



Appeal Decision

Site visit made on 16 April 2024

by Mrs H M Higenbottam BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2025

Appeal Ref: APP/P1805/C/23/3327300

Holt Farm, Naylor's Barn, Holt Lane, Romsley, Halesowen B62 0ND and land adjoining Naylor's Barn Holt Lane, Romsley, Halesowen

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Lee Carless¹ against an enforcement notice issued by Bromsgrove District Council.
 - The notice was issued on 3 July 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the carrying out of operational development on the Land comprising:
 - (i) the construction of a stable block ("the stabling") (located in the approximate position shown by the green block at Appendix 2);
 - (ii) the installation of hardstanding ("the hardstanding") (located in the approximate position shown by the yellow block at Appendix 2); and
 - (iii) the installation of hardstanding and gates ("the access works") (located in the approximate position shown by the orange block at Appendix 2).
 - The requirements of the notice are:
 - a) Permanently remove all components of the Stabling (including but not limited to the structure and any lighting and utilities) from the Land;
 - b) Permanently remove all components of the Hardstanding from the Land;
 - c) Permanently remove the Access Works (which for the avoidance of doubt includes the vehicular and pedestrian gates) from the Land; and
 - d) Restore the Land to its state and appearance immediately before the breaches took place.
 - The periods for compliance with the requirements with steps a, b and c is 12 weeks and the period for compliance with step d is 14 weeks.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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 by the addition of Plan A attached to this decision and varied by the deletion of the words 'yellow block at Appendix 2' at paragraph 3 (ii) and the substitution thereto of the words 'blue block on Plan A'.
2. Subject to this correction and variation the appeal is allowed, and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the construction of a stable block; the installation of hardstanding (located in the approximate position shown by the blue block on Plan A); and the installation of hardstanding and gates (located in the approximate position shown by the orange block at Appendix 2) at land as shown on the plan attached to the notice subject to the following condition:

¹ The appeal form is in the names of Mr and Ms Lee and Joanne Carless and Holme. However, the appeal was validated and started in the name of Mr Lee Carless.

- 1) The hardstanding and gates located in the approximate position shown by the orange block at Appendix 2 hereby permitted shall be demolished and removed and all materials resulting from the demolition shall be removed within 1 month of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 5 months of the date of this decision an attenuation scheme to minimise run off leaving the site from the access hardstanding shall have been submitted for the written approval of the local planning authority and the attenuation scheme shall include a timetable for its implementation.
 - ii) If within 10 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

3. The revised National Planning Policy Framework (revised Framework) was published on 12 December 2024. Both parties were consulted on the revised Framework, and I shall take the comments received into account in this decision.
4. The appellant has put forward arguments that amount to a hidden ground (c) and a hidden ground (d). The Council has been asked for comments on these matters. I will deal with them within the decision.

The Notice

5. The area of hardstanding identified on the plan by the yellow block is larger than the area that exists on site. The Council accepts that the area of hardstanding to the east of the stables is not dimensioned and that the plan could have been clearer. The appellant has provided a clearer plan of this area of hardstanding, with the area as on site. I will therefore correct the Notice by substituting a revised plan for the hardstanding identifying a smaller area. This would cause no injustice to either party.

Whether the erection of the gates was a breach of planning control

6. The appellant argues in relation to the gates that they do not constitute a breach of planning control. The onus of proof is on the appellant to show that there has not

been a breach of planning control. In this case the appellant submits that the gates are permitted development as they are not adjacent to the highway.

7. Class A, Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall, or other means of enclosure subject to certain limitations. Paragraph A.1. states that such development is not permitted by Class A if the height of the enclosure adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed one metre above ground level.
8. The appellant's gates are over 1m in height and less than 2m in height and are positioned across the access point on higher ground than Holt Lane, a highway used by vehicular traffic. The question to be determined is whether the gates are adjacent to the highway. There is no definition of 'adjacent' within the GPDO, but it is defined in the dictionary as meaning 'being near or close to, next to, or contiguous.' 'Contiguous' is defined as 'sharing a boundary or touching each other physically or continuous.' However, case law shows that the meaning of 'adjacent' in the context of the GPDO does not equate to 'contiguous' or 'abutting.' The assessment of what constitutes 'adjacent' must therefore amount to a question of fact and degree.
9. The thrust of case law is that means of enclosure can be set back from a highway but still be 'adjacent' to it, provided the enclosure is clearly to define the boundary of the property concerned from the highway. In *Simmonds*² it was held that a fence higher than one metre and less than one metre from a footway to a highway did abut the highway. In this case the entrance gates are to define the property boundary with the highway. I therefore conclude, as a matter of fact and degree, that the gates are adjacent to the highway. As such they do not benefit from the planning permission within the GPDO and hence constitute a breach of planning control.

