



Appeal Decision

Hearing held on 26 November 2024

Site visit made on 26 November 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2025

Appeal Ref: APP/N1025/C/23/3314848

Twinkle Toes, Wilne Road, Sawley, Derbyshire NG10 3AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Rachel Lipson against an enforcement notice issued by Erewash Borough Council.
 - The notice was issued on 30 November 2022.
 - The breach of planning control as alleged in the notice is Without planning permission the unauthorised material change of use of the land from an equestrian use to a mixed use, comprising of the operation of an equestrian enterprise and the siting of a motor home and wooden lodge on the land for residential purposes. The unauthorised storage of domestic items and a boat on the land in connection with the unauthorised residential use of the land.
 - The requirements of the notice are to cease the unauthorised mixed use of the land comprising of the operation of an equestrian enterprise and the use of the land for residential purposes, and to secure the removal of the unauthorised motor home, wooden lodge, boat and the storage of domestic items.
 - 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) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

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

- i) The deletion of 'Twinkle Toes' at section 2 of the notice (The land to which this notice relates) and their substitution with the words 'Riverside Farm'.
- ii) The deletion of all wording at section 3 (The breach of planning control alleged) and the substitution of the following:
Without planning permission:
 - i) *The erection of a wooden lodge dwellinghouse; and*
 - ii) *the material change of use of the land to a mixed use, comprised of residential use, agriculture, the keeping of horses and the operation of a 'pony party' enterprise.*
- iii) The deletion of all wording at section 5 of the notice (What you are required to do) and its replacement with the following:

- i) *Remove the wooden lodge dwellinghouse and any associated domestic items from the land; and*
 - ii) *Cease the use of the land for the mixed use comprised of residential use, agriculture, the keeping of horses and the operation of a 'pony party' enterprise.*
 - iv) The substitution of 12 months in place of 6 months as the time for compliance at section 6 of the notice.
2. Subject to those changes, 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.

Preliminary Matter

3. On 12 December 2024, after the hearing had taken place, the National Planning Policy Framework (The Framework) was updated. I sought the views of both main parties regarding the revised document and have had regard to the comments received in determining the appeal.

Background

4. The appeal site is located within an area of countryside, designated as Green Belt, next to the built-up area of Sawley. The site is located close to the River Trent and is split in two by a substantial embankment, which is part of the flood defences for the river. Most of the site is grazing land. However, a small part of the site has a more built-up character, with a wooden stable, wooden lodge and various smaller structures. The site is accessed from Wilne Road and there is a loose-surfaced parking/circulation area.
5. The appellant keeps a range of animals, including horses, goats, donkeys and a sheep. She holds 'pony parties', where children are able to interact with the animals and sometimes ride the ponies. I understand that this generates a net income of about £15,000 a year. The appellant advises that the pony parties are confined to the area around the stables.

The Enforcement Notice

6. The appeal on ground (d) raises certain matters regarding the enforcement notice and I raised some other matters as well. Although the appellant raises the question of the planning unit under ground (d), it amounts to a general attack on the allegation, and it is more convenient to address it here, together with other concerns relating to the notice. This allows me to consider the remaining ground (d) arguments against the corrected allegation. I also address matters relating to the requirements of the notice here.
7. The appellant advised that the site address should be 'Riverside Farm', rather than 'Twinkle Toes'. Both parties were content that I could correct this without causing injustice.
8. The allegation includes 'The unauthorised storage of domestic items and a boat on the land in connection with the unauthorised residential use of the land'. It is clear from the wording of this that the Council regarded the storage of these items as something ancillary to the residential use rather than a separate, primary use. Thus, this sentence can be removed from the allegation, since such ancillary use would be addressed by the principle allegation.

