



Appeal Decisions

Accompanied site visit made on 24 November 2014

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 14 January 2015

Appeal ref: APP/A1530/C/14/2213639 (Appeal A)

Land to north of Applecroft, Bacons Lane, Chappel, CO6 2EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Colchester Borough Council.
- The appeal is made by Mrs L Baines.
- The Notice was issued on 10 January 2014.
- The breach of planning control as alleged in the notice is, without planning permission, (i) the formation of a hardcore track; (ii) the erection of outbuildings and associated fencing; (iii) the erection of fencing in excess of 1m and adjacent to the highway; (iv) the change of use of the land to a mixed use for storage, keeping of horses and keeping of chickens.
- The requirements of the notice are to cease the use of the land for: the storage of a caravan, the storage of all items unrelated to the keeping of horses, and amenity use, including the keeping of chickens; and to remove from the land: the caravan, all the unauthorised outbuildings and associated fencing located in the area as shown on Plan 'A' to the Notice and hatched in yellow, the fence adjacent to the highway, as indicated with a bold red line on Plan 'A', all stored items of a domestic nature including, but not limited to, beach buggies, DIY tools/equipment, snooker table, garden table and chairs, BBQ, sofa, earth closet, TV aerial, and the hardcore track.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the Notice upheld.

Appeal Ref: APP/A1530/A/13/2205997 (Appeal B)

Land to north of Applecroft, Bacons Lane, Chappel, CO6 2EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs L Baines against the decision of Colchester Borough Council.
- The application Ref: 131389, dated 16 July 2013 was refused by notice dated 10 September 2013.
- The development is described in the application as proposed stable block.

Summary of decision: The appeal is dismissed.

Preliminary Matters

1. I shall commence by considering Appeal A. That appeal is made on grounds (b), (c), and (f). Grounds (b) and (c) are amongst what are termed the 'legal' grounds of appeal against an enforcement notice. Ground (b) applies where an appellant seeks to argue that a matter alleged to constitute a breach of

planning control has not occurred as a matter of fact, whilst ground (c) is appropriate where an appellant contends that the matters alleged by the enforcement notice do not constitute a breach of planning control. In each of the 'legal' grounds of appeal the burden of proof lies with the appellant, the relevant test of the evidence being the balance of probability.

APPEAL A - The appeal on ground (b)

2. There are two strands to the appeal on ground (b). The first is that, as advised by letter to the Council dated 28 November 2013, a number of items were removed from the site prior to the service of the enforcement notice. These apparently included the quad bikes, which had been stolen, the pool table and the BBQ. The appellant therefore argues that, as a matter of fact, these items were not present on the site when the Notice was served.
3. The appellant is correct in the contention that the relevant date is that of the issue of the Notice: however, there is inevitably often a significant time between a contravening use being detected and an enforcement notice being issued and the fact that some items had been removed from the site before the issue of the Notice cannot justify an argument that an appeal on ground (b) should succeed because the use, or an element of it, was not in being at the date of issue. The last use of the site was the unauthorised use the subject of the Notice, and that remains the position: indeed the items specified by the appellant are in any event referred to in the requirements of the Notice as opposed to the allegation.
4. The second argument made under the umbrella of the appeal on ground (b), though again not necessarily fitting comfortably within it, is that, whilst the Notice refers to 'outbuildings', the only other structures, with the exception of the former railway carriage, are the lean-to and hay store. This leads the appellant to argue that the Notice is therefore ambiguous and imprecise.
5. Whilst it is true to say that, when setting out the alleged breach of planning control, the outbuildings in question are not specifically identified, they are, by reference to a plan, when the Council come to set out the requirements of the Notice. It is a fundamental principle that the recipient of an enforcement notice should, from the four corners of the document, be able to tell what it is being alleged he has done wrong and what he needs to do to remedy it: however, it seems to me that, when read as a whole, the enforcement notice achieves this and is not therefore ambiguous or imprecise.
6. In the light of the above the appeal on ground (b) must fail and I therefore turn to consider the appeal on ground (c).

