The Planning Inspectorate

Appeal Decision

Hearing held on 2 July 2013
Site visit made on 2 July 2013

by R O Evans BA(Hons) Solicitor MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 August 2013

Appeal Ref: APP/B1550/C/13/2193751
Land adjacent to Wendy, Rayleigh Downs Road, Rayleigh, SS6 7LP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Henry Duffort against an enforcement notice issued by Rochford District Council on 25 January 2013.
- The Council's reference is EN/12/0062/COU-B.
- The breach of planning control as alleged in the notice is:
    i) The erection of a building, comprised mainly of stables and tack room (shown in the approximate location 'A' on the attached plan) and a corrugated metal fence (shown in the approximate position 'B' on the same plan)
    ii) The use of the site for the keeping of horses, parking of motor vehicles and trailers, and the storage of building materials.
- The requirements of the notice are to:

1) Permanently and completely remove from the site the stables and tack room building (shown "A" on the attached plan) including all associated framework.
2) Remove from the site all building materials and rubble arising from compliance with requirement (1) above
3) Cease the equestrian, parking and storage uses of the site and permanently remove all animals and any associated items including but not limited to, foodstuffs, hay, straw, animal bedding and all motor vehicles including dumper trucks as well as equipment such as carriages, carts, trailers, traps, containers and water tanks, and all building materials and packaging including wooden pallets. (You may keep on the land any equipment or vehicles you may use solely for the purpose of agriculture).
4) Remove from the site the fence constructed along the southern boundary and shown in the approximate position 'B' on the attached plan.

- The period for compliance with the requirements is 8 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Decision

1. The enforcement notice is corrected by replacing the first sentence of paragraph 4 with: "It appears to the Council that the breach of planning control identified at paragraph 3(i) above has occurred within the last 4 years and that identified at paragraph 3(ii) above has occurred within the last 10 years."

2. The appeal is allowed insofar as it relates to the erection of a building and the use of the site for the keeping of horses. Planning permission is thus granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for i. the erection of a building, comprised mainly of

stables and tack room (shown in the approximate location 'A' on the plan attached to the enforcement notice) and ii. the use of the site for the keeping of horses, subject to the following conditions:

1) Unless within 4 months of the date of this decision schemes for the internal layout, landscaping and boundary treatments, and disposal of waste, are submitted in writing to the local planning authority for approval, and unless the approved schemes are all implemented within 4 months of the local planning authority's approval (or within 4 months of their approval on appeal or such other time period as the scheme or schemes may allow), the use of the site shall cease until such time as all the schemes are approved and implemented. All disposal of waste shall take place in accordance with the approved scheme.

2) The use hereby permitted shall be restricted to the keeping of horses and ponies for domestic purposes only and not for gymkhanas, horse shows or similar events nor for any livery or commercial use. The total number of stables shall not exceed four.

3) No parking or storage of vehicles and trailers shall take place, nor open storage of any kind, save as may be ancillary or incidental to the keeping of horses.

4) The use hereby permitted shall be carried on only by Mr Henry Duffort and shall be for a limited period being the period during which the site is occupied by Mr Henry Duffort.

5) When the site ceases to be occupied by Mr Henry Duffort the use hereby permitted shall cease, and the stable block and all materials and equipment brought on to the land in connection with the use shall be removed within 3 months of its cessation.

3. The enforcement notice is varied by deleting the words in brackets in paragraph 5.3).

4. The appeal is otherwise dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the corrugated metal fence (shown in the approximate position 'B' on the plan attached to the notice) and the use of the site for parking of motor vehicles and trailers and the storage of building materials, and planning permission is refused in respect of those matters on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons – Preliminary Matters

5. The notice alleges both operational development and a material change of use, but refers only to the 4 year time limit for bringing enforcement action. That is relevant to the first allegation but not to the second which attracts a 10 year limit. The parties agreed however that the notice could be suitably corrected without causing injustice so I shall correct it accordingly whatever the outcome of the appeal. I shall also delete the words in brackets in the third requirement as they do not form part of it and are superfluous.

