Planning Inspectorate

Appeal Decision

Hearing held on 28 May 2025

Site visit made on 28 May 2025

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 20th June 2025

Appeal Ref: APP/G2245/C/24/3352309
Land West of Hever Road, Hever, Sevenoaks, Kent, TN8 7NP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Thomas McCarthy against an enforcement notice issued by Sevenoaks District Council.
- The notice was issued on 23 August 2024.
- The breach of planning control as alleged in the notice is the material change of the use of the land from equestrian and recreational land, to use as a residential caravan/mobile home site; Continued siting of mobile homes beyond the 28 days Caravan Licence period; Erection of a residential building; Engineering operations, including the creation of areas of hardstanding and access Roads; Installation of a security camera.
- The requirements of the notice are 1) Remove the unauthorised residential building and attached decking marked in red & A on the attached plan; 2) Cease the use of the land as a residential caravan/mobile home site; 3) The mobile homes marked as 1 & 2 on the attached plan shall be removed from the site; 4) No mobile home shall remain on land in excess of 28 days at any time; 5) Remove the areas hardstanding and access roads marked in purple on the attached plan; 6) Remove the security camera marked X on the attached plan; 7) Removal of any resultant materials from the land and return the land to its former grassed condition.
- The periods for compliance with the requirements is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) 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.

Decision

1. It is directed that the enforcement notice is corrected by:the deletion of the first two allegations "*the material change of the use of the land from equestrian and recreational land, to use as a residential caravan/mobile home site; Continued siting of mobile homes beyond the 28 days Caravan Licence period*" and the replacement of the words "*access roads*" with "*an access road*". Also the deletion from the requirements of Nos 2, 3, 4 and 5 namely: "*2) Cease the use of the land as a residential caravan/mobile home site; 3) The mobile homes marked as 1 & 2 on the attached plan shall be removed from the site; 4) No mobile home shall remain on land in excess of 28 days at any time; 5) Remove the areas of hardstanding and access roads marked in purple on the attached plan*"; and their replacement with "*remove the area of hardstanding and access road shown in purple leading to the building marked A on the attached plan*".

2. Subject to the corrections the appeal is allowed, the enforcement notice is quashed and 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 erection of a residential building, hardstanding and access road, and security camera as shown on the plan

attached to the notice and subject to the conditions in the attached Schedule of Conditions.

Preliminary Matters

3. At the Hearing several issues with the notice were discussed. The first allegation regarding the material change of use of the land needed to be corrected to allege a change of use to a mixed use, across the whole site, of equestrian, recreational and stationing of caravans for residential purposes. The second allegation needed to be removed as contravening the Site Certificate (not licence) was not a planning matter. Both parties were happy this did not cause injustice, in particular as the appellant was then able to run a ground (b) appeal that the change of use had not happened as at the time the notice was issued no residential uses had taken place. However, third parties who attended the Hearing disputed this and wished to provide their own evidence. I agreed that this would need to be tested under oath and so an inquiry was needed.

4. It further transpired that the appellant had subsequently used the mobile homes to house builders erecting two horse isolation units and for visitors to the stud farm. They envisaged a future use as accommodation ancillary (their term) to the stud farm for visitors to the stud who also might want to take advantage of the many tourist options in the locality. This was all evidence provided at the Hearing.

5. Given that to pursue either options for the mobile homes would leave the parties at a disadvantage, the appellant unable to deal with the third party evidence the Council unable to deal with the new proposed uses, which in any event would be beyond the scope of the notice, I agreed to remove the first two allegations from the notice. The Council could then issue a fresh notice solely to deal with the mobile homes.

6. This left the appeal to deal with the erection of a dwelling, engineering works and the security camera, to be dealt with by grounds (a) and (g). Had the material change of use been retained a new plan would have been required to encompass all the land in the appellant's ownership which comprised a single planning unit. However, as the notice now only refers to operations, and the location of those works are clear on the plan a substitute is not required.

The Dwelling

7. It was common ground that the stud farm requires a 24 hour on-site presence. This had been determined at a previous appeal[1]. The appellant also had a Lawful Development Certificate[2] granted for a staff lodge. They argued the new dwelling was a replacement as the old lodge was too small and had become uninhabitable. It was, however, a new dwelling within the green belt and so requires planning permission.

