The Planning Inspectorate

Appeal Decisions

Hearing and Site Visit held on 19 March 2019

By Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 13 May 2019

Appeal A: APP/Q3115/C/18/3201871
Land to the south-west of New Inn Road, Beckley, Oxfordshire OX3 9SS known as Ten Acre Farm

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Rogers against an enforcement notice issued by South Oxfordshire District Council.
- The enforcement notice was issued on 20 March 2018.
- The breach of planning control as alleged in notice (A) is without planning permission, the carrying out of engineering operations to create a motocross track.
- The requirements of the notice are:
    i. Remove from the Land the mounds and jumps created to form the motocross track, by means of reinstating the Land to its natural ground level, ensuring the ground is not disturbed at a depth deeper than 100mm below natural ground level;
    ii. Reseed the affected areas to grass.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Appeal B: APP/Q3115/C/18/3201874
Land to the south-west of New Inn Road, Beckley, Oxfordshire OX3 9SS known as Ten Acre Farm

- The appeal is made under section 174 of the 1990 Act as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Rogers against an enforcement notice issued by South Oxfordshire District Council.
- The enforcement notice was issued on 20 March 2018.
- The breach of planning control as alleged in notice (B) is without planning permission, the material change of use of the Land from use for equestrian purposes to a mixed use for (1) equestrian purposes and (2) use for motorised sport and practising for such activity.
- The requirements of the notice are:
    i. Stop using the Land for the purpose of motorised sport and practising for such activity.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Council has issued two notices. The appellant claims that the engineering operations targeted by notice A are integral to the use of the land (notice B). The allegation in notice A is disputed, on the basis that this matter has been incorrectly separated from the use and should not form an allegation in its own right.

2. The Council accepts that it was not obligated to serve separate enforcement notices in respect of the material change of use and the engineering operations. However, it is explained that the reasons for serving two notices were as follows: (i) it allowed for a clearer focus on the reasons why the Council considered it expedient to take action in respect of each breach of planning control; (ii) it allowed the appellant to identify clearly the grounds on which he wished to appeal the enforcement notices; (iii) it allowed the Council to specify clearly the different immunity periods for each breach of planning control; and (iv) the penalty provisions in section 179 of the 1990 Act may operate differently according to the nature of the breach.

3. Section 173(2) of the 1990 Act says that a notice complies with section 173(1)(a)[1] if it enables any person on whom a copy of it is served to know what those matters are. The test being as described in *Miller Mead*[2],whether an enforcement notice tells the recipient "fairly what he has done wrong and what he must do to remedy it".

4. There is no reason why allegations of operational development and a material change of use should not be combined into one notice, provided they relate to connected matters. However, it is important that the allegation and requirements are clearly structured to reflect the different types of development being alleged and the relevant immunity periods. The Council has chosen to issue two notices for reasons of clarity. I do not consider this approach to be incorrect in the circumstances. There is no evidence before me to show that either of the notices are invalid, having regard to the 1990 Act and *Miller Mead*.

5. During the Hearing it became apparent that an office building within the site is used for purposes in association with a construction company, in addition to being used for equestrian related matters. In mixed use cases, the allegation should refer to all components of the mixed use, even if it is considered expedient that only one should cease. The office use is not identified within the allegation of notice B, which I queried. The Council has since confirmed that the office use has planning permission[3].

6. The Courts encourage a very wide-ranging use of the power to correct notices, which includes correcting the allegation. Accordingly, this omission could be addressed if I were to correct the allegation to "the material change of use of the Land from a mixed use for (1) equestrian and (2) office purposes to a mixed use for (1) equestrian and (2) office purposes and (3) use for motorised sport and practising for such activity". The parties have agreed that such a correction would not cause injustice.

[1] Section 173(1) An enforcement notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control.
[2] *Miller-Mead v MHLG* [1963] 1 A11 ER 459.
[3] Planning permission was granted on 2 July 2015 (Ref P15/S1510/FUL) for "Extension of three existing stables and change of use to office".

7. The appellant also suggests that the allegation (notice B) should include a recently approved planning permission for the conversion of stables to holiday accommodation. However, this permission had not been implemented when the notice was served and it is not necessary to include it.

8. The appellant has indicated that the plans attached to both notices appear to be incorrect as the red line includes part of the adjoining bridleway. Notwithstanding whether or not the bridleway is within the appellant's ownership, it is not included in the description of the alleged breach of planning control. I am satisfied that there would be no injustice if the red line were to be amended to exclude the bridleway. I have attached an amended plan accordingly.

