The Planning Inspectorate

Appeal Decision

Site visit made on 12 March 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 MARCH 2025

Appeal Ref: APP/C3430/C/24/3349508
Squirrels Rest, Poplar Lane, Hatherton, Cannock, WS11 1RS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Luke Lee against an enforcement notice issued by South Staffordshire District Council.
- The notice was issued on 8 July 2024.
- The breach of planning control as alleged in the notice is (i) without planning permission, unauthorised development consisting of the erection of a wooden chalet and associated patio area, located on the land coloured green on the Plan, and (ii) without planning permission, the material change of use of the Land, to a mixed use as agriculture and residential and for the following non-agricultural uses: a) use as a paddock for the keeping of ponies and horses on field 1 outlined in blue on the Plan in connection with the domestic residential use of the adjacent dwelling, b) use as a sensory garden/playground on field 2 outlined in blue on the Plan in connection with the domestic residential use of the adjacent dwelling, c) use as a paddock for the keeping of goats on field 3 outlined in blue on the Plan in connection with the domestic residential use of the adjacent dwelling, including the erection of fencing outlined in pink to facilitate the material change of use of the land.
- The requirements of the notice are to: i) remove the wooden chalet and any materials used to form the base and the associated patio area and steps from the Land, ii) restore the land back to the condition it was in before the wooden chalet and associated patio area was erected upon it, iii) cease the use of the Land for use as a paddock for the keeping of ponies and horses, for use as a sensory garden/playground and for use as a paddock for the keeping of goats, iv) remove the large children's wooden climbing frame and all materials connected to it from the Land, v) remove the fencing (shown in the approximate position marked pink on the Plan used to demarcate fields 1-3 from the Land, vi) restore the Land (outlined in blue marked fields 1 – 3 on the plan) back to the condition it was before the unauthorised development took place.
- The period for compliance with the requirements is three months,
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice be varied by deleting the number 4 before 'what your are required to do' and replacing it with the number 5. Subject to the above variation, the appeal is dismissed, 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.

Preliminary Matters

2. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework) and was subsequently amended on 7 February 2025 to

correct cross-references from footnotes 7 and 8 and amend the end of the first sentence of paragraph 155 to make its intent clear. For the avoidance of doubt, the amendment to paragraph 155 does not constitute a change to the policy set out in the 2024 Framework. The 2024 Framework replaces the previous version of the National Planning Policy Framework published in December 2023. I afforded the main parties the opportunity to comment on the implications of the 2024 Framework as part of the determination of this appeal.

3. As part of my site visit, I noticed that a blue metal container was positioned to the side of the wooden chalet building which is the subject of this appeal. I do not know what it is being used for, or the circumstances which led to it being positioned on the site. It does not form part of the breach of planning control, and I have not taken it into account for the purposes of my assessment of the deemed planning application.

The Notice

4. The paragraph numbering in the notice is incorrect. In the section under 'what you are required to do', the paragraph number should be five and not four. I shall vary the notice, without injustice being caused to the main parties, by deleting the number 4 before 'what you are required to do' and replacing it with the number 5.

Ground (c) appeal

5. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The claim made by the appellant is that field Nos. 1 and 3 falling within the appeal land, as annotated on the plan attached to the notice, are in use for the grazing of animals and hence are in agricultural use.

6. Section 336 of the Act provides a definition of agriculture. It states agriculture *"includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly".*

7. The appellant states that the '*appellant may keep ponies, horses and goats for pleasure but, the definition of agriculture does not require use for business purposes'*. The appellant states that the miniature ponies are not intended to be ridden. He also comments that there are no stables or other structures on the land whereby the livestock can be kept independently from its use for grazing.

8. As part of the appeal, I sought clarity from the appellant in terms of how the animals were being kept on the land. The appellant did not respond to this request. Nonetheless, it is noted that in his appeal correspondence he refers to the animals being kept. Moreover, in terms of his ground (d) appeal, he says the land has *'been in continuous use for the keeping/grazing of horses/ponies for well in excess of 10 years'.*

9. The onus is on the appellant to make his case on legal grounds. While the fields may be being used for grazing purposes for at least some of the time, the appellant's evidence casts sufficient doubt about whether such animals are also

being 'kept' on the land as distinct from simply grazing. Despite being given an opportunity to clarify matters, the appellant's written evidence remains insufficient and ambiguous in terms of feed (i.e., whether supplementary feed is provided) and care arrangements. The evidence is also silent in terms of what happens to the animals when the weather is inclement.