APPEAL A - The appeal on ground (c)

7. The appellant raises a number of issues under this ground and I shall consider each in turn. First, as to the breach of planning control referring to the keeping of horses, it seems to me that, as stated by the Council, this is included within the allegation so as to describe the mixed use of the site, with the enforcement notice then making it clear that the keeping of horses is considered to be immune from enforcement action. The Notice is not therefore alleging that the keeping of horses is in breach of planning control.

8. As the Council point out, storage is in itself a use within the Use Classes Order, but the Notice is clear in excluding from its rigours storage related to the keeping of horses.
9. With regard to the fencing within and close to the boundary of the site, whilst that within the site may not exceed two metres in height, it seems likely that it was erected so as to facilitate the unauthorised mixed use alleged. In such circumstances an enforcement notice may secure the removal of buildings or works, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement action. This is so that the land can be restored to its condition before the change of use took place, as provided for by section 173(4) of the 1990 act as amended. The same approach is applicable to the fencing on or close to the boundary.
10. As to the keeping of chickens, the appellant suggests that this is for the purpose of providing eggs and is a use for "agriculture", within the definition contained in section 336 of the 1990 Act as amended, for which planning permission is not required. For their part the Council argue that the scale of activity is insufficient to constitute agriculture and is more in line with a hobby use. However, in any event the keeping of chickens is but one element in a mixed use and, as such, the requirements of the Notice may again secure the cessation of this activity so as to restore the land to its condition prior to that change of use occurring. Unfortunately for the appellant, the same principle applies to the caravan, the chicken hutches, and the earth closet.
11. Accordingly the appeal on ground (c) must fail. The appeal on ground (f) is, in the appellant's mind, linked to the section 78 appeal in that it is argued that, should Appeal B prove successful, the requirements of the Notice are excessive to the extent that they require the removal of the track. This, the appellant argues, is necessary and directly related to the proposed development. I shall therefore consider the appeal on ground (f) after I have examined the merits of the section 78 appeal.

APPEAL B – The section 78 appeal

12. Whilst not entirely certain as to the lawful use of the land, the Council appear to accept that, on the balance of probability, the keeping of horses is lawful and therefore they considered the application for the proposed stable block as being for a building ancillary to an existing lawful use. I have no reason to disagree with that view and accordingly it seems to me that the main issues are the effect of the building, and the consequent use of the land, on the character and appearance of the area.
13. The appeal site is situated in a rural location off Bacons Lane, which is a narrow country lane outside the defined settlement limits, which runs south east out of Swan Street. Swan Street is a hamlet within the Parish of Chappel. The application site comprises around 0.5 of an hectare of grassed land bounding Bacons Lane to the south west, footpath 17 to the south east, the railway line to the east, which lies at a lower level at the bottom of an embankment, and open countryside to the north west. A narrow strip of land adjoining the railway land runs north from the application site, connecting it to a larger field that is in the same ownership as the application site but which does not form

part of the application. Although fairly isolated the appeal site is close to two residential properties, 'Apple Croft' and 'Bacons Farm'.