9. Further matters were raised concerning the requirements of both notices which I have dealt with under ground (f) below.

Appeal A on ground (c)

10. In order to succeed on a ground (c) appeal, the appellant must show, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control.

11. The appellant considers that the works targeted in notice A are not development as defined in section 55(1) of the 1990 Act as amended[4]. The appellant explained that the materials deposited to create the track came from another part of the land which had been levelled. There was no import or export of material. The land was not formally prepared, but the material was spread around to create a more interesting motocross track.

12. The Courts have determined that engineering operations involve works with some element of pre-planning, which would normally, but not necessarily, be supervised by a person with engineering knowledge.

13. I saw that the motocross track is formed by an intricate series of loops and turns, the result of which is that the track covers a significant area of this part of the land. The track includes earth banks and jumps, along with raised bunds, which I understand have been formed by the action of the bikes throwing up soil. The track is largely bare earth although grass grows in places, mainly around the edges and on the steeper slopes.

14. The nature of the track does not support a finding that no pre-planning was involved in its creation. It is highly unlikely that the course layout, especially the position and height of the obstacles, came about by the random deposition of material. Moreover, due to the extent of the track and the volume of material used, it is clear that the works have been carried out using plant and machinery. In this case a small mechanical digger was used.

15. The evidence presented strongly suggests that an element of pre-planning was involved and a degree of skill was necessary to carry out the works. Therefore, I take the view that the works alleged in notice A amounted to an engineering operation within the meaning of development in s55(1), for which there is no planning permission.

[4] Section 55(1) says that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

16. I conclude that it has not been shown, on the balance of probability, that the matters alleged in notice A do not constitute a breach of planning control and the appeal on ground (c) must fail.

Appeal B on ground (c)

17. The basis of the appellant's ground (c) appeal is that the use of the land for motor cycling by the appellant's sons is 'permitted development' by virtue of Article 3(1) and Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This concerns the temporary use of land. Class B permits the use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of (b) motor car and motorcycle racing including trials of speed, and practising for these activities and the provision on the land of any moveable structure for the purposes of the permitted use.

18. I must determine the appeal on the basis of the corrected allegation, which is the material change of use to a "mixed use for (1) equestrian and (2) office purposes and (3) use for motorised sport and practising for such activity". It does not allege any temporary use of the land. The permitted development rights in Part 4, Class B only apply to motor car and motorcycle racing including trials of speed, and practising for these activities, as set out above on a temporary basis. There is no permitted development right for the alleged mixed use. Even if I were to accept the appellant's argument, I would need to consider the Court of Appeal's ruling in *Ramsey*[5], which does not support a finding that permitted development rights exist in this particular case, even for a temporary period, as explained below.

19. The essence of the ruling in *Ramsey* is that permitted development rights are available for temporary uses, even if these are facilitated by permanent physical changes to the land, provided the works do not prevent the normal permanent use from continuing for most of the year, and it does so continue. The critical factors are the duration of the temporary use and reversion to the normal use in between times. The appellant claimed the 14-day limit had not been exceeded and there was no evidence to the contrary. Therefore, I must focus on whether the whole of the land reverts to its normal use.

20. The lawful use of the land is for equestrian and office purposes. The equestrian use falls outside the definition of agriculture in section 336 of the 1990 Act as amended. "Keeping" horses involves activities other than just putting them out to graze. The appellant argued that when part of the land is not being used for motocross purposes, the whole land reverts to its normal use, which includes turning the horses out on the land and exercising them as part of injury rehabilitation programmes.

21. I accept that the track may have some benefit for horse rehabilitation, but this would be for relatively limited periods only. Moreover, it is necessary to show that the whole land reverts to use for equestrian/office purposes. There is very little evidence to show that the part of the land used for motocross is also used for turning-out horses or for other equestrian purposes on a routine basis. Consequently, I find that it has not been shown that the motocross use is a temporary use of the land and that the whole land reverts to its normal use in

[5] *Ramsey v SSETR & Suffolk Coastal DC* [2002] JPL 1123.

between times, which would constitute permitted development, even if such rights applied.

22. Therefore, I conclude that it has not been shown, on the balance of probability, that the matters alleged in notice B, as corrected, do not constitute a breach of planning control. The appeal on ground (c) must fail.