10. On the evidence that is before me, and, on the balance of probability, I find that when the notice was issued the evidence does not precisely and unambiguously demonstrate that field Nos. 1 and 3 were in agricultural use.

11. The appellant does not dispute that field No. 2 is being used as a sensory garden/playground. There is also a children's wooden climbing frame on this part of the land. There is no evidence to support any claim that this land has planning permission for such a domestic/residential use. In effect, I find that field Nos. 1, 2 and 3 are being used for outside residential purposes as an extension to the use of Squirrels Rest as a dwellinghouse. Such unauthorised development constitutes a material change of use of the land for which planning permission is required.

12. For the above reasons, I conclude that the ground (c) appeal fails.

Ground (d) appeal

13. The appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

14. The claim made by the appellant is that if the ground (c) appeal fails, field No. 1 began to be used for the grazing of ponies in 2000 when the horse exercise arena was constructed. He claims that it has been in the same use continuously for more than ten years. As a matter of fact and degree, I have concluded that the evidence is not sufficiently precise or unambiguous to demonstrate that field No. 1 was in agricultural use when the notice was issued. Moreover, the evidence from the appellant is not sufficiently precise or clear to demonstrate that this land has been used solely for grazing for a continuous period of ten years.

15. The onus is on the appellant to make his case on legal grounds. His claim that field No. 1 has been in continuous use for agricultural purposes is not supported by precise and unambiguous evidence. It is noted that as part of the ground (d) appeal, the appellant refers to *'keeping'* horses and ponies on the land. This casts sufficient doubt about use of the land for a continuous period of ten years for solely grazing purposes. In this regard, the ground (d) appeal fails.

16. The appellant does not make a claim that the mixed use of the land has not occurred. He does not make the claim that the sensory garden/playground or operational development in the form of the wooden chalet building with associated patio are immune from enforcement action owing to the passage of time. In this respect, I also conclude that the ground (d) appeal fails.

Ground (a) appeal and the deemed planning application

Main Issues

17. An appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. The appeal site falls within land designated as Green Belt. I have considered the reasons for issuing the notice and the deemed planning application main issues are: -

    - whether the development is inappropriate development in the Green Belt including its effect on the openness and purposes of Green Belt, and,
    - whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether inappropriate development in the Green Belt

18. I have considered whether paragraph 155 of the 2024 Framework is relevant in terms of the breach of planning control. Even if the development were found to be on a site that was grey belt land, I do not find that any aspect of the unauthorised development meets all the relevant criteria in paragraph 155 a) to d) of the 2024 Framework. In particular, the evidence does not indicate a demonstrable unmet need for the respective developments that are the subject of the notice. The appellant may wish for his child to have use of a separate building for sensory and tuition purposes, but that is not the same as demonstrating evidence of demonstrable unmet need for the type of development proposed. Consequently, the unauthorised development does not accord with all the requirements of paragraph 155 of the 2024 Framework.

19. The wooden chalet building (with facilitating patio) occupies land to the north of the dwellinghouse. The appellant states that it is being used as a sensory room by one of the appellant's children who occupies Squirrels Rest and has a specified disability. Given its position, I do not find that it has an intimate association with the dwellinghouse, and, moreover, it could not reasonably be said to constitute an extension to Squirrels Rest. It is positioned to the side of the approved ménage, and alongside the boundary of the site with bridleway No. 4. Even if one were to disagree with my finding about the chalet building not constituting an extension to Squirrels Rest, it is, in any event, disproportionately large when considered against the dwellinghouse and hence such development does not meet the requirements of paragraph 154(c) of the 2024. Given its position, size and use, the chalet building does not meet any of the exceptions listed in paragraph 154 of the 2024 Framework.

20. Paragraph 154(h)(v) of the Framework states that material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds), do not constitute inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. In the judgement of Royal Borough of Kingston upon Thames v SSLUHC [2023] EWHC 2055 (Admin), the judge confirmed that residential uses do not fall within this exception. Furthermore, it was held that it is not an open-ended category, but rather, because of the words "such as", the uses that will be within it should take their flavour or

extent from the examples given. Therefore, I do not find that paragraph 154(h)(v) of the 2024 Framework is relevant in respect of the residential use of the land.