9. I was advised by the appellant at the hearing that the motorhome¹ was only occupied up until when the lodge was built and that it was only stored on the site when the notice was served. The Council did not dispute that claim and I have no reason to doubt it. Thus, the reference to the siting of the motorhome for residential purposes can be removed from the notice. It is not clear that the storage of the motorhome on the land would have been a primary use of the land and so reference to such a storage use would not be appropriate.
10. The lodge is a large, multi-room structure, raised up off the ground and with a raised decking area to the front. It is made of interlocking wooden sections with a profiled sheet metal roof. The appellant advised that it was constructed on the site, rather than being brought to the site as a completed structure. It clearly could not meet the definition of a caravan² due to its size and method of construction, and both parties regard it as a building, a view I share. It is clear that building operations took place on the site to construct the lodge.
11. However, the allegation in the notice concerns the material change of use of the land comprising, among other things, the siting of a wooden lodge. There is no allegation of operational development. Thus, the allegation in the notice does not fully capture the development that has actually taken place at the site. At the hearing the parties agreed that the notice should have referred to operational development in respect of the lodge.
12. There is disagreement as to the change of use that has taken place. The starting point for considering the question of the use of land is to identify the correct 'planning unit'. The appellant's view is that the lodge creates a new planning unit amounting to the footprint of the lodge itself, and perhaps also including the car parking area adjacent to it. The remainder of the site is said to be a mixed-use comprising agriculture and equestrian uses. I have not, however, been provided with a plan showing the relevant areas. The Council argues that the whole site is in a mixed use comprising commercial equestrian and residential uses.

The planning unit

13. The leading case relating to planning units is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, in which three broad categories of distinction were suggested:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - A single planning unit that is in a composite use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
14. As described in *Burdle*, the starting point for defining the planning unit is the unit of occupation. The appellant owns all of the land targeted by the

¹ The appellant says it was actually an articulated caravan trailer, but I have used the terminology from the notice

² As defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968

enforcement notice. The land is occupied by the appellant in that she lives there and operates her equestrian business and farming activities from the land. Thus, I regard it as a single unit of occupation. There is also a link between the residential use and other uses, in that the appellant says that she needs to live at the site to care for the animals. Regardless of whether there is a need sufficient to justify the dwelling, I agree that the uses are linked and cannot be said to be 'unrelated'.

15. There are distinct areas within the appellants' land holding, in that the buildings, access and parking area are concentrated in a fairly small part of the site, with the rest mainly used for grazing. The pony parties also take place close to the buildings. However, although the area containing the buildings is fenced off from the grazing land, items such as a large gas tank and a large container for storing rainwater from the barn roof are located outside the fenced-off area. Thus, it is not possible to fully disentangle the different parts of the site.
16. Viewed as a whole, and as a matter of fact and degree, it appears to me that the whole site is a single planning unit. It is not possible to say that physically separate areas of the land are occupied for different and unrelated purposes. Although the appellant has described a separate planning unit for the lodge, I have no plan showing a precise boundary, and it is not realistic to suppose that no activity associated with the residential use will take place outside the footprint of the lodge. It is clear, for example, that car parking associated with the residential occupation of the property takes place next to the lodge.

The corrected allegation

17. Given my conclusion that this is a single planning unit, what use should the notice have alleged? It appears to me that there are a number of uses taking place at the site:
- The residential use
 - Agriculture
 - The keeping of horses/ponies and their use for a 'pony party' enterprise
18. It is not entirely clear, on the evidence before me, how the site was used prior to the breach of planning control and the extent of any agricultural use. However, it is not essential to specify the previous use in the enforcement notice and so reference to it can be removed.
19. Drawing the above together, it appears to me that an appropriate allegation would have been:
- Without planning permission:*
- i) *The erection of a wooden lodge dwellinghouse; and*
 - ii) *the material change of use of the land to a mixed use, comprised of residential use, agriculture, the keeping of horses and the operation of a 'pony party' enterprise.*
20. In accordance with s176(1)(a) of the Act I am able to correct any defect, error or misdescription in the enforcement notice, provided doing so does not cause

injustice to the appellant or the local planning authority. Would the substitution of the allegation set out above cause injustice in this instance?

21. Although the operational development of building the lodge will be added to the allegation, this really amounts to more accurately describing what is already in the notice. The appellant understood what the Council objected to and had prepared the various grounds of appeal accordingly. The requirement to remove the lodge leaves no genuine doubt as to the development targeted by the notice. As discussed in relation to ground (d), there are no practical implications arising from the shorter immunity period that applies to the operational development in this case.
22. The changes to the mixed use alleged, including the addition of agriculture, do not fundamentally change the disputed matters or the grounds of appeal and the removal of the reference to ancillary items does not change the primary uses targeted by the notice. Consequently, there is no injustice to the appellant or the Council in making these changes. At the hearing, the Council did not dispute the claim that the motorhome was not being used as accommodation when the notice was issued, and the removal of reference to it is therefore a necessary step which will not cause injustice to the Council, since it was not something the notice could legitimately target.
23. For these reasons, I am able to correct the allegation as outlined above without causing injustice to any party.