Appeal A on ground (a) and the Deemed Planning Application

Reasons

Background

23. Ten Acre Farm is located on New Inn Road to the south of Beckley Village. The land comprises buildings, a yard area, a manège and grazing land. The site is accessed from New Inn Road via a track. There is a bridleway adjoining the site to the west, beyond which lies ancient woodland.

24. There are three listed buildings in the vicinity; Royal Oak Farmhouse and New Inn Farmhouse and Barn. The nearby villages of Beckley and Stanton St John have Conservation Areas encompassing their core. The site is within the Oxford Green Belt.

Main Issues

25. The terms of the deemed planning application are derived from the allegation. Planning permission is sought for the carrying out of engineering operations to create a motocross track.

26. During the hearing, I heard from residents who explained that their main objection was to the noise and disturbance resulting from the use of the land for motocross purposes. I acknowledge these concerns, and those of the Council who are equally concerned about the impact on users of local rights of way. However, I must consider what is before me. The ground (a) appeal relates to the engineering operations only and not the use, which is targeted in a separate notice. There is no ground (a) appeal in relation to notice B. Consequently, I am unable to consider the noise implications as these relate to the use of land.

27. Hence, I consider the main issues to be:

- Whether the development is inappropriate development in the Green Belt, having regard to the development plan and the National Planning Policy Framework (the Framework)[6];
- The effect of the development on the character and appearance of the area;
- The effect of the development on the archaeological interest of the site;
- Whether there would be any other harm;
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the proposal.

[6] February 2019.

Reasons

Whether the development is inappropriate development in the Green Belt

28. Policy GB4 of the Local Plan[7] seeks to protect Green Belt land through minimising the impact of new development on the open nature, rural character and visual amenity of the Green Belt. The justification states that the primary aim of green belt policy is to keep development to a minimum. I do not consider Policy GB4 to be consistent with the relevant policies of the Framework. There is no reference to the five purposes of the Green Belt, the relevance of the term "inappropriate development" or the exceptions set out in paragraphs 145 and 146. As such, I attach limited weight to Policy GB4.

29. Policy CSEN2 of the Core Strategy[8] states that planning permission will not be granted for development within the Green Belt that is contrary to national policy and the purposes of including land within it. I agree with the main parties that this policy is broadly compliant with the relevant policies of the Framework. Therefore, it carries due weight.

30. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 146 sets out that certain forms of development are not inappropriate development provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. This includes engineering operations. The appellant argued that, in relation to the openness test, the only physical features of the track are the jumps and mounds which have limited visual impact.

31. It is established that openness of the Green Belt has a visual as well as a spatial aspect. The Council has provided an aerial photograph (paragraph 2.7 of the Hearing Statement) which indicates that the land had a very difference appearance previously. Due to the nature and formation of the track, it is an intensive feature within a part of the land that was previously relatively level grass. In addition, the earth mounds, jumps and banks have an urbanising effect. It no longer appears as a grazed field but as a parcel of developed land. Its distinct appearance as a motocross track, combined with the earthworks, adversely impacts on the openness of the Green Belt.

32. In relation to the Green Belt purposes, the appellant claimed that only c), as set out in paragraph 134 of the Framework, is relevant which concerns safeguarding the countryside from encroachment. It was argued that any harm resulting from any encroachment is limited as the only public vantage point is from the adjoining bridleway.

33. The countryside contains a wide variety of features and the effect of development as encroachment may be in the form of loss of openness or intrusion. There is a hedge along the site frontage and a group of trees to the north-west. While these provide some screening, the part of the land currently occupied by the track remains visible from the houses on New Inn Road and the adjoining bridleway. The development consequently represents a visual intrusion, which constitutes an encroachment into the countryside.

[7] South Oxfordshire Local Plan 2011 (adopted January 2006).
[8] South Oxfordshire Core Strategy (adopted December 2012).

34. I find that the development alleged does not preserve the openness of the Green Belt and conflicts with the aim of safeguarding the countryside from encroachment. Consequently, the development is inappropriate development which is, by definition, harmful to the Green Belt.

The effect of the development on the character and appearance of the area

35. The land is within the Oxford Heights Character Area as set out in the Council's Landscape Assessment (2003). This describes the local landscape as open hills and valleys, which is predominantly rural with some localised intrusion and/or urban influences. I saw that the landscape in the vicinity of the site was mainly farmland, interspersed with woodland and village development.

