



Appeal Decision

Hearing Held on 12 November 2024

Site visit made on 12 November 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2024

Appeal Ref: APP/M3645/C/24/3347924

Land at Stablefield, Church Road, Whyteleafe, Surrey CR3 0AR

- 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 Hannan Chaudery against an enforcement notice issued by Tandridge District Council.
 - The enforcement notice was issued on 14 June 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the substantial demolition of an outbuilding and subsequent construction of a toilet block; the substantial demolition of two further outbuildings and the subsequent construction of an extension to existing building, including a new roof on that building with associated fenestration alterations, with the subsequent material change of use of the land to a religious/community centre (mixed use of F.1 and F.2 use-class).
 - The requirements of the notice are: i) Cease the use of the land for religious/community centre (mixed use of F.1 and F.2 use-class) purposes; ii) Demolish building 4 located within the blue coloured area as indicated on the plan; iii) Demolish the whole of the extension located within the purple area as indicated on the plan; iv) Revert building 1 back to a stable block and remove the double doors; v) After compliance with steps (ii), (iii) and (iv), remove all subsequent waste arising from compliance with those steps, including all builders materials and equipment that are not directly associated with the maintenance of the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.

The ground (b) and (c) appeals

2. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred as a matter of fact. For the appeal to succeed on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

3. The mixed use enforced against is that of a religious/community centre falling within uses classes F1 (learning and non-residential institutions) and F2 (local community).
4. The appellant contends there has been no F1 use at the site and that it has only been used in a manner consistent with an F2 use for the provision of nature walks and recreation. During the Hearing the Council accepted that it had very little evidence of an F1 use. Longstanding local residents were also not aware of any such usage. Whilst a website pertaining to the site makes reference to the provision of prayer facilities and education, this relates to future aspirations. During my site visit I was also able to observe that the buildings do not currently benefit from any heating, lighting or notable fixtures. The evidence consequently demonstrates on the balance of probabilities that there has not been an F1 use taking place at the site.
5. The appellant then contends that records pertaining to business rate valuations for the site as well as estate agent particulars describe the historic and therefore lawful use of the site to be consistent with a F2 use. However, the business rates merely provide a description of *'stables and premises'*. I do not accept that an inference from the remainder of these records can then be drawn which demonstrates on the balance of probabilities a lawful F2 use. A use would also have to subsist for a continuous period of 10 years to become lawful.
6. Estate agent particulars from when the site was purchased in 2018 then state the *'land has been used for recreational use of horses and as a riding school, we are given to understand for over 50 years...'*. The particulars are however not a sworn statement or first-hand account of the use of the site. There is also a disclaimer on the particulars stating that *'any description or information given should not be relied on as a statement or representation of fact...'*. Even if this is a standard disclaimer, I still afford the particulars very limited weight.
7. Longstanding local residents also advised during the Hearing that there had never been a riding school at the site, and that it was rented from the owner and then used by a small group of friends for their horses. Whilst the evidence from the Hearing was not taken on oath, it is first hand evidence from residents who will certainly have some evidential knowledge of the site. I therefore afford their evidence moderate weight.
8. I therefore do not doubt there has been the keeping or stabling of horses at the site. The appellant has however provided very little evidence to demonstrate on the balance of probabilities that the site was in lawful use as an outdoor riding school or other establishment that would then fall within use class F2, and there is little evidence of a planning permission or certificate of lawfulness relating to the use of the site for F2 purposes.
9. The operational development enforced against has then been described in 3 parts, namely: 1.) the substantial demolition of a building and the subsequent construction of a toilet block (building 4); 2.) the substantial demolition of two further outbuildings (buildings 2 and 3) in order to facilitate the construction of an extension to an existing building (building 1); 3.) a new roof and fenestration alterations to building 1.
10. There is a reasonable body of photographic evidence showing the buildings at the site prior to the works being undertaken. These demonstrate on the

balance of probabilities that building 1 was a large brick-built stable building, building 2 was a timber clad makeshift stable building connected to this, building 3 was a particularly makeshift corrugated building then adjoining or connected to this, and building 4 was a small makeshift corrugated building detached from this group.

11. The appellant contends that the three buildings have not been substantially demolished and no new building or extension has been constructed. It is contended that all the buildings are original, with external repair and maintenance undertaken, as well as internal works which would not amount to development.
12. During my site visit it was not possible to ascertain the full extent of the works undertaken. This was principally because internally the buildings had largely been plastered and floors laid, and externally they were clad in either timber or corrugated metal. It was therefore not possible to meaningfully inspect the actual construction of the buildings to ascertain the extent of original materials and development works carried out. They were ostensibly sealed both internally and externally owing to the works undertaken.
13. The only reasonable conclusion I could draw from my site visit on the balance of probabilities was that the new roof and fenestration alterations to building 1 would amount to repair and maintenance, given no new external openings have been created and there is no dispute that the height or roof form of the building has changed.
14. I am then very cognisant of the fact that the onus is firmly on the appellant to demonstrate their case on the balance of probabilities. It was clear to me during my site visit that substantive works had taken place in respect of the other three buildings. There is however very little evidence in the form of invoices or sworn evidence pertaining to the extent of the works to which I can attach considerable weight in support of the appellant's contention.
15. As a matter of fact and degree the appellant has therefore not discharged the necessary burden of proof to demonstrate there has not been the substantial demolition of the three buildings and subsequent construction of a building and extension. I can therefore only find that development pursuant to s55 of the Act has been undertaken as alleged by the notice.
16. There has then been no planning permission brought to my attention for the operational development enforced against or contention that those works would amount to a form of permitted development.
17. In summary, the appellant has demonstrated on the balance of probabilities that there has not been a breach of planning control as a matter of fact in respect of an F1 use at the site, because this has not taken place, and that the works to building 1 amount to repair and maintenance and thus not development. However, as a matter of fact and degree it has not been demonstrated on the balance of probabilities that the appellant's F2 use of the site is not a breach of planning control and that the works to the other three buildings do not amount to development as has been enforced against.
18. I will therefore correct the enforcement notice accordingly, and so the grounds (b) and (c) appeals only succeed to this extent.

The ground (a) appeal

Main Issues

19. The main issues are:

- whether or not the development is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework);
- the effect of the development on highway safety;
- whether the development is harmful to the character and appearance of the area;
- the effect of the development on ancient woodland and associated biodiversity;
- the effect of the development on neighbouring living conditions; 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

20. The deemed planning application relates to the use of the site for recreational/community uses falling within use class F2 as well as the construction of one building and an extension to an existing building. During the Hearing the appellant asked me to consider a twice monthly use for not more than 15 visitors and 5 cars at any one time for the purposes of an outdoor recreation and community use which would fall within use class F2(b) and F2(c) of the Order.

Whether inappropriate development in the Green Belt

21. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 142 of the Framework states that the Government attaches great importance to Green Belts. The essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development. Paragraph 143 then specifies the five purposes which the Green Belt serves, including to assist in safeguarding the countryside from encroachment.

22. Policy DP10 of the Tandridge Local Plan Part 2, July 2014 (the LP) states that within the Green Belt, planning permission for any inappropriate development which is, by definition, harmful to the Green Belt, will normally be refused. Proposals involving inappropriate development in the Green Belt will only be permitted where very special circumstances exist, to the extent that other considerations clearly outweigh any potential harm to the Green Belt by reason of inappropriateness and any other harm. This is accordingly broadly consistent with the Framework.

23. Paragraph 155 e) of the Framework states that material changes in the use of land for outdoor sport or recreation do not constitute inappropriate development in the Green Belt, provided they preserve its openness. I am satisfied that the very modest twice monthly use described to me during the Hearing would in itself preserve openness.
24. However, the development before me also relates to the construction of a building and an extension to an existing building. Paragraph 154 of the Framework is then concerned with such development in the Green Belt.
25. I however have very limited evidence that the operational development represents the provision of an appropriate facility in connection with the very modest outdoor recreational use. I appreciate the appellant has sought to retain the footprint of buildings at the site, but this does little to demonstrate that they represent appropriate provision for the use now before me.
26. Moreover, the construction of the building and extension have resulted in a substantively new and conglomerated group of bulky and conspicuous buildings that consequently both visually and spatially fail to preserve openness. Building 3, in particular, would also appear to be higher based on the photographic evidence before me. Whilst I appreciate there were buildings here previously, the deemed planning application relates to the construction of a new building and extension as the ground (b) and (c) appeals have failed in this regard, and so I afford the presence of those previous makeshift buildings only limited weight. The associated facilities and development undertaken in connection with the F2 use therefore does not preserve openness and conflicts with the purposes of including land within the Green Belt. Paragraph 154 b) of the Framework is therefore contravened.
27. The extension to the building has then resulted in a very large building. Whilst it may be regarded as like-for-like in size with the previous buildings, this is disputed by the Council, as well as whether they were internally connected or simply adjoining. In any event, the extension then enforced against, and which remains before me, is of a significant size, and therefore results in a disproportionate addition over and above the size of the original brick building. Paragraph 154 c) of the Framework is therefore contravened.
28. The buildings that have then been constructed may be regarded as replacements. However, they are not in the same use as the ones that went before, because the buildings are for F2 purposes which represents a material change of use. Paragraph 154 d) of the Framework is therefore contravened.
29. Given the operational development has had a greater impact on the openness of the Green Belt, paragraph 154 g) of the Framework is also contravened.
30. I therefore conclude the operational development enforced against is inappropriate development that is, by definition, harmful and contrary to national policy to protect the Green Belt. This is a planning harm to which I attach substantial weight.

