



Appeal Decisions

Hearing held on 20 July 2010

Site visits made on 19 and 20 July 2010

by **Chris Hoult BA BPhil MRTPI MIQ**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
30 July 2010

Appeals Refs: APP/R0660/C/10/2123813 & 2124219

Land North of Pedley Lane, Timbersbrook, Congleton, Cheshire, CW12 3PY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Leo Deen and Ms Catherine Wincote against an enforcement notice issued by Cheshire East Council.
- The Council's reference is 10/00002/ENFAPP.
- The notice was issued on 27 January 2010.
- The breach of planning control as alleged in the notice is, without planning permission, change of use of the land from an agricultural use to a mixed recreational and educational use.
- The requirements of the notice are: (a) stop using The Land for recreational and educational use including use as a petting farm and for the holding of children's parties; (b) remove from The Land all structures associated with the unauthorised use such as: animal shelters, aviaries, classroom, gift shop, toilets, walkways, parking area; signs.
- The period for compliance with the requirements is: (a) 16 weeks; (b) 24 weeks.
- The appeals are 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 1990 Act").

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with correction and variation.

Appeals Refs: APP/R0660/C/10/2123424 & 2123425

Land North of Pedley Lane, Timbersbrook, Congleton, Cheshire, CW12 3PY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr I Smith and Mrs R Smith against an enforcement notice issued by Cheshire East Council.
- The Council's reference is 10/00002/ENFAPP.
- The notice was issued on 27 January 2010.
- The breach of planning control as alleged in the notice is, without planning permission, change of use of the land from an agricultural use to a mixed recreational and educational use.
- The requirements of the notice are: (a) stop using The Land for recreational and educational use including use as a petting farm and for the holding of children's parties; (b) remove from The Land all structures associated with the unauthorised use such as: animal shelters, aviaries, classroom, gift shop, toilets, walkways, parking area; signs.
- The period for compliance with the requirements is: (a) 16 weeks; (b) 24 weeks.
- The appeals are proceeding on the grounds set out in section 174(2)(b) of the 1990 Act.

Summary of Decision: The appeals are dismissed and the enforcement notice upheld with correction and variation.

Preliminary matters

1. The decisions concern two sets of appeals against the same notice. Appeals refs. APP/R0660/C/10/2123813 & 2124219 are in respect of the land subject of the notice and were dealt with at the hearing on 20 July 2010 which included a site visit. Appeals refs. APP/R0660/C/10/2123424 & 2123425 relate only to the track, which is separately owned by the appellants for these appeals, and were dealt with under the written representations procedure, for which a site visit took place on 19 July 2010. I consider that, though there is a separate decision on each, I can deal with them together.
2. No plans were submitted in respect of the ground (a) appeals. I deal with them on the basis of the site layout as seen and as set out in an annotated version of plan ref. 07/036/LD/1 which was agreed by the parties as I requested at the hearing. This was the site layout plan considered by the Council when it refused planning permission for the change of use in April 2008. The annotations reflect the further changes to the site layout which occurred between then and the issue of the notice.

Background

3. The appeals concern a site in the open countryside to the east of Congleton, in the Cheshire Green Belt, near the small settlement of Key Green. The appellants acquired it around 2003. It houses a variety of animals and birds, some of them rare breeds, and contains ponds and other wildlife habitats. The structures on the site consist mostly of animal shelters but there is also a more substantial classroom and a former stable block housing a modest gift shop and feed store. These are part of a concentration of built development in the south-eastern corner, which includes storage buildings and structures close to the access track, and hardstandings for parking vehicles.
4. The site operates as a facility which caters in particular for disabled people and local schoolchildren who visit it in organised groups but it is also open to the wider public and is manned by volunteers. The enclosures and habitats can be seen at close quarters and there is an element of teaching and awareness raising of countryside issues. There have been three previous planning applications to regularise it. Earlier applications also involved a dwelling on the site. The second of two applications made in 2004 was dismissed on appeal. The application refused in 2008 excluded the dwelling and the site layout was largely as it is at present. A further application was expected following its refusal but did not materialise, leading to the issue of the notice.

Matters concerning the notice

5. I considered whether the description of the mixed use at the site reflects all its component parts, in the light of a representation from an objector to which I drew the parties' attention at the hearing and which refers to children's parties, organised camping, fetes and events at Halloween and Christmas. The appellants did not dispute that these have occurred albeit in some cases infrequently. These activities could fall under the general description of a recreational use but, for clarity, and bearing in mind the guidance in paragraphs 2.10 and 2.11 of Circular 10/97, I correct the notice to expressly refer to them as components of it.