6. The second allegation involves a change to a mixed use. Although there was no appeal on ground (b), it was clear from the Appellant's statement that he (via his agent) regarded the parking of vehicles and trailers, and the storage of

building materials, as ancillary or incidental to the keeping of horses. The Council however maintained their position that the former activities were sufficient to found the allegation of a full mixed use. The Appellant's purpose in pursuing the ground (a) appeal was only to secure a permission for the keeping of horses. Rather than seeking to add an appeal under ground (b), the parties were agreed that if I were to conclude that permission should be refused for the full mixed use, but that the equestrian use alone would be acceptable, then permission might be granted for the latter but the notice be otherwise upheld. Such a course is possible pursuant to section 177(1) and if necessary, I shall approach the case on that basis. There is indeed nothing to prevent a similar approach to the two items specified in the first allegation.

7. The appeal site is a mostly regular shaped plot of land thought to be about 0.5ha in area. It lies at the southern end of Rayleigh Downs Road, with a southern boundary to the A127 Southend Arterial Road. Residential properties, known as Wendy and Rose Maie, adjoin the northern and eastern boundaries, with a small part of the site extending eastwards around the latter's northern boundary. There is no dispute that the Appellant first began to occupy the site about one year before the hearing. Until then, it had apparently not been put to any beneficial use for as much as 30 years or more. A crane operating company was said to have occupied it in the 1970s, it was thought unlawfully. Going further back to the Second World War years, the Appellant believed it to have been used for the production of vulcanised tyres.

8. Some such historical use or uses was borne out by the extensive areas of concrete hardstanding visible near the entrance and in the eastern part of the site, and by the derelict concrete, probably lighting, posts still standing in a couple of places. Much of the rest of the site was heavily overgrown at the time of my visit, mostly with scrub vegetation including trees and bushes, but with a number of more mature trees particularly around the outer parts of it. Parts of the site, including a strip alongside the boundary with Rose Maie, showed signs of recent clearance. The roadside boundary was defined by a concrete post and chain link fence, obviously of some age and mostly hidden, at least in summer, by vegetation. Corrugated metal panels have been erected over 4 sections of it in the south eastern corner however, making up the fence identified in the first allegation.

9. The stables and tack room block, with stabling for 4 horses, stands at about the point identified on the notice plan. It is mostly of wooden construction with a low pitched roof and is set on a concrete base with brick infills visible in places. At the time of my visit there was a lorry container, said to be used for storage, and a trailer parked towards the north eastern corner of the site, as well as 2 water tanks. Whatever use may have been made of the site in the past, it was agreed that it effectively now has a 'nil' lawful use in planning terms.

Ground (a) & the Deemed Application

10. ***First Issue.*** Whatever view may be taken of the site's location in functional terms, it is within the Green Belt for the purposes of the District's Local Development Framework Core Strategy (2011) and the saved policies of the 2006 Replacement Local Plan. I am thus bound to consider the allegations in the light of relevant Green Belt policies, including the more recently published National Planning Policy Framework. In both instances the first issue therefore is whether these are inappropriate forms of development in the Green Belt.

11. Policy GB2 of the Core Strategy maintains a restrictive approach to development within the Green Belt, but with some relaxation for rural diversification, including outdoor recreation and leisure activities. The NPPF advises that local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking to provide opportunities for outdoor sport and recreation, to retain visual amenity and to improve damaged or derelict land. Construction of new buildings should be regarded as inappropriate however unless within specified exceptions. These include the provision of appropriate facilities for outdoor sport and recreation, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.