Highway safety

31. The site is accessed via a reasonably narrow straight stretch of road that is rural in character. There are no footways or street lighting. There is a single-width vehicular access point into the site, and so it is only possible for one vehicle to either enter or exit at a time. Whilst the Council advises that it has

- previously been in receipt of a travel assessment report, the appellant accepted that this is not before me.
32. I could see during my site visit that the current layout of the site would only afford 2 vehicles to park and then exit towards the highway in a forward gear, as opposed blocking in other vehicles and then having to reverse onto the highway, which thus represents an unacceptable hazard to other road users.
33. It was put to me during the Hearing that the existing sand school could be used for the parking of vehicles. I could see during my site visit that this area was now heavily vegetated and, in any event, would have originally been a surface of loose sand for horses. I am therefore not persuaded that it represents a suitable surface for the parking of vehicles.
34. It was also put to me that planning conditions could secure suitable access arrangements in terms of the provision of visibility splays and the potential to increase the width of the access. However, no professional evidence is before me to demonstrate what would be appropriate or feasible. I also noted during my site visit the close proximity of very mature trees, which contribute to the rural character of the area.
35. Moreover, the deemed planning application does not relate to access alterations. I am therefore concerned that there is both inadequate evidence and that such matters go beyond the scope of the appeal before me.
36. The issue of parking provision and highway safety is thus simply unresolved. This was further emphasised when it was put to me during my site visit that there was a second vehicular access into the site. Whilst there then might have been some evidence of a historic opening with gate posts, this access had clearly been closed-off for a considerable period of time, and therefore its status, as well as suitability for safe highway access, is unknown.
37. In the absence of professional evidence, I am not persuaded that such matters can or should be left to planning conditions, as it otherwise appears highly likely that road safety would be compromised by the vehicle numbers proposed entering or exiting the site as well as the absence of suitable parking provision.
38. I conclude the use is unacceptably harmful to highway safety and contravenes Policies CSP 12 of the Tandridge District Core Strategy, October 2008 (the CS) and DP7 of the LP which seek, amongst other things, for development to have regard to parking standards and adopted highway design standards. There is a planning harm to which I attach considerable weight.

Character and appearance

39. The site is located outside of a settlement boundary and within rural surroundings. It presents as fields in a countryside setting along this part of Church Road.
40. The previous equestrian use of the site was a rural and low-key one. The use put to me would also be a low-key one. However, it would result in the need for an additional area of hardstanding, given my findings in respect of the unsuitability of the sand school, and involve the presence of parked vehicles. In the absence of a suitable scheme to the contrary, I find this would be at-odds with the otherwise rural character of the site.

41. The appearance of the building and extension are then unresolved. I appreciate the intention to mimic what went previously, but despite being advised during the Hearing that they were in-keeping, I was later advised during my site visit that it had not been the intention to retain the use of corrugation, or at least not in the form I observed. The use of corrugation as well as the building detached from the group of buildings, in particular, represent poor design and accordingly do not protect the countryside. Even though the previous equestrian buildings were makeshift in parts, based on the photographic evidence before me there has been very little improvement, and the current affixing of the corrugation and its relationship with the roof is particularly incongruous.
42. Moreover, the buildings are of considerable collective size. Whilst I appreciate the appellant has sought to retain the footprint of buildings at the site, albeit this is contested, the use now put to me is a very modest one. The size of the buildings would therefore appear to be disproportionate to the F2 use, which thus result in unnecessary bulk and visual intrusion.
43. I conclude the development is unacceptably harmful to the character and appearance of the area and contravenes Policies CSP 18 and CSP 21 of the CS and DP7 of the LP. These policies, amongst other things, for development to respect the character, setting and local context, protect the character of the countryside for its own sake and integrate successfully with its surroundings. For the same reasons it contravenes the achieving well-designed and beautiful places objectives of the Framework. This is a planning harm to which I attach considerable weight.