36. I accept that the B4027 and nearby aerial masts are intrusive features. I also noted that the farm adjoining the site contains some unsightly features, such as piles of building materials, trailers and caravans. Nonetheless, the area is clearly separate from the urban area of Oxford and I do not consider its character to be a transition between rural and urban, as described by the appellant.

37. The motocross track is not overly prominent in views from the B4027, due to intervening hedges and some scattered trees. However, it is prominent in public views from the adjoining bridleway, from which the whole of the area used as a motocross track can be seen.

38. The appellant claims the track has a "benign" effect as it is not an end use in its own right. However, the engineering operations have resulted in a permanent physical change to the land. Its appearance is firmly that of a motocross track that is not comparable with a manège with coloured sand or some other feature that commonly occurs in a rural setting.

39. I have considered whether the development could be made acceptable through the imposition of planning conditions. However, the level of landscaping required to screen the track from the bridleway would be extensive. Due to its proximity to the bridleway, landscaping would encroach into the track area which could be considered unreasonable. Moreover, there is no evidence that a planting scheme could be implemented without harm to the archaeological significance of the area.

40. Consequently, I find that the development is contrary to Policies CSEN1 and CSQ3 of the Core Strategy and Policies D1, G2 and G4 of the Local Plan which, amongst other things, seek to protect the District's character and the distinctiveness of the countryside. The appellant argued that Policies CSQ3 and D1 are not relevant. However, these policies concern all development and are relevant to the matters before me.

The effect of the development on the archaeological interest of the site

41. I understand that the site lies close to a section of Roman Road with a probable Roman/Medieval Holloway at the northern end. It is highly likely that archaeological remains lie within and close to the line of the Roman Road, which includes the area of land where the track has been constructed.

42. The appellant explained that the earth used to create the track was laid onto the land and there has been no excavation. However, I was told that the bunds which have formed alongside the track are as a result of the bikes throwing up

earth. This has eroded the subsoil in some places and could well have had an impact on archaeology. Therefore, I do not accept that there has been no ground disturbance and I am unable to find that there has been no harm to the significance of the non-designated heritage asset, contrary to Policy CSEN3 of the Core Strategy and Policies CON11, CON12 and CON13 of the Local Plan.

The effect of the development on designated heritage assets

43. The main parties agree that the development has not affected the setting of the nearby listed buildings or conservation areas. There is no reason for me to reach a different conclusion. Consequently, I am satisfied that the development preserves the setting of the Grade II listed buildings and the character and appearance of the Beckley and Stanton St John Conservation Areas. This would satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 193 of the Framework and would not conflict with Policy CSEN3 of the Core Strategy that seeks, among other things, to ensure designated heritage assets are conserved and enhanced.

Other Considerations

44. It is argued that the use of the land for motocross purposes is permitted development. Irrespective of my findings on this matter, the use of the land is not relevant to the ground (a) appeal, for the reasons set out above. Consequently, this consideration carries only limited weight.

Conclusion

45. The development is inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there is an adverse impact on the character and appearance of the area and a likely impact on the significance of archaeological deposits.

46. Limited weight is attached to the other considerations put forward by the appellant. These considerations do not clearly outweigh the totality of harm. Consequently, the very special circumstances necessary to justify the development do not exist. The development does not accord with the Framework or Policy CSEN2 of the Core Strategy, insofar as it seeks to protect Green Belt land. The development is also contrary to Policy GB4 of the Local Plan, although I have attached limited weight to this policy.

47. For the reasons given above, the appeal on ground (a) and the application for deemed planning permission fail.

Appeal A on ground (f)

48. The appellant has appealed under ground (f) on the basis that the steps required by the notices to be taken exceed what is necessary. There are two purposes which the requirements of an enforcement notice can seek to achieve; to remedy the breach of planning control which has occurred or to remedy any injury to amenity which has been caused by the breach[9]. The reasons behind both notices refer to the effect of the development on the openness of the Green Belt, among other concerns. The notices are directed at remedying the breach of planning control and what must be considered is whether the requirements exceed what is necessary to achieve that purpose.

[9] Sections 173(4)(a) and (b) of the 1990 Act as amended.