That in relation to parts of the hardstanding at the date when the Notice was issued no enforcement action could be taken.

10. The burden of proof is on the appellant to demonstrate that, on the balance of probabilities, that the hardstanding was substantially complete four years before the Notice was issued. The Notice was issued on 3 July 2023 and so the material date is 3 July 2019.
11. The appellant states that much of the hardstanding within the locality of the stables has been laid for a period in excess of 4 years and have provided an aerial photograph dating from 2019. A street view image from April 2019 shows a hard surface had been laid for the access. The hard surfacing appears to be of crushed stone on earth.
12. The Council have provided further photographs, and I saw on site that the entrance hard surfacing is not crushed stone and has been finished in a bonded finish.
13. While I accept that crushed stone was clearly visible in the aerial and other photographs on the site in 2019, what exists today is something materially different. Therefore, either the crushed stone was not the substantially completed hard

² *Simmonds v SSE and Rochdale MDC* [1981]

surface or further operational development took place after April 2019. Either way the entrance hard surfacing has not been demonstrated on the balance of probability to have been substantially completed more than four years before the Notice was issued. As such, it is not immune from enforcement action through the passage of time.

Appeal on ground (a)

Background

14. The land outlined in red (comprising two parcels) on the plan attached to the Notice includes what appears to be all the land within the ownership of the appellant. This includes a residential property, Naylor's Barn and paddock areas along with a manège. The identification of the land for the purposes of the Notice is not determinative of the planning unit.
15. The site is located in the West Midlands Green Belt and within flood zone 1. It is in a rural location with agricultural land and businesses in the locality. The appellant's ownership includes not only the area the subject of the Notice, but land to the north and east which comprises grazing land and directly to the north a manège. To the south is the appellant's residential property, Naylor's Barn and a part of a building previously utilised as stables (the old stables) which are on land that is at a lower level than the appeal site and manège and grazing. There is a gate from Naylor's Barn to the appeal site.
16. The appeal stables are located about 13.5m north west of the old stables on higher land, with a separate vehicular access via the gates the subject of the Notice.
17. The manège (part retrospective) was granted planning permission in 2015 (reference 15/0640). A planning application for the erection of a stable block (part retrospective) was refused in October 2022 (reference 22/00998/FUL). A subsequent application for retention of the stable block and hardstanding was refused (reference 22/01633/FUL) in April 2023.
18. The barn adjoining the southeastern boundary of Naylor's Barn has been converted to residential use and the appellant states that engineering operations to change the land levels in the garden has resulted in the old stables flooding. The watermarks on the internal walls of the old stables were pointed out to me at my site visit. The appellant has also submitted a letter from their vet highlighting conditions affecting horses from poor ventilation.
19. The appellant has considered whether works to the old stables such as building an internal wall and drainage system with a further laying of concrete to the floor could be undertaken to address the flooding issue. However, the appellant concluded that such works would make the old stables too small and unfit for their purpose. The Council consider that the appellant has failed to sufficiently demonstrate that the old stables are beyond repair.
20. The appellant has put forward that the old stables would be removed if planning permission were granted for the retention of the stables the subject of this appeal. The old stables relate more closely with the residential property Naylor's Barn, which is more likely than not in a separate planning unit. With the appeal site, grazing and manège forming a separate planning unit. It is not clear whether the

old stables were part of the original permission for Naylor's Barn or are subject to any restrictions on use.

21. I note that the appellant has in previous planning applications referred to sorting out the flooding issues in the old stable building and converting it back to a garage. This seems to imply that it was originally garaging for Naylor's Barn which supports the old stables being within a planning unit for Naylor's Barn. The grazing and manège are physically removed/separate to the residential complex and old stables.