21. Even if one were to disagree with the above, it is noteworthy that the sensory garden/playground in field No. 2 includes a children's wooden climbing frame. Moreover, owing to its height the wooden climbing frame is visible from parts of Poplar Lane (particularly when the gates are open) and from longer distance views to the east. While the sensory garden/playground has not had a very significant impact on the openness of the Green Belt in spatial and visual terms, in my judgement it does not meet the test of preserving the openness of the Green Belt.

22. While animals in field Nos. 1 and 3 would suitably preserve the openness of the Green Belt, it is noted that the unauthorised use of this land has included the erection of facilitating fencing which I find has resulted in some spatial and visual harm to the openness of the Green Belt. Moreover, and, in this context, the use of this land is visually appreciated, alongside the use of field No. 2 as a sensory garden/playground, as constituting an enlarged residential plot for Squirrels Rest. In visual terms, field Nos. 1, 2 and 3 are seen as an extension of the land associated with the residential property known as Squirrels Rest. I find that it has sought to further urbanise this area of countryside. Accordingly, I find that it has led to conflict with one of the Green Belt purposes, i.e., to safeguard the countryside from encroachment.

23. While bridleway No. 4 includes mature boundary planting along large parts of its length, there are nonetheless some gaps within the planting. Hence, the three 'fields', and including the wooden climbing frame, are also visible from glimpsed views from bridleway No. 4. It is also important to emphasise that approval of the sensory garden/playground would have the potential to result in the provision of other play equipment or domestic chattels/paraphernalia which may also further erode the openness of the Green Belt.

24. I therefore find that the use of field Nos. 1, 2 and 3 has resulted in countryside encroachment. In this regard, it fails to serve the Green Belt purpose in paragraph 143(c) of the Framework which is to assist in safeguarding the countryside from encroachment. In effect, this development has resulted in the enlargement of the residential plot associated with Squirrels Rest.

25. For the above reasons, I conclude that the unauthorised development constitutes inappropriate development in the Green Belt. Paragraph 153 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt, and local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness.

Effect on the openness and purposes of the Green Belt

26. The evidence is that field Nos. 1, 2 and 3 were in agricultural use prior to the unauthorised material change of use occurring. I have already concluded that the unauthorised use of field Nos. 1, 2 and 3 has caused some harm to the openness of the Green Belt. Furthermore, there is some conflict with one of the purposes of the Green Belt.

27. The wooden chalet building (including its associated patio) is large in the context of the size of the dwellinghouse. Part of its roof can be seen from

Bridleway No. 4 and some of it is noticeable from the more open and longer distance views to the east. In spatial and visual terms, I find that this development has had a moderately adverse impact on the openness of the Green Belt. The evidence is that this land was previously devoid of built form and had a more rural and open character.

28. Like the use of field Nos. 1, 2 and 3, I consider that the chalet and patio has led to countryside encroachment and, in effect, has resulted in the enlargement of the residential plot associated with Squirrels Rest. This development therefore fails to serve the Green Belt purpose in paragraph 143(c) of the Framework which is to assist in safeguarding the countryside from encroachment.

Other Considerations

29. Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.

30. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.

31. I acknowledge that the appellant's child has a particular disability that requires specialist educational and other support. I do not doubt that having a sensory garden/playground, as well as use of the appeal building for sensory and tuition purposes, and away from the distractions of the appellant's other children, offers the child the facilities needed for emotional, social, and educational needs. These are matters which weigh in favour of allowing the chalet building.

32. Notwithstanding the above, the needs of the appellant's child must be weighed against the collective harm that has been caused to the Green Belt to which I afford substantial adverse weight. I note that planning applications have previously been refused for the erection of a sensory building in connection with the property known as Squirrels Rest. Such proposals were in combination with other proposed development and included land outside the residential curtilage of Squirrels Rest. It is also noteworthy that the needs of the appellant's disabled child were also considered by me as part of a dismissed appeal in July 2023[1]. At this time, the appellant was proposing to make use of a sensory caravan for the disabled child, also on land outside the curtilage of Squirrels Rest.