14. Policy ENV1 of Colchester Borough Council's Local Development Framework (LDF) Core Strategy document (December 2008) states, amongst other things, that the Council will conserve and enhance Colchester's natural environment and countryside, and that "unallocated Greenfield land outside of settlement boundaries...will be protected and where possible enhanced...". It indicates that, where new development needs, or is compatible with, a rural location, it should demonstrably, and amongst other criteria: (i) be in accord with national, regional and local policies for development within rural areas...; (ii) be appropriate in terms of its scale, siting and design; and (iii) protect, conserve or enhance landscape...character...".
15. Policies DP1 and DP24 of the Council's Development Policies (October 2010) document of the LDF are also of relevance. Policy DP1 states, amongst other things, that development proposals must demonstrate that they, and any ancillary activities associated with them, will, amongst other things, respect or enhance the landscape. Policy DP24 relates specifically to equestrian activities and states that planning permission will be supported for equestrian related development if it can be demonstrated that the proposal:(i) cannot be located within existing buildings on the site through the re-use or conversion of buildings for any related equestrian use before new or replacement buildings are considered; (ii) is satisfactory in scale and level of activity, and in keeping with its location and surroundings; (iii) will not result in development leading to an intensification of buildings in the countryside and urban fringe or have a detrimental impact on the townscape setting or local landscape character. (iv) is related to an existing dwelling within the countryside or will not lead to pressure for the development of a new dwelling.
16. These policies are consistent with the National Planning Policy Framework (NPPF) which identifies, at paragraph 17, as one of twelve core land-use planning principles, that planning should contribute to conserving the natural environment and reducing pollution. The Council quotes from part of one of the other core planning principles, when it refers to "recognising the intrinsic character and appearance of the countryside", as well as to the three dimensions to sustainable development referred to at paragraph 7 of the NPPF. The appellant's Design and Access Statement and Planning Statement refers to the presumption of favour of sustainable development and, in relation to design, paragraphs 56-61 of the NPPF.
17. In that Statement the appellant states that the L-shaped stable block would be positioned on the south eastern corner of the plot, would measure approximately 12 metres in length, with a depth of 3.6 metres, and would incorporate 4 stable bays, a hay store and a tack room. I accept that equine facilities can maintain environmental quality and countryside character, and note that the appellant has no intention to place obstacles, jumps or other riding paraphernalia on the paddock land that would cause detriment to the rural landscape. However, whilst its design is of a fairly standard form, I concur with the Council that the building's detachment from existing structures on the land which, in so far as they are not the subject of enforcement action, seem likely to remain, and its position away from the road, leading to pressure for an access track, would result in it having an adverse impact on the

appearance and open character of the countryside. This would not be adequately mitigated by the backdrop of trees and hedges on the railway embankment. Moreover, that adverse impact would be exacerbated by the scale of the building, which is greater than that which can be justified for this modest site. Guidance produced by the British Horse Society suggests that average pasture will maintain approximately 2 horses per hectare as permanent grazing. The site is around half that size, suggesting that the keeping of one horse on the site might be sustainable: however, even if adopting the combined system of management, where the horses are stabled for part of the time, the land would seem unlikely to be able to satisfactorily accommodate more than two horses. This can be contrasted with the proposal, which it seems would result in 4 horses and 2 ponies being kept on site. A use of the land on such an intensive scale would ultimately undermine the conditions in which the horses and ponies were kept, as well as harming the character and appearance of the land itself.

18. Whilst I accept that such an intensification might have a limited impact in terms of such matters as vehicle generation, particularly if the use were limited to the appellant and members of her family, this is a quiet rural location with very limited traffic and any increase which is not otherwise justified in planning terms is likely to cause some environmental harm. In that respect, whilst I note the appellant's reference to a planning permission recently granted in relation to Bacons Farm, this related to an existing building and different planning policies will apply.
19. For the reasons given above the appeal proposal would harm the character and appearance of the area and, in causing environmental harm, it cannot be viewed as sustainable development. The scheme is in clear conflict with the Council's LDF and with the NPPF and planning permission must accordingly be refused. This leads me to the appeal on ground (f) in relation to Appeal A.

APPEAL A - The appeal on ground (f).

20. This ground of appeal was based on the need for the access track should planning permission be granted for the stable block. As I have reached the conclusion that the grant of planning permission must be refused, the case for an access track to it dissipates. The appeal on ground (f) must therefore be dismissed.

Formal decisions

Appeal A: APP/A1530/C/14/2213639

21. The appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/A1530/A/13/2205997

22. The appeal is dismissed.

Felix Bourne

Felix Bourne

INSPECTOR