Main Issues

22. The main issues in this case are

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework), any relevant development plan policies and taking account of the effect of the proposed development on openness and the purposes of including land within the Green Belt.
- The effect of the development on the character and appearance of the area.
- The effect of the hardstanding at the access on surface water drainage.
- If the development is inappropriate development in the Green Belt whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether the development is inappropriate development in the Green Belt

23. The development comprises the following elements:

- The stable building and hardstanding (as identified on the revised plan attached to this decision)
- Gates and hardstanding (coloured orange)

24. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. The PPG³ reflects the findings of the Courts in *Turner*⁴ and *Samuel Smith*⁵ which held that perceptions of openness can be visual as well as spatial, and that matters relevant to openness in any particular case are a matter of planning judgement, rather than a matter of law.

25. Other than types of development listed as exceptions within the Framework, development within the Green Belt is generally regarded as "inappropriate development", which is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

³ Planning Practice Guidance, para.013, Ref: 64-013-20250225, February 2025

⁴ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

⁵ *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3e

26. Exceptions to inappropriate development, set out at paragraph 154 b and h of the Framework, include the provision of facilities, including buildings⁶, for outdoor sport and outdoor recreation and engineering operations. For these exceptions, a qualifying proviso is that the development must also preserve the openness of the Green Belt and not conflict with the purposes of including land within the Green Belt. The most relevant purpose in the current case is to assist in safeguarding the countryside from encroachment.
27. Further exceptions to inappropriate development are set out in paragraph 155 of the Framework, whether homes, commercial and other development should also not be regarded as inappropriate where it would utilise grey belt subject to specific criteria.
28. Policy BDP4.4 of the Bromsgrove District Plan 2011-2030 (adopted January 2017) (BDP) is consistent with the Framework and supports facilities for outdoor sport and outdoor recreation which preserve openness and do not conflict with the purposes of including land within the Green Belt.
29. Policy BDP15 supports rural renaissance and deals with all rural areas, including the Green Belt. This policy seeks to encourage, amongst other things, proposals for new buildings in association with equine development such as stables and field shelters, where new buildings are kept to the minimum necessary and consist of essential facilities and which preserve the openness of the Green Belt. This policy is also consistent with the Framework.
30. The appellant's land to the north of their residence, Naylors Barn, is used for the grazing of horses and the exercising of horses within the manège and as such the use of the land includes use for outdoor sport or recreation for the purposes of the Framework paragraph 154. The appellant owns three equines.
31. The development comprises a small single storey stable building with three stables and is stated to meet the needs of the appellant's three equines. The gates and associated hardstanding provide security and access to vehicles to the stable block area. The stable building, hardstanding adjacent to the stables, the gates and associated hardstanding all support the outdoor sport or recreation use. These in my view comprise small scale development commensurate with the extent of the equine use of the land. I am therefore satisfied that the development as a whole comprises appropriate facilities for the purposes of the Framework (paragraph 154).
32. In my view, paragraph 154, allows such buildings, which includes the gates, and engineering operations of the hard standings. Any new building or structure is likely to result in some degree of reduction in openness whether that is spatially and visually, or just spatially. Paragraph 154 qualifying requirements cannot act to exclude all listed exceptions and thus there is an inherent acceptance within the guidance that some effect on openness is permitted.
33. The stables are close to Naylors Barn and adjacent converted barn residential units and well related to the manège and grazing land in used to exercise and graze the horses. Furthermore, they are the minimum necessary to accommodate the three

⁶ The definition of building at section 336 of the 1990 Act includes any structure or erection and any part of a building as so defined but does not include plant or machinery comprised in a building.

equines owned by the appellant and are to my mind providing essential facilities in the light of the flooding issues associated with the old stables.

34. The nearby stable block at Willow Barn Holt Lane was granted planning permission under reference 13/0015 was considered to be acceptable in views from the Public Rights of Way and the current stable block has a similar visibility to that block. The appeal stables have a similar effect on views.
35. In my view, the appeal stables are seen against the complex of buildings which include Naylor's Barn and are an adjunct to those buildings and against the existing embankment of the manège behind it and thick hedge and tall tree line. They appear as part of the cluster of buildings and relate well to the use of the land for equestrian grazing and the manège. I therefore find that the stables are not overly prominent in the landscape and do not encroach into the countryside as they sit between the residential complex of buildings and the manège and thus do not harm the purposes of the Green Belt.
36. I am satisfied that the stable building and gates constitute not inappropriate facilities for the purposes of paragraph 154 and support the appellant's equestrian use of the land. They also comply with Policies BDP4 and BDP15.
37. Furthermore, paragraph 151 of the Framework states local planning authorities should plan positively to enhance the beneficial use of Green Belts such as looking for opportunities to provide access and provide opportunities for outdoor sport and recreation. Taking this in the round, it seems to me, that the qualifying requirements of paragraph 154 seek to limit the effect to the minimum necessary for the outside sport and recreation use to function.