The requirements of the notice

24. The requirements of a notice generally reflect the allegation. The requirements to remedy a revised alleged breach of planning control, as outlined above, could be:
 - i) *Remove the wooden lodge dwellinghouse and any associated domestic items from the land; and*
 - ii) *Cease the use of the land for the mixed use comprised of residential use, agriculture, the keeping of horses and the operation of a 'pony party' enterprise.*
25. Such a requirement would go no further than the requirements in the notice as issued – both would require the removal of the lodge and domestic items and the cessation of the mixed use.
26. It is important to note that the requirement is to cease the unauthorised mixed use. That does not take away any lawful use rights. Section 57(4) of the Act provides that '*Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out*'.
27. So, for example, the inclusion of 'agriculture' in the amended requirement would not affect any right to revert to a lawful agricultural use, but rather requires the mixed use, of which agriculture is a single element, to cease. Consequently, no injustice would result from the reference to agriculture in the revised requirement, which would simply more accurately reflect the breach which has actually occurred. The same principle applies to any other element that would be lawful individually.

28. As I have explained, I will remove reference to the motorhome and boat from the allegation and, consequently, it is not necessary to include any requirement relating to them. I am satisfied that the removal of those requirements leaves the essence of the notice intact and does not cause injustice to the Council. While the appellant argues that the reference to 'domestic items' is vague and should be removed, it seems to me to be a reasonable term to capture general domestic items that may be kept inside or around the lodge and should be removed as part and parcel of the cessation of the residential use.
29. For these reasons, I will vary the requirements of the notice, as outlined above.

Ground (d)

30. Ground (d) appeals are made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control alleged. The burden of proof is on the appellant and the standard of proof is the balance of probability. It is common ground that the lodge and residential use is a breach of planning control and that it was open to the Council to take enforcement action against them at the point when the notice was issued. That is not changed by my finding that the lodge is a building. Thus, the appeal on ground (d) relates only to the other elements of the allegation. It might be said that some of the appellant's arguments fall more naturally into grounds set out at s174(2)(b) or (c)³, but the arguments are clear and can be dealt with here.
31. The appellant argues that the agriculture and equestrian uses are lawful because a) they are authorised by planning permissions, and b) they have acquired immunity from enforcement action due to the period of time over which they have continued. In support of those arguments, I am referred to the planning permissions from 2002 and 2006 relating to the stable⁴ and the numerous letters written by people who have been customers of the appellant's business over a number of years. However, both arguments are predicated on the view that the lodge occupies its own planning unit, a view I have rejected. Given my finding that there is a single mixed use taking place on a single planning unit, the question that arises is whether the Council was still able to take enforcement action against that mixed use on the date the notice was issued, rather than whether individual elements of it were lawful at any time.
32. In accordance with s171B of the Act, the relevant period for taking enforcement action in respect of the use of the land is 10 years. Thus, the question to be determined is whether the use commenced and continued for a 10-year period before the notice was issued on 30 November 2022. To succeed, the appellant must demonstrate this, on the balance of probability.
33. However, the residential use of the site did not commence until 2018 at the earliest when, I am told, the motorhome was brought to the site, subsequently to be replaced by the lodge. The residential use is obvious because of the lodge (and previously the motorhome) and there will also be a range of comings and goings associated with that use. Consequently, and regardless of whether the change to the commercial equestrian use is a material one, the introduction of the residential use caused a clear change in the character of the use of the

³ Grounds (b) and (c) are that the matters stated in the notice have not occurred or do not constitute a breach of planning control

⁴ Refs ERE/1101/0035 and ERE/0706/0029

land. Thus, a material change of use occurred when the residential use started in 2018. It is only at that point that the current mixed use commenced (residential use being one of the primary uses that make up the mixed use).

34. From the above, it is clear that the use alleged in the notice (as corrected) cannot have acquired immunity since, when the notice was issued, it had been carried out for less than the 10 years that would be necessary. Even if, as the appellant argues, the commercial equestrian use acquired lawfulness at any point prior to that, that cannot make the current mixed use lawful. It is clear from the decision of the High Court in the case of *Beach v SSETR & Runnymede BC [2001] WHC 381 (Admin)* that a new mixed use can bring about a material change in the use of the land, even if some (or most) elements of that mixed use had been in place before. Here, regardless of the lawfulness of previous elements of the current mixed use of the site, the residential element is a significant change that has resulted in a material change in the use of the land.
35. For these reasons I conclude that it was not too late to take enforcement action when the notice was issued. Accordingly, the appeal on ground (d) fails.