6. With regard to step 5(b) of the requirements, the walkways and parking areas are not structures as such. I vary the requirements to refer to them as other operational development and also to refer separately to signage. The Council cites the cases of *Murfitt* and *Somak Travel*¹ as authority for its view that it is entitled to require the removal of all development carried out facilitate the unauthorised use. It is clear from reading the notice that it seeks the removal of these items in so far as they constitute such development.
7. I deal with the appellants' argument that the description of the mixed use should also include agriculture and the possible variation of the requirements to allow some or all of the buildings to remain together in dealing with the ground (f) appeals. However, the correction I identify at this stage seeks to describe more fully the elements of the mixed use rather than widen it while the variation seeks to more accurately describe the steps rather than adding to them. Both can be made without causing injustice to the appellants.

Appeals Refs. APP/R0660/C/10/2123424 & 2123425

8. The appeals are made on ground (b), which is that the alleged breach of planning control has not occurred as a matter of fact. The appellants own the access track; the owners of the site have a right of access over it but only in connection with its use for agriculture, which is the lawful use of the site in planning terms. Its use as an educational and recreational facility by its nature involves visits by the public which, in the case of the disabled groups and parties of schoolchildren, can only realistically be achieved by gaining vehicular access to it, along the track. The use of the track in this way, by visitors, but also by the appellants and volunteers, is in breach of planning control and of restrictive covenants which apply to it. If the track were not used in this way, it is questionable whether the site could function in the way that it does.
9. I do not dispute the appellants' contention that the track is not physically used for educational or recreational purposes. Moreover, given that it is also a public footpath, access to the site could be lawfully obtained on foot. However, it follows from the above that I conclude that its use as a vehicular access is part and parcel of the unauthorised use. It is therefore necessary to bring it within the scope of the notice, the more so since its requirements could be complied with by enforcing the restrictive covenants, which were said by the owners of the track at the hearing to be legally enforceable. In the light of this, it would undermine the purpose of the notice to delete it from the plan or show it as merely a background feature. Since I am satisfied that the breach of planning control involves the use of the track, I do not accept that it has not occurred as a matter of fact. Therefore, the ground (b) appeals must fail.

Appeals Refs. APP/R0660/C/10/2123813 & 2124219

Ground (a) appeals

Main issues

10. The starting point for considerations is the site's Green Belt location. Saved Policy PS7 of the Congleton Borough Local Plan First Review mirrors national planning policy in Planning Policy Guidance Note 2 (PPG2): *Green Belts*. The

¹ *Murfitt v SSE and Another* [1980] JPL 598; *Somak Travel v SSE and LB of Brent* [1987] JPL 630

mixed use falls under "other uses of land" to which criterion (ii) of the policy refers. The main issues are therefore as follows:

- (a) whether the change of use to a mixed educational and recreational use represents inappropriate development for purposes of development plan policy and PPG2;
- (b) the effect of the mixed use on the openness of the Green Belt and the character and appearance of the open countryside; and
- (c) whether the harm to the Green Belt arising from inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the mixed use.

Under the heading of "any other harm", I consider, in addition to those matters identified in (b) above, whether the location is sustainable and also the potential for harm to the safety of highway users.

Whether inappropriate development

11. Paragraph 3.12 of PPG2 says that material changes of use are inappropriate development in the Green Belt unless they maintain openness and do not conflict with the purposes of including land in it. These purposes are set out in paragraph 1.5 of PPG2. Openness in the context of Green Belt policy should be taken to mean freedom from built and/or operational development. Of the five purposes listed, the most relevant to these appeals is assisting in safeguarding the countryside from encroachment, from built or operational development of an urbanising character. The policy tests set out in paragraph 3.12 reflect those in criterion (ii) of local plan Policy PS7 in so far as they determine whether "other uses of land" in the Green Belt should be allowed under the terms of the policy.
12. In applying these tests, it is plain that the introduction of a series of structures, together with some hard surfacing to facilitate vehicle parking, on to land which was formerly open agricultural land runs contrary to the objective of maintaining openness. It results in encroachment into the open countryside. I note the appellants' references to the condition of the land at the time they acquired it but I saw no evidence to indicate that its previous use for lorry parking and the storage of hardcore etc. was in any way lawful. By these tests, the change of use amounts to inappropriate development.
13. The appellants draw my attention to paragraph 1.6 of PPG2 in so far as, in providing opportunities for access to the open countryside for the urban population and for outdoor recreation near urban areas, the site can be argued to have a positive role in the Green Belt. I accept that these are benefits to be considered but they are not of relevance in considering inappropriateness. Paragraph 1.7 makes clear that it is the purposes of including land in the Green Belt which are of paramount importance for its continued protection, which takes precedence over these land use objectives. As to the notion that the structures represent essential facilities for outdoor recreation, that was firmly rejected by the Inspector who dismissed the appeal in 2005. He considered that that the resulting agglomeration of buildings would be harmful to openness, a view which I see no reason to seriously dispute.