Ancient woodland

44. A small part of the site, some distance from the entrance and buildings, is designated ancient woodland with its associated biodiversity interests and natural habitat. During the Hearing the parties agreed that a suitably worded planning condition could address any potential harms, and I have no reason to disagree. On this basis I conclude the use would accord with Policies CSP 17 of the CS and DP19 of the LP and the conserving and enhancing the natural environment objectives of the Framework. These policies, amongst other things, seek to protect biodiversity. The absence of this planning harm attracts neutral weight.

Living conditions

45. Given the very modest intensity of use put to me during the Hearing, which again could be controlled by suitably worded planning conditions, I am satisfied there would not be significant harm arising to the living conditions of neighbouring occupiers in terms of noise and other disturbances. On this basis I conclude the use would accord with Policies CSP 18 of the CS and DP7 of the LP which require, amongst other things, for development to not significantly harm the amenities of occupiers of neighbouring properties. The absence of this planning harm attracts neutral weight.

Other considerations

46. The appellant also represents a charity and there is an agreement in place for the site to be used by the charity until July 2028. There are accordingly laudable aims associated with this to which I afford moderate weight.

47. The appellant contends there is a fallback position arising from the use of permitted development rights. However, the ground (b) and (c) appeals have largely failed and therefore a material change of use and operational development has arisen for which there is then very limited evidence that a permitted development fallback could arise.

Green Belt balance

48. The use of the site for a very modest outdoor recreational/community use does not amount to inappropriate development in the Green Belt. This would attract neutral weight. There would then be no harm to ancient woodland or the living conditions of neighbouring occupiers, subject to the imposition of suitably worded planning conditions, and which then also attracts neutral weight.
49. However, the building and extension do amount to inappropriate development, which attracts substantial weight. Moreover, there would be unacceptable harm to highway safety and the character and appearance of the area, given there are a number of unresolved matters that either go beyond the scope of the deemed planning application or which I am not satisfied can or should be left to planning conditions. These harms each attract considerable weight. There are not then other considerations to outweigh these harms and so the very special circumstances necessary to justify the development do not, therefore, exist.

Conclusion

50. For these reasons and having regard to all other relevant matters raised, I conclude that the ground (a) appeal should fail.

The ground (f) appeal

51. The purpose of the enforcement notice is to remedy the breach of planning control. 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 alternative steps.
52. There is little evidence of a planning permission or certificate of lawfulness pertaining to a F2 use and the ground (c) appeal has consequently failed. Moreover, the corrected notice only requires the cessation of the use class enforced against and would not therefore be excessive.
53. It is then not excessive to require the demolition of the building and extension that has been correctly enforced against and for which the other grounds of appeal have failed.
54. Given my findings in respect of building 1, under the ground (c) appeal, it would however be excessive to require works to be undertaken to this building. It also goes beyond the scope of this notice to require its express reversion to a stable block.
55. The appeal on ground (f) therefore succeeds to this extent.

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 6 months was sought. The parties agreed during the Hearing a period of 3 months to cease the use and a period of 6 months in respect of the remaining requirements. However, in light of my above findings, a period of 6 months for all the requirements 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 in respect of the very modest use now envisaged. 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 appeals should not succeed. I shall accordingly 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 in their entirety and replacing them with the words '*Without planning permission, the substantial demolition of an outbuilding and subsequent construction of a toilet block; the substantial demolition of two further outbuildings and the subsequent construction of an extension to an existing building; the material change of use of the land to a recreational/community use falling within Use Class F2 of the Use Classes Order 1987.*'
- substituting '*6 months*' as the time for compliance in section 5.
- deleting the words in section 5. i) in their entirety and replacing them with the words '*Cease the use of the Land for purposes falling within Use Class F2.*'
- deleting the words in section 5. iv) in their entirety and renumbering 5. V) accordingly.

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:

Richard Evans, Agent
Hannan Chaudery, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ryno Van Der Hoven, Principal Planning Enforcement Officer

INTERESTED PARTIES:

Nicky Hodgetts, Local resident
Trudy Miles, Local resident
Pauline Sinclair, Local resident
Deano Cleine, Local resident

DOCUMENTS:

1. Map of ancient woodland
2. List of suggested conditions