Ground (a)

The scope of the appeal on ground (a)

36. The deemed planning application arising from the appeal on ground (a) is derived from the allegation in the enforcement notice, as corrected. Thus, planning permission is sought for:
- i) The erection of a wooden lodge dwellinghouse; and*
 - ii) the material change of use of the land to a mixed use, comprised of residential use, agriculture, the keeping of horses and the operation of a 'pony party' enterprise.*

Main issues

37. The main issues are:

- Whether the development is inappropriate in the Green Belt, having regard to the National Planning Policy Framework and any relevant development plan policies.
- The effect of the development on the openness of the Green Belt and its purposes.
- The effect of the development on the character and appearance of the Sawley Conservation Area and the wider rural landscape.
- Whether the development complies with local and national policies relating to flood risk.
- Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, including any need for the development and the personal circumstances of those living at the site, so as to amount to the very special circumstances required to justify the development.

Whether the development is inappropriate in the Green Belt

38. The Framework advises at Paragraph 154 that development in the Green Belt is inappropriate unless one of the specified exceptions applies. None of the exceptions listed apply to the lodge that has been built at the site. Although reference is made to Paragraph 154(g) of the Framework, no detailed case has been made out to show that it should be regarded as the infilling or redevelopment of previously developed land.
39. Certain forms of development are also not inappropriate in Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). I conclude below that the development harms openness and conflicts with one of the purposes of Green Belt. Consequently, the development cannot be 'not inappropriate' on that basis. It is not claimed that the site should be regarded as 'grey belt', and so it has not been shown that the development is 'not inappropriate' on the basis of paragraph 155 of the Framework.
40. For these reasons, it is clear that the development is inappropriate within the Green Belt. The Framework advises at Paragraph 153 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy GB1 of the Erewash Local Plan follows the same general approach.

Green Belt openness and purposes

41. Openness is one of the essential characteristics of Green Belt. The development includes the construction of a wooden lodge. This is an entirely new building and thus erodes the openness of the site and the Green Belt to an extent. It is, however, a single storey building, located next to a large stable building on a mainly well-screened site. Consequently, its effect on the openness of the Green Belt is a modest one.
42. The purposes of the Green Belt, as set out at Paragraph 143 of the Framework, include to assist in safeguarding the countryside from encroachment. Here, the introduction of a residential use and building on this rural site has resulted in a small element of encroachment of the countryside, contrary to that purpose.
43. The other elements of the mixed use rely on pre-existing structures and do not affect the openness or purposes of the Green Belt.

Character, appearance and the conservation area

44. The site lies within a predominantly flat, open, rural landscape, albeit close to the residential area of Sawley. It lies within the Nottinghamshire, Derbyshire and Yorkshire Coalfield National Character Area and within the Landscape Character Type known as the Lowland Village Farmlands as identified in the Derbyshire Landscape Character Assessment.
45. Although there are a few lodges near to the river, not far from the appeal site, that does not alter the fundamentally open character of the landscape. The introduction of a lodge and residential use at the appeal site is contrary to the prevailing character of the area. Many views of the site are limited by dense hedgerow, including views from the road. Nevertheless, the lodge is in clear view from the public footpath which runs past the site from Wilne Road.

Consequently, despite the screening and the location of the lodge next to the stables, there is some, limited harm to the character of the landscape, contrary to the aims for landscape character within Local Plan Policy EV16.

46. The site lies within the Sawley Conservation Area. Section 72 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The Framework requires that, when considering the impact of a proposed development on the significance of a designated heritage asset (such as a conservation area), great weight should be given to the asset's conservation. Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification.
47. The conservation area is focused on the historic core of Sawley and includes large areas of farmland, which contribute to its significance as an historic rural settlement. The appeal site is a part of that. The introduction of a residential use and lodge building harms the rural character and appearance of the site and, consequently, erodes the significance of the conservation area, albeit the effect is limited by screening and the siting of the lodge next to the existing stable building. The simple, wooden construction of the lodge, while not typical of dwellings in the conservation area, does not look out of place next to the stable and does not add to the harm.
48. The stable building was the subject of a planning permission granted in 2006 and the notice does not cite any buildings constructed in connection with the commercial pony party use. I do not have evidence to show that the traffic and visits associated with the use are such as to have a significant effect on the character or appearance of the conservation area.
49. The site is located close to the Grade II listed Bothe Hall, but the scale and location of the lodge is such that the setting of the listed building has been preserved.
50. I conclude overall that the lodge and residential use have caused a small degree of harm to the character and appearance of the site, the landscape within which it lies and the conservation area. This gives rise to conflict with Policy 10 of the Core Strategy and Policy EV16 of the Local Plan, which seek to protect local identity and landscape character. No harm arises from the other elements of the mixed use.
51. The Framework requires that, where (as in this case) a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I consider the benefits of the development later.

