



Appeal Decision

Site visit made on 29 January 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Appeal Ref: APP/R1038/C/23/3327195

Land east side of Gashouse Lane, Eckington S20 5DF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Hartwood Estates Limited against an enforcement notice issued by North East Derbyshire District Council.
 - The notice was issued on 13 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission, a Material Change of Use of the land from agriculture to the keeping of horses (equestrian). Herein after referred to as 'the equestrian use'.
 - The requirements of the notice are to:
 - a) Cease the equestrian use of the Land.
 - b) Unless authorised by Planning Permission 10/00824/FL (a copy of which is attached to this notice), remove from the Land all buildings and structures, including, but not limited to, all field shelters and buildings used for the keeping of horses. Remove from the Land all other equestrian related paraphernalia including but not limited to, water troughs, water collection tanks, feed troughs, paddock fencing and tape and gates.
 - c) Restore the Land to its condition prior to the breach taking place, including removing any areas of hardstanding or materials used in the construction of field access tracks, unless authorised by Planning Permission 10/00824/FL.
 - The periods for compliance with the requirements are:
 - a) Two months.
 - b) Three months.
 - c) Fourth 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. The appeal is allowed and the enforcement notice is quashed.

Ground (d)

2. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
3. The appellant states that the keeping of horses has occurred continuously for over 10 years at the land. To succeed in this appeal, the appellant will need to show, on the balance of probabilities, that the material change of use occurred on or before 13 July 2013 and that it continued without significant interruption for at least 10 years thereafter.
4. The appeal site comprises a substantial area which is bound by fencing and mature hedgerows. The site slopes down, with field shelters generally located in

the northern part of the site. Although there is delineation within the appeal site, plots are generally delineated by wooden posts with electrified tape fencing.

5. I have been provided with a statutory declaration signed by an individual who states they have managed the site since 2011, which includes managing tenants needs, collecting annual water bills, filling any vacancies and ensuring that plots are kept clean and tidy. Various tenancy agreements have been provided, which is consistent with the statutory declarations provided. From the evidence, it seems the appeal site comprises a single unit, which is occupied and controlled by a single land owner, with one primary use, which is the keeping of horses. As such, in my judgement the appeal site comprises a single planning unit.
6. The Act 1990 defines agriculture as including 'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly'.
7. As established in *Belmont Farm v MHLG* [1962] 13 P&CR 417, the use of the land for the grazing of horses would be an agricultural use, whereas the exercising and keeping of horses, which involves activities other than just putting the horses out to graze would not fall within the definition of agriculture. Where land is being used both for grazing and for other purposes, the question will be of the predominant purpose for which it is being used, to be determined as a matter of common sense¹.
8. The appellant states that planning permission was granted in 2010, reference 10/00824/FL, for the retention of dry store for keeping of horses. The red line boundary for the application was drawn around the appeal site. Condition 2 attached to the permission states that the timber store hereby approved shall be used solely for agricultural storage and the shelter and/or housing of animals of the owner of the land contained within the application site and those of the immediate family only and shall not be used for any other purpose unless otherwise agreed in writing by the Local Planning Authority.
9. The Design and Access Statement (DAS) submitted in support of the application states that 'The planning application seeks full permission for the erection of a timber dry store building with a small hardstanding area, the application also seeks for the land to be officially used for the grazing of horses.' It states that the field has been used for the grazing of horses for over thirty years.
10. The Planning Assessment contained within the Officer Report stated 'The store is located to the west edge of a field currently used for the keeping of horses and has been for the past 30 years.' It also advises, 'there is already an existing equestrian use on the land and adjacent fields under the applicant's ownership.' While the appellant has not advanced their appeal on the basis that planning permission has been granted for the material change of use, this points towards the site having been used for the keeping of horses.