49. Requirement (i) of notice A requires "Remove from the Land the mounds and jumps created to form the motocross track, by means of reinstating the Land to its natural ground level, ensuring the ground is not disturbed at a depth deeper than 100mm below natural ground level". The appellant claims this is unworkable.

50. The Council advises that the requirement is necessary to protect archaeological deposits. However, it goes beyond what is necessary to remedy the breach and I consider it to be onerous. The remedy to the breach of planning control would be achieved by removing the mounds and jumps created to form the motocross track and reinstating the land to its condition before the development took place. I will, therefore, vary the requirement accordingly. To this limited extent, appeal A on ground (f) succeeds.

Appeal B on ground (f)

51. In relation to notice B, the appellant's position is that an enforcement notice cannot be interpreted so as to make an offence out of a lawful activity, such as a temporary GPDO use[10]. While this is correct, I have found that the matters alleged as corrected, which includes motocross use, constitute a breach of planning control. The Council requires the motocross use to cease. If the appellant were to act within the scope of the permitted development right, the Council would have no power to require the cessation of that use, which would be lawful. Consequently, there is no need to amend the requirement and appeal B on ground (f) must fail.

52. I acknowledge the appeal referenced by the Council which concerned a material change of use to a mixed use including motocross[11]. In that case, the requirement specified that permitted development would not be affected. The evidence that informed that decision is not before me, and I am unable to judge whether similar circumstances applied. In any event, that point was not at issue as the grounds of appeal centred on other matters.

Appeal A on ground (g)

53. The appeal on ground (g) is that the time given to comply with the notice is too short. I consider that it would be difficult to complete the works required within the three months given by the notice. This is because it will be preferable to undertake the reseeding during the optimum planting period, which would be September/October.

54. Taking account of all circumstances, I conclude that a compliance period of six months would be proportionate and reasonable for all matters. The appeal on ground (g) succeeds.

Conclusion

55. For the reasons given above I conclude that appeal A should succeed on grounds (f) and (g) only. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

[10] Support is drawn from *Duguid v SSETR & West Lindsey DC* [2001] JPL 323.
[11] APP/E2530/C/14/2220124 dated 21 January 2015.

56. Appeal B should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decisions

Appeal A

57. It is directed that the enforcement notice is corrected by:

    i) The substitution of the plan attached to the notice with the plan attached to this Decision;

    and varied by:

    ii) The deletion of the words "to its natural ground level, ensuring the ground is not disturbed at a depth deeper that 100mm below natural ground level" in paragraph 5(i) after "reinstating the Land" and their replacement with the words "to its condition before the development took place"; and,

    iii) the replacement of the word "three" in paragraph 6 with the word "six".

58. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

59. It is directed that the enforcement notice is corrected by:

    i) The substitution of the plan attached to the notice with the plan attached to this Decision, and;

    ii) the deletion of the words "the material change of use of the Land from use for equestrian purposes to a mixed use for (1) equestrian purposes and (2) use for motorised sport and practising for such an activity" in paragraph 3 with the words "the material change of use of the Land from a mixed use for (1) equestrian and (2) office purposes to a mixed use for (1) equestrian and (2) office purposes and (3) use for motorised sport and practising for such activity".

60. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

Debbie Moore

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr M Crook	MCS Planning
Mr T Kernon	Kernon Countryside Consultants
Mr T Rogers	
Ms J Rogers	
Ms K Lawrence	

FOR THE LOCAL PLANNING AUTHORITY:

Ms S Mangion	South Oxfordshire District Council
Ms J Scrivener	Bourne Rural Planning Consultancy Ltd
Ms T Smith	South Oxfordshire District Council

INTERESTED PERSONS:

Mr J Walsh	Local Councillor and Resident
Ms G Camps-Walsh	Local Resident
Dr J Todd	Local Resident
Ms J Langdon	Local Resident
Mr A Langdon	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

Ronald M Duguid v SSETR [2000] QBCOF 1999/1243/C

Policy CSEN1 of the Core Strategy and Policy R4 of the Local Plan

Constraints plans showing heritage assets

DOCUMENTS SUBMITTED AFTER THE HEARING BY AGREEMENT

Land Registry office copies entries and plan (Title number ON91005)

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 13 May 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

Land at: New Inn Road, Beckley, Oxfordshire OX3 9SS known as Ten Acre Farm

Reference: APP/Q3115/C/18/3201871, APP/Q3115/C/18/3201874

Scale: NTS