14. Accordingly, I conclude that the change of use to a mixed educational and recreational use which has occurred represents inappropriate development for purposes of PPG2 and the development plan, which conflicts with local plan Policy PS7. Paragraph 3.2 of PPG2 says that such development is by definition harmful to the Green Belt and that the Secretary of State will attach substantial weight to the harm arising from inappropriateness.

Openness of Green Belt

15. I accept that, in failing to maintain the openness of the Green Belt, the change of use will have caused harm to it, aside from whether it can be regarded as inappropriate development. The Inspector in 2005 took the view that the number of buildings on the site resulted in material harm to openness and it appears that there has been a further increase since that time. However, I consider that there are mitigating factors.
16. Firstly, the majority of the structures are modest while the wire mesh bird enclosures are open and insubstantial in appearance. Secondly, the two largest structures near the car park, a building housing a store and workshop and the former stable block housing the gift shop and feed store, already benefit from planning permissions. These are for uses in connection with agriculture and the keeping of horses. If the previous Inspector was aware of these permissions, he does not appear to have expressly taken them into account in his assessment of the effect on openness. Accordingly, I attribute correspondingly reduced weight to the harm to the openness of the Green Belt.

Character and appearance

17. The site is largely hidden from Pedley Lane and is visible only from the footpath that runs along the access track and its eastern boundary. A belt of trees and bushes along this boundary gives it an enclosed feel and serves to largely filter or screen it in long-distance views from the rising land in the vicinity of "The Cloud". It would in any event appear as a minor component of a wide vista in views from this higher ground. The view from the footpath is of an array of timber buildings, animal shelters and fencing demarcating the various enclosures which amounts to visual clutter which has extended to encompass the whole of the site. The picnic tables scattered across the mown grass area in particular draw the eye and appear incongruous in a rural setting.
18. However, once on site, the buildings, walkways and enclosures appear to me to be more purposefully laid out than the haphazard arrangements witnessed by the previous Inspector and referred to by the Council. The fencing has an affinity in visual terms with that used to delineate paddocks for grazing horses and the buildings and structures grouped together near the car park are largely constructed of timber and are of functional design and appearance. These elements do not appear out of place in a rural setting. The animal shelters scattered throughout the site are of modest size. The location is not what I would necessarily regard as isolated. The access track is a short walk from houses on the edge of Key Green and the site is viewed from the footpath against a backdrop of substantial barns on immediately neighbouring land.
19. Paragraph 3.15 of PPG2 says that the visual amenities of the Green Belt should not be injured by development which is visually detrimental in terms of siting, materials or design. Local plan policies RC1 and RC4 set out a range of criteria

in relation to recreational and community facilities, including where located in the countryside, which relate to this issue. While certain elements appear incongruous and the site has a cluttered appearance, the resulting harm does not appear to me to be significant. Any visual detriment to the Green Belt arises primarily from matters of siting, while no material conflict arises with criteria (ii), (iii) or (v) of Policy RC4 or with the parallel requirements of criterion (iii) of Policy RC1. While some harm arises to the character and appearance of the open countryside, the weight I attach is limited accordingly.

Any other harm

20. With regard to the Council's concerns about the accessibility of the site to public transport, the site caters primarily for groups who are likely in any event to require organised transport to reach it. To that extent, its proximity to normal bus routes is immaterial since it would be largely accessed by this form of transport wherever located. I accept that, as regards the wider public, and especially given the claimed benefit of providing opportunities for people living in urban areas, it would be more suitably located within or on the edge such areas. There are examples up and down the country of similar types of "urban farms" which have operated successfully in this way. However, to the extent that it encourages organised visits, the site operates broadly in line with the expectations in PPS1 Climate Change² in relation to encouraging sustainable transport opportunities.
21. With regard to highway safety, it is clear that the site could, if necessary, provide for more off-road parking than is accommodated in the small dedicated car park. The previous Inspector rejected the Council's concerns over visibility and wider highway safety and, from my own observations regarding conditions on Pedley Lane, I see no reason for disagreeing with his conclusions. In any event, it was pointed out at the hearing that far more traffic congestion along the lane occurs on the occasions of the local chapel's regular jumble sales. Although there remains the potential for coaches accessing the site to occasionally come into conflict with the farm vehicles which use the lane, I am satisfied that no harm arises to the safety of highway users. Accordingly, I conclude that only very limited weight can be attached to these additional factors in considering any other harm.

