hearing that the appellant's landscape architect was not involved in the developments until after they had taken place.
42. I am accordingly not persuaded that the developments, in particular the extent of engineering works and the presence of a significant number of lorry bodies and portacabins, as well as the positioning of the mobile home, respond positively to the landscape context or are intrinsically reflective of other patterns of development. It results in a significant quantum and spread of development. Furthermore, given the site is within the South Downs National Park, it attracts the highest status of protection in relation to landscape and scenic beauty. I am not persuaded these developments conserve or enhance the natural beauty of the National Park for the aforementioned reasons.
43. The appellant has suggested that the mobile home could be moved to a more discrete location, which could be secured by a planning condition or a legal agreement. However, it was confirmed during my site visit that no alternative location had been identified.
44. Whilst longer distance views of the site cannot be attained from the south, given the settlement of Woodingdean, such views can very likely be seen from other vantage points, given the site's elevated level. Given the PRoW along the Drove, there are also short-distance views of the site.
45. I recognise there were structures on the site of poor quality and appearance that have since been demolished and so there may have been some improvement to parts of what may have been considered a previously untidy site. I also accept that there is good access to the site and that horses require an appropriate level of stabling. However, and whether or not the site constitutes previously developed land, this does not offset the harm of the significant additional developments that have since been undertaken. Similarly, planning conditions would not address, amongst other things, the proliferation of structures and spread of development that has taken place.

46. I conclude the development is unacceptably harmful to the character and appearance of the area in contravention of Policies SD1, SD4, SD5, SD6, SD7 and SD24 of the LP. Collectively these policies, amongst other things, seek to conserve and enhance the natural beauty of the National Park, reflect the context and type of landscape, be of sensitive and high-quality design, safeguard key views and relative tranquillity and be a scale of equestrian use compatible with the landscape. For the same reasons the development contravenes the achieving well-designed and beautiful places and conserving and enhancing the natural environment objectives of the Framework.

Other Matters

47. The appellant has suggested that, in the alternative, I grant planning permission for only those items that I feel are appropriate. However, it is not for me to cast around and choose which of the numerous buildings and other developments could potentially be retained in isolation, particularly in light of my above findings, and that in isolation they may serve little practical benefit to the appellant.
48. The Park Authority has raised concerns in respect of the water environment and ecological interests. It was agreed during the Hearing that such matters could be addressed by a suitably worded planning condition. I accordingly have no need to consider these matters further.
49. I appreciate the Park Authority may have previously indicated that a use comprising a horse rearing business and temporary siting of a mobile home might be acceptable in-principle. However, I am not bound by this advice and have determined the appeal on the basis of the evidence placed before me.
50. The Park Authority also raised during the Hearing that the size of the loose boxes may not be adequate for larger horses. This is however not determinative for the purposes of my assessment in light of my above findings.
51. I also appreciate a neighbouring Council has granted a planning permission relating to access to the site. This however has little bearing on my assessment in respect of the developments before me.

Conclusion

52. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the ground (a) appeal should fail.

The ground (f) appeal

53. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
54. However, the appellant does not propose lesser steps, rather, the proposals made relate to matters which are said could be secured by condition or that

parts of the development could be retained, which thus relate to the ground (a) appeal, and which I have considered above.

55. As no other lesser steps are before me, the appeal on ground (f) fails.

The ground (g) appeal

56. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short.

57. A period of 12 months is requested which the Park Authority accepted during the Hearing. It would also give the appellant an opportunity to consider the submission of a revised and comprehensive planning application in an effort to address the planning harms and shortcomings I have identified. This is however a subsequent matter which is entirely for the parties.

58. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

59. 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.

Formal Decision

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

- deleting the words in section 3. i. of the notice and replacing them with the words '*Without planning permission and within the last 10 years, the material change of use of the land to a mixed use comprising a commercial equestrian business use for livery and the breeding of showjumping horses and the placement and residential occupation of one mobile home (the mixed use).*'
- substituting the words '*and bunds.*' for '*sand school, bunds*' in section 3. vii.' of the notice.
- substituting the words '*Cease the mixed use.*' for '*Cease the use of the land for equestrian use, storage and residential occupation.*' in section 5. i. of the notice.
- substituting '*12 months*' as the times for compliance in section 6. of the notice.
- attaching plan '*235.22.20 dated 15.08.2022*' to the notice.
- substituting the '*revised site plan after appeal hearing*' relating to the entirety of the holding, received on 29 October 2024, as the plan to which the notice now relates.

61. 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.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Campion, Planning Agent
Sally-Ann Tinsley, Equine Welfare and Business Management
Trevor Furse, Landscape Architect
Roger Rowell and Leesa Long, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Stella New, Development Management Lead, South Downs National Park
Julia Allen, Rural Practice Chartered Surveyor
Richard Campbell, Senior Enforcement Officer, South Downs National Park

INTERESTED PERSONS:

Paul Gumbrill, Local resident

DOCUMENTS:

1. Financial Statement, October 2024
2. Hard copy of appellant's appendices
3. Updated Statement of Common Ground
4. Land Registry search, October 2024
5. Copy of Business Plan and Financial Forecasts, March 2022
6. Substitute revised site plan