12. Certain other forms of development are also not inappropriate within the Green Belt, but they do not include a mixed use involving the storage of building materials and parking of motor vehicles and trailers. By itself however, the Council accepted that the use of land for the keeping of (non-agricultural) horses, together with the provision of a small set of stables, would not be inappropriate in principle. Indeed, they fall squarely in my view within the provision of facilities for outdoor recreation or sport and for the reasons discussed below, they would assist in preserving the openness of the Green Belt. They are thus not inappropriate for this purpose. The same cannot be said of the corrugated panel fencing however, even if only erected as part of the Appellant's wider occupation of the site.

13. ***Other Main Issues.*** The fact that development is not inappropriate in principle in the Green belt does not automatically make it acceptable if there are other overriding objections to it. The remaining issues therefore are the suitability of the site for the use intended; the impact the use and buildings would have, if permitted, on the character and appearance of the area, including its openness; their effect on neighbouring residents' living conditions; and finally their implications if any for highway safety.

14. Saved Policy LT14 of the Local Plan takes a positive approach to equestrian related development subject to a number of criteria. The supporting text explains that it should be closely related to existing development and should not be in remote / isolated rural locations. The specific criteria cited are concerned with: the adequacy of the site to allow for the proper care of horses in accordance with the British Horse Society (BHS) Standards (i); locational aspects outside the urban settlement areas (ii); relationship to bridleways and highway safety (iii); visual and other impact, including on nature conservation (iv); and impact on amenity by virtue of noise, smell or disturbance (v).

15. The Appellant's case is based partly on the fact that the animals he keeps are 'driving' horses rather than ones kept for general riding. They thus have different requirements for feed, grazing and exercise. His evidence that he lives within about a 5 minute drive from the site was not disputed. Nor was the availability of up to some 10ha of grazing land some 4.5 miles away, confirmed as an informal arrangement by the land owner at the hearing. I also have no reason to doubt the assertion that other such land could be found reasonably easily within the local area. Access to bridleways was not considered important since they could not be used for horse drawn vehicles, while the site itself provided space for exercise and socialising. Despite its still partly overgrown state, there was clear evidence of the horses having had access to much of it. Moreover, the appeal was supported by representatives

of both the BHS and the British Driving Society, who expressed their satisfaction with the proposed arrangements. Of itself therefore, I find the site adequate for the proper care of the animals, if reliant at times on the availability of grazing land elsewhere.

16. Rayleigh Downs Road is an unadopted and unmade track running between the A127 and the A1015 to the north. Though within the Green Belt, it lies very close to the urban settlements of Southend to the east and Rayleigh to the north west. It is lined along both sides mostly with detached dwellings of varying size and character set in spacious if not large plots. Whether it is appropriately placed within the Green Belt is not a matter for me to determine. What can be said is that while the immediate surroundings retain a semi-rural character, neither the road nor the appeal site is remote or isolated.

17. The site has been left for many years to revert to nature but can still be fairly described as damaged or derelict, at least in part. In its present state it provides a 'green buffer' between the A127 and the nearest dwellings, particularly in the summer months, but the Council expressed no objections on nature conservation grounds. There remains also a wide belt of roadside vegetation outside the site and there is nothing to prevent its full clearance internally if the occupier so chose. A grant of permission for the full mixed use would clearly have the potential to cause serious harm in this setting[1]. Its 'not inappropriate' use for the keeping of horses however would preserve openness in the sense of keeping the land all but free of built development, save for the stable building, while at the same time allowing for the imposition of conditions affecting the site's condition and appearance. That more limited use would thereby assist in checking the unrestricted sprawl of large built up areas, and in preventing neighbouring towns from merging into one another.

18. The corrugated fencing was described as temporary, the intention being to replace it with a fence meeting BHS standards. It is an unsightly visual barrier and should be removed. If the permission is limited to the parts of the allegation indicated however I see no reason why it should result in any harm to the character or appearance of the area or to openness more widely.