Flood Risk

52. The site lies close to the River Trent. The Environment Agency (EA) advises that it is categorised as Flood Zone 3a. A flood defence in the form of an embankment runs through the site. The lodge is located on the 'dry' side of the embankment, which is maintained by the EA. Buildings used for dwelling houses are categorised as 'more vulnerable' for the purpose of flood risk, within Annex 3 of the Framework. Land and buildings used for agriculture are 'less vulnerable', as are leisure uses.

53. Paragraph 176 and Footnote 63 of the Framework establish that a site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. Thus, the need for an FRA is triggered by both the lodge and the change of use. However, I have not been provided with a flood risk assessment (FRA) prepared by an appropriate specialist, and there is therefore conflict with the Framework in this respect.
54. The EA has carried out modelling to consider the residual risk that would arise from a breach of the flood defences at the site. It advises that, during a 1% annual exceedance probability event (including a 30% allowance for climate change), a breach in the defences would result in flooding to a depth of 2.63m with a velocity of 0.84 meters per second. This gives a flood hazard rating of 'danger for all'.
55. It is, of course, to be hoped that such a breach, which might well affect local housing, is unlikely to occur. Nevertheless, the EA expresses concern that, during a sudden breach of the flood defences, the occupants of the lodge would have no access to safe refuge. The lodge is raised up on blocks, but nowhere near to the extent that would be necessary to avoid the risk posed by flooding in such an emergency scenario. I have no technical evidence from the appellant to contradict the EA's assessment or any FRA to show how a flood situation could be safely managed. The proximity of the lodge to the flood defences would appear to place it at particular risk in the event of a failure.
56. Furthermore, the Framework and Planning Practice Guidance (PPG) set out a sequential test, in order to take account of flood risk in planning decisions. The Framework advises that 'The aim of the sequential test is to 'steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding'.
57. It adds 'The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary.....would be located on an area that would be at risk of flooding from any source...'.
58. The sequential test does not apply to the change of use but, given the location of the site in Flood Zone 3a and the lack of an FRA, it applies to the lodge. However, there has not been any consideration of alternative sites for the lodge. The appellant's view is that a dwelling is needed in this particular location, within sight and sound of the animals, in connection with the equestrian and farming uses. However, I consider later the need for the lodge on this site and conclude that it is not needed on that basis. Consequently, I am not persuaded that the requirements of the sequential test have been met, since alternative sites should have been considered.
59. I appreciate that the enforcement notice did not raise the issue of flood risk. Nevertheless, it has been raised at appeal, and I must consider the matter with regard to the development plan and relevant national policy. For the reasons set out above I conclude that the sequential test is failed, there is no FRA, as required by national policy, and it has not been demonstrated that the development is safe. Accordingly, there is conflict with the aims for managing flood risk within Policy 1 of the Core Strategy and Policy DC7 of the Local Plan.