8. The appellant had two arguments as to why it was not inappropriate development in the green belt. Firstly that it was a replacement dwelling and secondly that it was grey belt land. The first issue turned on the size of the original dwelling. Paragraph 154(d) of the NPPF allows for replacement dwellings as long as they are not "materially larger" than the original. The appellant argued the original

[1] APP/G2245/W/22/3298185 issued 19 June 2023
[2] 22/03520/LDCEX granted 15 September 2023

dwelling was 101sqm and the new one is 132sqm, only a 31% increase. The Council argued the original dwelling was only 59sqm, so it was a 124% increase.

9. This discrepancy arose because of the uncertainty as to what had actually been granted in the LDC. The plan attached to the certificate showed, in small scale, a 'U' shaped stable block with one end longer than the other. This extended end was the dwelling, which originally had been a separate unit but, long before the LDC was applied for, had allegedly been extended into the first loose-box. The extended dwelling was 101sqm. The Council pointed out the plans that accompanied the application for the LDC showed the original, separate dwelling, which was only 59sqm.

10. On site, it was difficult to be certain what the current state was as the area between the end of the original dwelling and the stables was covered in firmly nailed down plastic sheeting and access to the dwelling was not available[3]. However, looking round the back of the stables I was able to see through a loose plank that the back of the separate dwelling appeared still to be intact and there was nothing between it and the beginning of the stable block. It did not seem, therefore, to have been extended. That and the uncertainty as to what the plan attached to the certificate actually showed cast doubt on the appellant's measurement of 101sqm. However, whatever the truth of the matter I consider that a 31% increase is, in any event, materially larger than the original, so the new dwelling does not fall within 154(d).

11. On the question of grey belt, the Council accepted the land did not 'strongly contribute' to purposes (a), (b) or (d) of the five purposes of including land in the green belt outlined in paragraph 143 of the NPPF. No footnote 7 policies are involved. It was agreed there was a demonstrable need for the type of development proposed, the green belt as a whole in the District would not be fundamentally undermined and the golden rules did not apply. The sole objection remaining was the sustainability of the location. However, after discussion, it was clear that given the need for the dwelling was on this specific site, the question of sustainability was effectively side-stepped. Therefore, the development is on grey belt land and so is not inappropriate development.

12. The Council further opposed the dwelling on policy grounds. They argued that originally it had been next to (or attached) to the stable block which was well hidden by trees from views across the site from the road or from a footpath that ran across the far corner of the fields. The new dwelling was in a much more prominent position, opposite the entrance to the stud farm, and surrounded by open land that fell away to the north, leaving it exposed and isolated. This was contrary to policies EN1(a) and (b) and LO8.

13. LO8 is part of the Core Strategy and requires that development should conserve the countryside and local landscape character. EN1 is part of the development management plan. 1(a) requires development to respond to the scale and site coverage of the area and 1(b) that it should respect topography and character of the site and surrounding area.

14. The appellant argued that the main criticism was the new dwelling harmed the openness of the countryside and this had already been covered in the green belt

[3] The relevant witnesses had been unable to attend the Hearing due to either being held up in Spain at the last minute or were in hospital.

argument. As it was deemed not to be inappropriate development then there could be no further openness argument. I agree that openness has been determined by the finding of it not being inappropriate development. But there is a considerable difference between the understanding of the meaning of the word 'openness' in the context of the green belt where it is used in a specific way and when considering general countryside policies. Quite clearly the new dwelling sits in an exposed and isolated position. Although now largely hidden from the road by solid gates and hedges, it would be more visible in the winter when the leaves are of the trees and it is clearly visible from the footpath. From close up, the new road, flanked by lighting, leading to a large car park area directly in front of the dwelling makes it further stand out.

15. On the other hand, I accept that the new dwelling needed to be separated from the stables due to noise and flies, so there would not seem to be any where else that would have been a strongly preferential location. It still needs to be by the access and the stable block. It seems to me therefore the main problem with the location is the urbanisation of the access. The rather fussy landscaping, with ornamental shrubs along with large areas of gravel and hardstanding do not help.

16. Bringing this all together, I consider the new dwelling is contrary to EN1 and LO8, but that these objections can be overcome by a landscaping condition and a more sensitive design of the car parking, lighting and screening hedges.