19. Different reactions to the use were expressed by the two closest neighbours, one welcoming it, the other, if with more personal reasons, having considerable reservations. Given the amount of clearance that must already have taken place and the erection of the stables, it is understandable that there would have been a degree of noise and disturbance while that work was being carried out. It may indeed have given cause for wider concerns. Once established however, and with high background noise levels from the A127, there would be no reason to expect the use to cause significant harm by reason of noise and disturbance. Smell may at times be an issue but given the number of animals kept, is again not likely to be so material as to justify refusal. That can also be ameliorated to some extent by a scheme for the disposal of waste and possible enhancement of the boundary treatments and landscaping around the site.

20. The lack of objection from the Highways Authority was said to be because of the size of the development. If that is so, it can only reflect the scale of the risk perceived to be involved. The use would generate traffic, probably daily, but not in any great numbers if restricted to private purposes. As I saw, traffic

[1] In passing, while no appeal was pursued under ground (b), the evidence available pointed to the other activities having only ever having been ancillary to the principle purpose of the keeping of horses.

on the A127 can be fast or slow moving depending on the time of day but that is not the only means of access to the site. The conditions affecting this site are no different to those affecting residents. Some greater risk of conflict with other road users may arise with a horse drawn vehicle but that would be true almost anywhere. I do not therefore find there to be such a significant increase in risks to highway safety as would justify refusal of permission in this location.

21. ***Conclusions.*** Approaching the case on the 'split' basis already described, there is no requirement for the Appellant to demonstrate 'very special circumstances' where the development is not inappropriate in the Green Belt. The more restricted development may not match every criteria of Policy LT14 to the letter but taken overall I can find no good reason for permission to be withheld, subject to the imposition of suitable conditions. They should include landscaping, boundary treatments and waste disposal, as indicated, and a restriction to private use of the land. I do not see a need to restrict the times of vehicle movements, given the scale of the use, nor for the same reason to prevent ancillary open storage. Anything beyond that however could be visually obtrusive so for the sake of certainty, I shall include this in conditional form. It will remain partly covered also by the notice requirements.

22. The Appellant also sought a personal permission. He may have his own reasons for that but the planning system does not exist to assist an applicant in his personal business. That said, part of his case was put on the basis of the particular kind of animals he keeps and his known personal stewardship of them. Since part of the Council's case was based originally on the unsuitability of the site, I find it a little surprising that they opposed the imposition of a personal permission, especially given the degree of control they sought in other respects. There does seem to me a case on planning grounds for imposing a personal condition in this instance as the particular nature of the Appellant's use has been a material factor in granting permission. That would allow the Council to review the position on a change of occupier in the light of whatever policy criteria may then be applicable.

23. I have taken account of all other matters raised, including those in residents' letters, but none serves to outweigh my above conclusions. I shall grant permission accordingly but the notice will be otherwise upheld.

Ground (f)

24. Since I am granting permission for the matters requested by the Appellant, I do not need to consider ground (f) any further. **NB** The requirements of the notice will not however be varied to delete the matters for which I am granting permission. The reason for this is that, if the notice were so varied and the amended requirements complied with, a deemed – and unconditional – permission might then arise pursuant to section 173(11). The Appellant instead may rely on the specific grant of permission to override those parts of the notice, pursuant to section 180(1).

Ground (g)

25. The Appellant sought a period of 6 months for full compliance but I do not see a need to extend the 8 week period for removal of the corrugated fence alone, the other uses having effectively ceased already.

R O Evans
Inspector

APPEARANCES

FOR THE APPELLANT:

Mr A Biebuyck MA MSc	Appellant's Agent; Partner, Neighbours LLP
Mr H Duffort	The Appellant
Mr G Marlow	of Old Hall Farm
Ms S Glen	South East Essex Representative, British Horse Society
Ms E Hopton	Essex & North London Area Commissioner, British Driving Society
Mr B Pitman	Local resident

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Barnes Dip TP MRTPI	Team Leader (Planning Enforcement)
Councillor S Smith	

INTERESTED PERSONS:

Mr J Tomlins	Local resident

DOCUMENTS PRESENTED AT THE HEARING

1 Council's Notification Letter
2 Copy Committee Report