Other considerations

60. A range of matters have been raised in support of the development.
61. First, I am told that the pony party enterprise provides a service that is highly valued by its users. There can be little doubt regarding this. The proposal is supported by letters from customers, a number of whom attended the hearing to explain the benefits of the enterprise in person. I heard in particular that the services provided by the appellant and the interaction with the animals was important to the wellbeing of many young people and people facing particular difficulties in life, helping with things such as social interaction and confidence. It was impressed upon me how important this was to the people concerned, and I have no reason to doubt the sincerity of that evidence. These benefits are clear and I attach significant weight to them accordingly.
62. Second, the business provides an income for the appellant. It will also make a modest contribution to the local economy. This is a minor benefit of the development.
63. Third, the lodge provides a home for 2 people. National policy emphasises the need for new housing. That said, since it has not been shown that the lodge is safe from the risk of flooding, I attach only limited weight to this as a benefit in terms of its contribution to the supply of housing.
64. Fourth, it is argued that a dwelling is needed on this site in connection with the business and the care of the animals. The appellant describes a lengthy range of tasks which make up her daily routine at the site. Some of the animals are rare breeds and have required particular care. Also relevant are the personal/health circumstances the appellant describes. These are not queried by the Council, and I have no reason to doubt them. I am told that this reinforces the need to have a dwelling on the site and would make it impractical for the appellant to carry on her business if living in a remote location. I am also told the appellant prefers to live on the site for security reasons.
65. However, it is common enough for horses to be kept in fields and paddocks without a permanent on-site presence. I have not been provided with any detailed assessment from an appropriate specialist to show that there is a need for an on-site presence day and night in connection with agriculture or the keeping of horses in this instance. While I understand the appellant's preference to be on the site at all times, I am not persuaded, on the evidence before me, that the scale or nature of the enterprise, involving only a modest number of animals, or any animal welfare requirements, are such as to justify a permanent dwelling.
66. Even if there is a need for water, facilities and shelter for a worker at the site, that would not indicate a need for a dwelling there. The Council has suggested that such provision might be made by an appropriate alteration/addition to the stable building, and there is nothing before me to show that such an approach would be impractical. There is no assessment of the availability of housing in the locality, but the site is close to a residential area, and I have no evidence to show that housing is unusually hard to come by in the area.

67. I sympathise regarding the personal/health circumstances described by the appellant. However, I am not persuaded that this shows a need associated with the enterprise such as to justify a dwelling.
68. The appellant and her partner would lose their current home as a result of the enforcement notice. This is an important consideration and would also represent a serious interference with their right to respect for private and family life and the home, as outlined in Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. This is a qualified right, and interference may be justified if it is necessary and proportionate. I return to this later.

Planning balance and conclusion

69. I attach substantial weight to the harm to the Green Belt. There is additional, limited harm to the character and appearance of the area and the conservation area. There is a risk of flooding and clear conflict with relevant local and national policy on flood risk.
70. Having considered all matters raised in support of the development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist, and the development is at odds with the Green Belt policy set out in the Framework. There is also conflict with Policies GB1 of the Erewash Local Plan, and Policy 3 of the Core Strategy, which largely follow the approach to development in the Green Belt set out in the Framework.
71. While the notice would result in the appellant and her partner losing their current home, I cannot see that the aim of protecting the Green Belt or following policies relating to flood risk could be achieved by any other means which would cause less interference with their rights under Article 8, as outlined above. In my judgement, and bearing in mind also my decision in relation to ground (g), dismissal on ground (a) is a necessary and proportionate response, and would not result in any violation of those rights.
72. It might be said that the agriculture and commercial pony party element should be considered separately from the lodge/residential use. Section 177(1) of the Act enables me to consider granting planning permission in respect of any part of the matters stated in the notice. The harm I have found in respect of the Green Belt and the character and appearance of the area and conservation area have arisen from the lodge and residential use, rather than the other elements of the mixed use. However, my concerns regarding flood risk relate to the development as a whole, and the lack of an FRA would still give rise to clear conflict with the Framework, even if the residential element were removed.
73. For these reasons, the appeal on ground (a) fails.

Ground (g)

74. The appellant requests that the time period be extended to 18 months for all the required steps in order to allow time to look for an alternative site and relocate the animals. I am mindful that the lodge provides a home for 2 people, and time will be needed to look for alternative accommodation. Moreover,

there may be a need to seek an alternative site for the business to operate from. I have also taken account of the appellant's personal/health circumstances.

75. Weighed against that is the desirability of remedying the breach of planning control without undue delay. I do not have specific evidence to show that the 18 months the appellant seeks is justified.
76. Considering the case as a whole, 12 months would strike an appropriate balance in my judgement, and I will vary the notice accordingly. To that extent, the appeal on ground (g) succeeds.

Conclusion

77. For the reasons given above, I shall uphold the enforcement notice with corrections and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Church – Planning Consultant

Rachel Lipson – Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andy Ward – Planning Officer, Erewash Borough Council

INTERESTED PARTIES:

Janet Shreeves

Thalia Porter Shreeves

Wendy Brown

Emma Bradley

Christopher Freeman

Tracy Morgan

Luke Simpson

Wendy Grice

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Email from Sarah Dale dated 25 November 2024
2. Address list – hearing notification letter
3. Riding Establishment Licence dated 22 August 2024
4. Plan for planning permission ref ERE/0706/0029
5. Appellant's comments on revised NPPF
6. Council's comments on revised NPPF