Other considerations

22. In view of the substantial weight attached to the harm to the Green Belt by reason of inappropriateness, paragraph 3.2 of PPG2 says that it is for the applicant to show why permission should be granted. Very special circumstances to justify such development will not exist unless the totality of the harm is clearly outweighed (my emphasis) by other considerations. The benefits in relation to paragraph 1.6 of PPG2 are matters which fall under this heading, as is the support for the facility from the local community, of which there was clear evidence at the hearing, and the various letters of support.
23. Taking the latter first, I attach only limited weight to the (mainly pro-forma) bundle of letters submitted by the appellants. They give an impression of being the product of a campaign in which the issue at hand is simplistically

² Planning Policy Statement: Planning and Climate Change (Supplement to Planning Policy Statement 1 (PPS1): *Delivering Sustainable Development*.

portrayed as being the threat of closure of the facility. The weight I attach to the petition is also limited. Not only does it refer to the site as a nature reserve (a term the appellants now disown) but it appears that a proportion of it is simply duplicated from a previous application. While these items to a degree indicate support from the local community, I attach greater weight to the representations made in person at the hearing and to the letters of support from organisations whose charges benefit from visits to the site. Mr Deen comes over as an enthusiastic and likeable person who is clearly held in high regard by those who attended the hearing.

24. It is against this background that I consider the explanation of the benefits from and justification for the site in the appellants' statement to be inadequate, limited to one brief paragraph lifted from the grounds of appeal. There is no explanation of the rationale for the site in planning or operational terms. The land seems to have been acquired with little thought to the planning policy implications. The Council's letter following an initial meeting, which was submitted at the hearing, sets out the planning issues in a carefully balanced way but give no indication of support for a facility along the lines of that which has been developed. With regard to the view that a facility such as this would be better located within or on the edge of the urban area, given its claimed benefits, there is no evidence as to why this option should be discounted and the use located in this particular open countryside location in the Green Belt.
25. Despite a refusal of permission and dismissal on appeal as far back as 2005 of similar proposals, in which Green Belt policy and character and appearance issues were to the fore, the appellants appear to have given no active consideration to re-locating to an alternative site. The notion that I should regard the deletion of a dwelling from the proposals as decisive in coming to a view on the present planning merits appears simply to ignore these previous planning policy objections. I accept that the appellants might have formed an attachment to the locality, and the work they put into clearing the site is clearly a benefit, but that sits uneasily with their failure to resolve the matter of their access rights. Policy RC4(iv) requires that satisfactory access can be achieved from the highway. Given that the owners of the track could seek to enforce the restrictive covenants, the site fails to meet even that basic requirement.

Balancing exercise

26. It is for the appellants to demonstrate that the benefits to the local community amount to a consideration capable of outweighing the substantial harm to the Green Belt, even if I attribute only limited weight to any other harm arising. Given the claimed benefits, they need to consider alternative sites if they are going to demonstrate, by reference to the practicalities of re-locating or any particular advantages of the appeal site, why such options should be discounted. These seem to me to be basic requirements of any case justifying retaining the use on the site. On the evidence before me, they fall some way short of meeting them. The other considerations adduced fail to clearly outweigh the harm to the Green Belt by way of inappropriateness and any other harm, and therefore to justify the mixed use. Very special circumstances do not therefore exist. In the light of this, the ground (a) appeals must fail.

Ground (f) appeals

27. The appellants argue that it is unduly onerous to require the removal of structures which could be re-used in connection with the site's lawful agricultural use but go on to claim that the site is currently at least in part used for agriculture, even if a material change of use to a mixed use has occurred. They say that the trading of some animals which has occurred is consistent with normal farming practice. At the hearing, third parties testified to the buying and selling of rare breed pigs and the appellants said that they had the paperwork to demonstrate this. I deal separately with their objection to the requirement to stop using the site as a "petting farm".
28. It appears to me that the site is laid out primarily to facilitate the educational and recreational use, in so far as the birds and animals are kept to be on display. While the enclosures containing the goats, sheep, donkeys and pigs allow them to graze and root, the footpath linking them allows them to be viewed from close proximity and notices around the site anticipate that visitors may from time to time wish to touch and feed them. If a parallel commercial farming operation is being carried out, I have no documentary evidence of it, in order to be able to come to an informed view as to whether it is part of the mixed use in its own right or merely ancillary to the other uses.
29. Similarly, I have no evidence relating to any plan or programme or intentions on the part of the appellants to carry on a commercial farming operation should the notice be upheld and the mixed use be discontinued. The appellants say that the small size of the holding would only support a limited rare-breeds livestock rearing operation. However, I have no evidence as to what that might entail, with regard to the structures needed to support them.
30. That said, it is clear that the purpose of the notice is to remedy the breach of planning control. To that extent, s173(4)(a) of the 1990 Act requires that that be achieved by restoring the land to its condition before the breach took place. Two of the buildings benefit from extant planning permissions and appear to have been in place before the appellant acquired the site. They have been converted and extended for uses which are part and parcel of the unauthorised mixed use but, while the notice can require the removal of these elements, the original structures could be re-used in line with what these permissions allow and, in such a way, they could revert to their lawful uses.
31. Therefore, while I see no reason to correct the description of the mixed use in the alleged breach to one which includes agriculture as a separate element, I consider that the requirements should not extend to the removal of these structures. As to the reference to a petting farm, the evidence is that, occasionally, visitors touch the animals and washing facilities have therefore been installed at the request of the Council's environmental health officers. However, the site does not operate as a petting farm in the sense that touching and stroking the animals is encouraged. I vary the requirements of the notice accordingly and, to that limited extent, the ground (f) appeals succeed.

Ground (g) appeals

32. The appellants argue that a period of six months should be set aside before the notice takes effect to allow existing reservations to be met. The requirement to stop the unauthorised use would come into effect four months or so from the

date of the notice and they would have a total of six months to remove the structures. In the circumstances, and given the arrangements which would need to be made to dispose of the birds and animals, I consider it reasonable to extend the initial period to six months and to add to it a further two months for the removal of the structures and other development. I vary the notice accordingly and, to that extent, the ground (g) appeals succeed.

Conclusions

33. For the reasons given above I conclude that the appeals should fail. I shall uphold the enforcement notice with correction and variations and refuse to grant planning permission on the deemed application.

Decisions

Appeals Refs: APP/R0660/C/10/2123813 & 2124219

34. I direct that the enforcement notice be corrected by, in Section 3, the insertion, after the words "educational use", the words "to include use for children's parties, organised camping, fetes and events at Halloween and Christmas".

35. I direct that the notice be varied by:

- (a) in step 5(a), the deletion of the words "use as a petting farm and" after the word "including";
- (b) the deletion of step 5(b) and its replacement with the following words "(b) Remove from the land all structures, other operational development and signage associated with the unauthorised use such as animal shelters, aviaries, classroom, gift shop, toilets, walkways and parking areas excepting the former livestock storage building and stable block subject of previous planning permissions.";
- (c) in Section 6(a), the deletion of the words "16 weeks" and their replacement with the words "6 calendar months after this notice takes effect"; and
- (d) in Section 6(b), the deletion of the words "24 weeks" and their replacement with the words "8 calendar months after this notice takes effect".

36. Subject to this correction and these variations, I dismiss the appeals, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under s177(5) of the 1990 Act.

Appeals Refs: APP/R0660/C/10/2123424 & 2123425

37. I dismiss the appeals and uphold the enforcement notice as corrected and varied above.

C M Hoult

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Gough DipTP MRTPI	Gough Planning Services
Mr L Deen	Appellant
Ms C Wincote	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs D Ackerley BA(Hons) DUPI MRTPI	Principal Planning Officer, Enforcement, East Cheshire Council
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INTERESTED PERSONS:

Mr and Mrs Rogers	Objectors to notice
Mr J Upton	Objector to notice
Mr and Mrs M Owen	Objectors to notice
Ms J Abigal	Objector to notice
Mr M Breakwell	Horsley Sparrow Consultancy (representing Mr and Mrs Smith – local residents)
Mr I Smith	Local resident/supports notice
Mr D Brown	Local Ward Councillor/objector to notice

DOCUMENTS

- 1 Council's letter of notification giving details of date, time and place of hearing and attached circulation list.
- 2 Representation against notice from Daniel Morris and Stacey Winfield, local residents.
- 3 Letter, Council/Mr Deen, dated 11 July 2003.
- 4 Copy of poster for jumble sale, Key Green Chapel, 3 July 2010.
- 5 Extract from Congleton Borough Local Plan First Review setting out policies RC1, RC4 in full.

PLANS

- A Copy of plan ref. 07/036/LD/1 annotated to show recent changes to site layout.