¹ *Sykes v Secretary of State for the Environment and Another* [1981] 42 P.&C.R. 19 and *Fox v First Secretary of State* [2003] 4 P.L.R 26

11. Tenancy agreements dated 2008 also support the suggestion that the site was used for the keeping of horses prior to submission of the application and include a clause regarding insurance, which states 'riding is at your own risk. You are responsible for the tack.' This points towards the land having been used for the riding of horses.
12. The appellant states that the horses have been given supplementary hard feed from a bucket / feeder and any grazing was secondary. In support of their case, the appellant has provided a series of invoices for hay and/or haylage between 2010 and 2022 and a number of invoices for pony nuts and Molichop between 2018 and 2023. The appellant has also provided a number of photographs which show horses eating hay within the appeal site, including photographs dated 2009, 2010 and 2014. Horses can also be seen eating from buckets in photographs dated 2009, 2010 and 2011.
13. A statutory declaration provided by a current tenant advises that they have kept horses at the since 2008. The tenant advises that the horses had regular supplemental feeds, which is consistent with the photographic evidence provided. The appellant has also provided a number of photographs which show horses being ridden, including the use of jumps. In some cases, it is clear that the photographs are taken from within the appeal site. In others, it is less clear. Nevertheless, this photographic evidence is consistent with the suggestion that the land has been used for the exercising of horses and not simply grazing.
14. The Council has provided Google Streetview images from April 2012, May 2012, July 2013, November 2020 and May 2021. The April 2012 image is stated to show 1-3 horses grazing the field, with some evidence of subdivision and 'one additional field shelter' located at the northern end of the site. This is consistent with the use of the appeal site for the keeping of horses. Furthermore, there is no evidence to show that other animals have grazed the land, and other animals, such as sheep, are not evident within the photographs provided by the appellant or the Council.
15. An interruption in the ten year period can take the form of some cessation in activity or change to the character of the use or size of the planning unit. The Council suggests the character of the land has changed since April 2015, with the increased subdivision of the land, fencing radiating out from a central access point and field shelters.
16. It is also suggested that the evidence shows increased vehicle movements to the land and between different paddock parcels and that the land appears unable to support the increasing numbers of horses. The Council has drawn my attention to a number of Google Earth images, which, it suggests, show additional water/feed troughs, rotation of ground vehicle parking and material storage (though it is not suggested this would constitute a storage use in its own right).
17. Within an aerial image dated 28 September 2011, structures are visible in the north western corner of the site and around half way along the northern edge of the site. Items, which the appellant suggests are jumps, are visible in part of the site. There appears to be some delineation of the site, with fencing and rotation evident in the north eastern section of the appeal site and within an area along the western boundary. Although the quality of the 2013 aerial photograph is more limited, the extent of sub-division and structures within the site appears unchanged.

18. At some point between the 2013 aerial photograph being taken and the 2015 photograph being taken, the number of field shelters appears to have increased, as well as the extent of internal fencing and the extent of rotation of the ground. However, while the use of internal fencing appears to have increased, the site is still for the keeping of horses. In my view, the character of the use is unlikely to have changed significantly: The land has been let out to different tenants for the keeping of horses on the land, which have been fed with supplemental feed and have been exercised in in the field.
19. While the number of tenants and therefore the number of horses kept within the site has fluctuated over time, from the evidence provided by the manager of the site, as well as details of tenant water charges, it seems the fluctuation is unlikely to have been so significant as to result in a change to the character of the use. For example, 10 horses are detailed within the 'tenant water charges' document between 15 December 2010 and 18 January 2012. A similar number are detailed for the period 3 July 2014 and 19 December 2015. The appellant advises there are now 15 horses located at the site.
20. Vehicle movements to and within the site are also likely to have fluctuated, however, the evidence does not show this to be to the extent that the character of the use has changed.
21. Although built development within the site has increased over time, in my view the Council could have taken enforcement action against the use at any point during a 10 year period. Thus, I find, on the balance of probabilities, that the material change of use occurred before 13 July 2013 and continued without significant interruption for at least 10 years thereafter. The appeal under ground (d) therefore succeeds.

Conclusion

22. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.
23. In these circumstances, the appeal on grounds (a) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR