Appeal Decision

Inquiry held on 20 June 2001

by B C Wilkinson BEng(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Transport, Local Government and the Regions

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Date
5 JUL 2001

Appeal Ref: APP/C1950/C/00/1053673
Hornbeam Lane, Essendon, Hatfield

- 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 Rose Limited against an enforcement notice issued by Welwyn Hatfield District Council.
- The Council's reference is A1037.
- The notice was issued on 22nd September 2000.
- The breach of planning control as alleged in the notice is the laying of three strips of concrete and the deposit of builders rubble and hardcore on the land between and around the strips.
- The requirements of the notice are to remove to an authorised site the concrete strips, the builders rubble and the hardcore.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the 1990 Act.

Summary of Decision: The appeal is allowed following correction of the notice in the terms specified in the Formal Decision below.

Appeal Ref: APP/C1950/A/01/1060428
Hornbeam Lane, Essendon, Hatfield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Rose Limited against Welwyn Hatfield District Council.
- The application (Ref. S6/2000/1492/FP), is dated 8th November 2000.
- The development proposed is the construction of a 20 box stable building for equestrian use.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out in the Formal Decision below.

The Appeal Site and the Planning Background

1. The appeal site lies on the east side of Hornbeam Lane, an unmetalled bridlepath in rolling, wooded countryside to the south of Essendon. The plan accompanying the enforcement notice covers the whole of a large field, known as the East Field, currently divided into paddocks. However, the alleged breach of planning control is in a relatively small area in its north-western corner. The proposed stable to which the Section 78 appeal relates is intended to be built in this same part of the field. The whole of the site lies within the Metropolitan Green Belt.

2. In April 1999 planning permission was refused for a change of use of the East Field to equestrian purposes, the construction of a 30 box stable building, the formation of a menage and rides and associated landscaping. A report dealing with the implications of keeping a string of polo ponies accompanied this application. The main reasons for refusal were that the proposed stable building constituted inappropriate development within the green belt,

and that there were no special circumstances sufficient to justify the harm caused to the openness of the area. A subsequent application relating to the same area of land was submitted for a change of use to equestrian purposes (with associated rides, menage, and landscaping) and was approved in August 1999. In January 2000 an application for a stable building comprising 24 timber loose boxes was refused, for a reason similar to that invoked in the April 1999 decision.

3. The stable proposed in the present appeal would have dimensions of about 32m x 22m x 7m. The Council resolved to refuse this application on 5th March 2001, in ignorance of the fact that an appeal against non-determination had by then been submitted. The reasons intended by the Council were similar to those involved in the previous refusals of those applications which included a stable building.

4. The local development plan for this area comprises the Hertfordshire Structure Plan Review 1991-2011 (1998) and the Welwyn Hatfield District Plan Alterations No 1 (1998). A review of the latter has recently been placed on deposit but because of the early stage in its emergence I have attached relatively little weight to its proposals. In any event its current proposals do not appear to involve any significant alterations in respect of the provisions most relevant to the present appeals

Correction to the Notice

5. Both parties agreed that the dimensions specified in Section 3 of the notice were incorrect, but both accepted that I could, without injustice, correct the notice to reflect the true dimensions. I see no reason to take a different view and I shall correct the notice and determine the appeal on the basis of the notice as corrected.

The Appeal on Ground (c)

6. Part 6 of Schedule 2 to the 1995 General Permitted Development Order (GPDO) deals with agricultural buildings and operations. Class A grants permission for the carrying out on agricultural land comprised in an agricultural unit of 5 Ha or more, of any excavations or engineering operations which are reasonably necessary for the purposes of agriculture within that unit.

7. For these purposes agricultural land is defined as land which, before the development was carried out, was in use for agriculture for the purposes of a trade or business. The Council did not, at the inquiry, challenge evidence on behalf of the appellants that the land on both sides of Hornbeam Lane has, in recent years, been used for the production of haylage and for the grazing of sheep. Both activities fall within the definition of agriculture and, since the products of a sheep flock of about 50 were sold, I am satisfied that a trade or business was involved, albeit a relatively small scale one. It follows that the operations alleged in the enforcement notice were carried out on agricultural land. Furthermore, since an agricultural unit is defined as agricultural land which is occupied as a unit for agricultural purposes I am satisfied that the appellants' holding comprises an agricultural unit. The fact that it has been used partly for equestrian purposes does not alter my conclusion in this regard.

8. The Council appears to have reached similar conclusions when, under the prior notification procedure, they determined in March 1998, that a barn could be built on the land without the need for specific planning permission.

9. The appellants' holding comfortably exceeds 5Ha in extent, and I have no doubt that the development that has taken place comprises engineering operations. Bearing in mind my conclusions that this is agricultural land comprised within an agricultural unit I consider that the development alleged in the notice was permitted under the terms of the GPDO. For this reason, and having regard to all other matters raised, I consider that the appeal should succeed on ground (c). Accordingly the enforcement notice will be quashed and the application deemed to have been made under section 177(5) of the Act as amended does not need to be considered. Nor do the appeals on Grounds (a) and (f).

The Section 78 Appeal

10. From what I have seen, heard and read I consider that there are two main issues in determining this appeal. The first is whether the development constitutes inappropriate development within the green belt. The second is the effect it would have upon the character and appearance of its surroundings.

11. Both parties agreed that the main local policy relating to this appeal was GB3 of the Local Plan, which provides that within the Green Belt permission will normally be granted only for three categories of development. It was common ground that the only category potentially applicable in the present case was the second which allows for :

> "essential small scale facilities for outdoor sport and outdoor recreation, or ... for other uses of land which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it;"

This reflects the provisions of Planning Policy Guidance 2 – Green Belts (PPG2), Section 3.4 of which states that the construction of new buildings inside the green belt is inappropriate unless it is for one of a list of purposes. One of these is virtually the same as the second category of GB3 except that the PPG2 reference does not include the words "small scale".

12. In the present instance the planning permission for equestrian purposes related to a use that would be for outdoor recreation and would also, in my view, preserve the openness of the green belt and avoid conflict with the purposes of including land within it. As they granted permission for such a use the Council presumably took a similar view. Consequently, in relation to Policy GB3, the proposed stable building is appropriate development so long as it is small scale and essential for the equestrian purposes previously granted permission. Although the application for these purposes was simply for equestrian use, the documents which accompanied it, and the site's history, clearly indicated that the intention was to provide for the exercising and training of a string of polo ponies. The associated facilities such as the menage and surfaced ride were entirely consistent with such a use.

13. The Council's witness suggested that as the appellants had already received a refusal of permission for a block of 30 stables and must, therefore, have realised that there was no guarantee of receiving permission for stables, they ought to have sought an alternative siting for them. However, I find such a position hard to accept. It had been explained to the Council that the polo ponies would need to be exercised and trained in groups on a frequent and regular basis. For this to be done whilst they were stabled away from the site would necessitate trips by more than one horse box on an almost daily basis up and down the narrow, roughly surfaced track which is Hornbeam Lane. Such a procedure would be a source of harm to the ponies, the local environment and the interests of traffic and

pedestrian safety. In my view stables on this site would be essential to the use of the land for the type of equestrian purposes envisaged in the application.

14. However, the Council's main argument at the inquiry was that they were prepared to accept that a stable block of some kind was essential on the site, but considered that the one proposed was much larger than was necessary. In support of this position they drew my attention to Section 3.5 of PPG2 which gives advice on the subject of essential facilities in the green belt. It gives, as possible examples of such a facility small changing rooms or small stables. The Council interpret small, in this context, to be an absolute term, limiting buildings under any circumstances to those of about the size of a small stable. However, the reference to a small stable in PPG2 is only included as a "possible example" of a facility and I see no reason to assume that it defines a limit. In fact, the only requirement assigned by Section 3.5 is that the facility should be genuinely required.

15. The Local Plan specifically refers to "essential ***small scale*** facilities" (my emphasis) but again I see nothing in that wording which indicates that "small scale" should be interpreted as being an absolute term, rather than one related to the size of the land-use it would serve. If the Council's interpretation of the term was correct the Local Plan would prevent facilities such as golf courses being developed in green belts at all, because essential elements such as clubhouses would be rejected as being too large. In fact golf courses and comparable facilities (with clubhouses) are often found to be acceptable in green belts.

16. I think, therefore that it is appropriate in this case to take into account the size of the proposed facility relative to the size of the land served and the scale of activity intended. On that basis I consider that stables housing 20 units, whilst a substantial building, are only barely large enough for a polo string. Nor do I believe that the individual stable units or ancillary facilities proposed in this case are unduly large. Given the existence of the permission for equestrian use I am satisfied that the proposed stables are both essential and, in their context, small scale. I find that, in the present circumstances, they are appropriate development within the green belt.

17. I do not consider that this conclusion is inconsistent with that reached by an Inspector determining an appeal relating to a stable block in Billericay. In that case the Inspector, in deciding whether the proposal would be inappropriate development, specifically took account of "...the scale of development in relation to the remaining parts of the relatively small paddock...". Although, in considering the building before me, I have reached a different conclusion from my colleague I have taken into account similar factors, in particular the relationship between the size of the building and the size of the land it would serve.

18. The Council do not raise any objection to the materials or design of the stable building or its position on the East Field and I see no reason to take a different view. It would be in a relatively isolated position in attractive countryside but its remoteness also means that it would hardly be visible from any dwellings or, except at long distance, from any well used road. Additionally the tall hedges and areas of woodland which proliferate in this area further restrict views of the site. The main views from public vantage points would be from Hornbeam Lane and, at a greater distance, from Cucumber Lane. However, a condition of the permission for equestrian use was the carrying out of a scheme of planting and landscaping. The appellants have prepared a scheme involving very substantial tree planting which also takes into account the intended presence of the proposed stables.

Although this has not yet been formally agreed by the Council I am satisfied that a combination of new planting and existing trees and hedges would be sufficient to reduce the visual impact of the stable to negligible proportions.

19. There is likely to be considerable activity on the site when the proposed development is in operation, but most of that would arise from the already permitted use of the land for equestrian purposes. The addition of the stables would be unlikely to substantially increase such activity and might even reduce it. Moreover, the nature of the activity as a whole would be of a kind generally appropriate to the countryside and would be unlikely to cause any significant environmental harm. Bearing in mind all of these factors I conclude that the proposals would not significantly harm the character and appearance of its surroundings. On that basis, and bearing in mind my conclusion as to the appropriateness of the proposals, I am satisfied that they would be consistent with the relevant policies of the local development plan including Policy CR18 which relates specifically to stables in the countryside.

20. Taking into account my conclusions on the main issues I have identified I am satisfied that the proposed development would not, in planning and environmental terms, cause unacceptable harm, and that granting permission for it would be consistent with local and national planning policies. I am unaware of any other material considerations sufficient to indicate any other decision except the approval of the development. For the reasons given above and having regard to all other matters raised, I conclude that planning permission should be granted and the appeal allowed.

Conditions

21. Because full details of the materials to be use in the construction of the stables are not on the plans I consider that a condition should be imposed allowing for the Council's approval of such materials. Furthermore, because my conclusions on the acceptability of the stables depend to a large extent upon the particular details of the appellants' proposed use of the land, I consider that the use of the stables should be restricted to purposes associated with that use. Finally, as successful landscaping is necessary to reduce the impact of the proposal to acceptable proportions I shall impose a condition requiring the timely implementation of such landscaping.

Formal Decision

Appeal Ref No : APP/C1950/C/00/1053673

22. In exercise of the powers transferred to me, I direct that the enforcement notice be corrected by the deletion of Subsection 3(i) : and the substitution therefor of the following :

    "Developing the land by laying thereon three strips of concrete, each 4.5m wide, 33m long, and 20cm deep set 4.5m apart."

23. Subject to this correction I allow the appeal and direct that the enforcement notice be quashed.

Appeal Ref No : APP/C1950/A/01/1060428

24. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for the construction of a 20 box stable building for equestrian use at Hornbeam

Lane, Essendon, Hatfield in accordance with the terms of the application Ref.S6/2000/1492/FP dated 8th November 2000, and the plans submitted therewith, subject to the following conditions:

1) ***The development hereby permitted shall be begun before the expiration of five years from the date of this decision.***

2) ***No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.***

3) ***The stable building hereby permitted shall be occupied only in conjunction with the equestrian use permitted on the adjoining land and shall not at any time be used for any commercial livery or riding school.***

4) ***Unless the local planning authority shall have previously agreed otherwise in writing, the stable building hereby permitted shall not be begun prior to the approval of the landscaping and management plan required by Condition 2 of Planning Permission No S6/0372/99/FP (dated 9th August 1999).***

Information

25. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court within 6 weeks from the date of this decision.

26. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

27. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.

28. Attention is drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970, as amended.

APPEARANCES

FOR THE APPELLANTS:

Mr R Jameson He called	Solicitor, Jameson and Hill, Solicitors
Mr A M Perryment	Director of Appellant Company
Miss J R Orsborn BA(Hons) DipTP MRTPI	Planning Consultant and Appellants' Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Easton	Of Counsel, Instructed by Welwyn Hatfield D C
He called	
Mrs B J Skipper BSc(Hons)	Senior Area Planner, Welwyn Hatfield D C

DOCUMENTS

Document	1	List of persons present at the Inquiry
Document	2	Letter of Notification and Related Documents
Document	3	Statements by the Main Parties
Document	4	Copy of the Enforcement Notice
Document	5	Documents Relating to Planning Application S6/2000/1492/FP
Document	6	Recent Photographs of the Site and Surroundings
Document	7	Correspondence between the Council and the Appellants' Agent
Document	8	Documents Accompanying Evidence by Miss Orsborn
Document	9	Documents Accompanying Evidence by Mrs Skipper