Character and appearance

38. While the stables can be viewed from the Public Rights of Way that of itself does not make the building prominent. It is seen against a back drop of buildings and vegetation within a countryside setting. It is single storey and low key in design. As such I consider it is in keeping with its countryside location and are not prominent in the landscape.
39. The gates are solid and the site beyond cannot be seen through them. This aids in providing security to the equestrian site. Moreover, it is not uncommon in the immediate area for solid gates with hardsurfacing, similar to those the subject of the appeal and as such they are compatible with the character and appearance of the area.
40. The hard surfacing within the site provides a functional surface for vehicles and horses and has little visual effect outside the immediate site, due to the gates, and distance to the footpath. As such, I consider it does not harm the character or appearance of the area.

Surface Water Drainage

41. The reasons for service of the Notice states the hardstanding at the access by reason of insufficient surface water attenuation, fails to attenuate surface water on site and exacerbates flood risk on site and within the surrounding area.
42. I note that in the officer's report on the erection of new stable block (part retrospective) (reference 22/00998/FUL) it is stated a land drain/soakaway has

been installed within the field and a slot drain is evident on site. It refers to Plan 2816-003 Rev 2 indicating the location of the soakaway. Finally, it records that the Lead Local Flood Authority has not highlighted any concerns regarding flooding. This planning application was refused but there was no reason for refusal relating to surface water drainage. I am satisfied that in relation to the hardstanding adjacent to the stable building and the stable building itself, that surface water drainage has been satisfactorily dealt with.

43. In the comments on the refused retrospective planning application (reference 22/01633/FUL) reference is made to a drainage plan for the access with a linear channel to collect run off and discharge via an inspection chamber to the existing ditch. The North Worcestershire Water Management (NWWM) reported response was that this did not minimise the run off leaving the site. The Council noted in the report that if the suggestions of NWWM in respect of attenuation were taken forward then the runoff from the access could be resolved. I am satisfied that subject to the imposition of a condition requiring the submission of a drainage attenuation scheme and its implementation the development would not conflict with Policy BDP23 on water management.

Other matters

44. Both parties have referred to other stable developments. These include appeal decisions where stables were allowed and dismissed. In my view, each of these decisions was determined on their own particular facts and circumstances. I have therefore dealt with this appeal on its own merits.
45. The Supplementary Planning Document entitled High Quality Design (SPD) sets out sizes for stable buildings and states that these should be a minimum. Where these minimum sizes are not met it will be for the applicant to provide reasonable justification. The stables comply with elements of the SPD. The SPD size is 3.65m x 3.65m. However, the size of one stable is 3.4m by 4.72m and two stables are 3.4m by 3.4m. The smaller stables as erected meet the British Horse Society minimum recommendations for Large Ponies 13.2 hands high plus of a minimum of 3.05m x 3.65m. The larger stable exceeds the SPD but provides an acceptable sized rectangular rather than square stable which is not overly generous. I am satisfied that the stable building provides suitable stable sizes for the equines that use them. I note that the height of the stable is marginally higher than set out in the SPD by 0.08m which is of no significance, and I consider this to be acceptable.
46. While the appellant has suggested that the old stables are removed, I have found the development as built is not inappropriate and therefore it is not necessary or justified to require the removal of the old stables.

Conditions

47. In the light of the comments by NWWM to an earlier retrospective application I am satisfied that an attenuation scheme to minimise run off leaving the site from the access hardstanding would mitigate the drainage issue. I will therefore impose a condition requiring the submission of such a scheme and its implementation.

Conclusion

48. I have found, subject to the imposition of a condition, that the development would comply with the stated policies and the development plan as a whole. For the

reasons given above, I conclude that the appeal succeeds on ground (a). The enforcement notice shall be corrected, varied, and quashed and planning permission shall be granted for the development.

Hilda Higenbottam

INSPECTOR



Planning Inspectorate

Plan A

This is the plan referred to in my decision dated: 25 March 2025

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at: Naylors Barn, Holt Lane, Romsley, Halesowen B62 0Nd and land adjoining Naylors Barn Holt Lane, Romsley, Halesowen

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Scale: nts