The Engineering works

17. The notice, as amended, refers to "*engineering operations, including the creation of areas of hardstanding and an access road*". It was pointed out on site the rear patio area, which also would seem to have resulted from engineering works, was created after the notice was issued. The road to the mobile homes is also now beyond the scope of the notice as that is part and parcel of the material change of use allegation. This leaves the access road to the new dwelling and car parking area in front. I have dealt with those above, and they can be reconfigured to reduce their impact as part of the planning permission for the new dwelling.

The Security Camera

18. There are 2 security cameras at the property. A low level one on the wall by the gate, but the one targeted by the notice stands inside the site overlooking the entrance and is fixed to a pole. There was some concern from local residents that it showed a view of their front gardens. The appellant's view was that this would be illegal under the GDPR legislation, designed to protect privacy, but in any event was not the case. I saw the camera working on the site visit. It automatically pans round, roughly 180 degrees, but as I saw it points into the site and over the access from the side. Although it can be seen from across the road, poking above the hedge, what can be seen is the back of the camera and I was reassured that at no point does it show anything of the properties along Hever Road. The appellant was happy to show any concerned residents the footage if that would assuage their concerns.

19. In my view the post and camera fall within exemption 154(h)(ii) as an engineering operation that preserves openness and so is not inappropriate development, and I will grant planning permission for the camera.

Conditions

20. Various conditions were discussed, clearly the occupation of the dwelling needs to be restricted to persons working at the stud farm. The Council also asked for certain permitted development rights to be removed. Given the prominent location of the dwelling and my criticisms of the existing hardstanding and urbanising effects then this is reasonable, as is a landscaping and lighting condition to reduce the amount of lighting on the approach to the dwelling (I am excluding any consideration of the lighting on the access road to the mobile homes), reduce the amount of hardstanding and provide native trees and shrubs to better settle the dwelling into the landscape.

21. The existing dwelling also needs to be demolished. The appellant has an application with the Council to redevelop the stables to provide an American barn style set-up so the whole stable area would be demolished and rebuilt. However, that does not yet have planning permission so a separate condition is required to ensure 2 dwellings are not retained on the site, especially as one is seriously sub-standard. I shall allow up to 6 months to provide the opportunity for the works of removal and redevelopment to take place together.

Conclusion

22. I shall correct the notice as discussed above by removing the first two allegations and amending the requirements as necessary. Subject to those corrections I shall quash the notice and grant planning permission for the remaining development (the dwelling, access road and security camera) subject to conditions in the annex attached.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jonathan Clay – counsel

John Eastcott BA(Hons) Dip TP MRTPI

Jim Godwyn

FOR THE LOCAL PLANNING AUTHORITY:

Sean Mitchell

Ryan Grant

INTERESTED PARTIES:

Cllr Nick Roberts

Bridget Harris

Michael Lynch

DOCUMENTS

Notes on the Agenda provided by the appellant

Appellant's additional Hearing statement

Council's response to the above.

Schedule of Conditions

1) The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly employed or last employed at Hever Stud Farm, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

2) Unless within 3 months of the date of this decision and notwithstanding the grant of planning permission, a scheme for (1) the hard and soft landscaping of the dwelling hereby permitted, such a scheme to include proposals to reduce the amount of hardstanding, replace the current planting with more appropriate native species to better assimilate the dwelling into its surroundings and a scheme for implementation of the approved details and their management for the first 5 years; and (2) a proposal for reduced lighting on the approach to and around the dwelling hereby approved, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the occupation of the dwelling shall cease and all equipment and materials brought onto the land for the purposes of such occupation shall be removed until such time as a scheme is approved and implemented.

   If no scheme in accordance with this condition is approved within 8 months of the date of this decision, the occupation of the dwelling shall cease and all equipment and materials brought onto the land for the purposes of such occupation shall be removed until such time as a scheme approved by the local planning authority is implemented.

   Upon implementation of the approved lighting proposal specified in this condition, that proposal shall thereafter be retained and no further lighting is permitted.

   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.

3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, AA, E and F of Part 1 of Schedule 2 to the Order shall be undertaken.

4) Within 6 months of the date of this decision the original dwelling as shown on the plans forming part of the LDC 22/03520/LDCEX granted 15 September 2023 (whether joined to the stables or not) shall be demolished and all materials resulting from the demolition shall be removed from the site.