33. As outlined in the July 2023 dismissed appeal, there is no evidence to indicate that it would not be possible, in principle, to provide a well-designed and proportionate extension to Squirrels Rest to provide a 'sensory room' in accordance with paragraph 154(c) (formerly paragraph 149(c)) of the 2024 Framework, while at the same time retaining the integral character and appearance of the dwellinghouse. Indeed, as part of the July 2023 dismissed

[1] Appeal Ref: APP/C3430/W/21/3282975 - change of use of land to mixed use for the keeping of horses and as a residential gypsy caravan site for the stationing of three caravans, together with laying of hardstanding, erection of amenity building, stable and haybarn.

appeal, the local planning authority commented that it *'would encourage an alternative application compliant with NPPF paragraph 149(c) that is proportionate, well-designed in relation to the existing building, and does not encroach beyond the approved domestic curtilage, and would treat such an application on its merits'.*

34. Furthermore, and, as outlined in the July 2023 appeal decision, the evidence does not indicate that a refusal of planning permission would necessarily mean that the appellant's child would not be able to be home tutored in Squirrels Rest following the family making some arrangements to ensure improved peace and quiet during the times when home tutoring takes place. I appreciate that this option may not be as desirable as having a dedicated sensory room as an extension to Squirrels Rest, but I find that it is likely that there is potential for such an arrangement to occur, at least for a short time, and until a policy compliant extension had been approved and constructed.

35. The evidence is that there are potentially less harmful and, importantly, Green Belt policy compliant options that could be explored by the appellant which would meet the needs of his disabled child from a tuition and well-being point of view. This therefore diminishes the weight that I afford to the identified personal circumstances.

36. The appellant states that the unauthorised sensory garden/playground must be in its current location because the outside land within the curtilage of Squirrels Rest is hardstanding. There is indeed an extensive amount of hardstanding around Squirrels Rest. However, the evidence does not lead me to conclude that some of it could not be given over to grass for the purpose of being used as a softer area for play and/or as an area where the appellant's disabled child can have relative peace and quiet, or indeed where the wider group of children may want to play. The appellant states that *'there is nowhere within the residential curtilage where play equipment can be safely installed'*. This comment is not reasonably substantiated. The area of hardstanding around Squirrels Rest is extensive. I have not been provided with a good reason as to why a safe and enclosed area for children to play could not be provided within the curtilage of Squirrels Rest.

Planning Balance and Conclusion

37. I have found that the breaches of planning control amount to inappropriate development in the Green Belt. Moderate harm has been caused to the openness of the Green Belt in respect of the chalet building (with facilitating patio) and some harm has been caused to the openness of the Green Belt from the use of field Nos. 1, 2, and 3 and including facilitating development. Moreover, the respective developments have failed to safeguard the countryside from encroachment and therefore there is conflict with one of the Green Belt purposes. I afford the totality of the harm to the Green Belt substantial adverse weight in decision making terms. In these respects, the unauthorised material change of use and operational development does not accord with the Green Belt requirements of policy GB1 of the South Staffordshire Council Core Strategy 2012, and the 2024 Framework.

38. Weighed against the above are the personal circumstances of the appellant's child. On balance, and, for the reasons outlined above, I conclude that the harm by reason of inappropriateness in the Green Belt, coupled with the harm caused to the openness of the Green Belt and one of its purposes, is not clearly

outweighed by the other considerations identified above so as to amount to the very special circumstances necessary to justify the development.

39. I acknowledge that my decision would lead to a significant interference of Article 8 rights. However, the planning harm that I have identified is of such weight that a refusal of planning permission is a proportionate, legitimate, and necessary response that would not violate those persons rights under Article 8. I find that the protection of the public interest cannot be achieved by means that are less interfering of the rights of the appellant's child. I have also had due regard to the PSED. In this case, the totality of the harm caused to the Green Belt outweighs the benefits of the proposal from the point of view of meeting the needs of the appellant's child who has a disability. I conclude that it is therefore proportionate and necessary that the ground (a) appeal fails, and that the deemed planning application is refused.

Ground (f) appeal

40. The appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.

41. The claim made by the appellant under ground (f) is that the requirement to cease the use of land for the keeping of animals is excessive as the animals are grazing the land and so this amounts to an agricultural use of the land and is not development given sections 336 and 55(2)(e) of the Act. I have already considered this matter as part of the ground (a), (c) and (d) appeals. Given my conclusions, it is not excessive to cease the use of the land for the keeping of the animals.

42. The purpose of the notice is to remedy the breach of planning control. In this regard, the requirements in the notice are not excessive.

43. For the above reasons, I conclude that the ground (f) appeal fails.

Overall Conclusion

44. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR