

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
Birmingham District Registry
ADMINISTRATIVE COURT
PLANNING COURT**

Birmingham Civil Justice Centre
Bull St, Birmingham B4 6DS

16/02/2016

B e f o r e :

HHJ DAVID COOKE

Between:

Christine Davis

Appellant

- and -

**Secretary of State for Communities and Local
Government (1)**

Lichfield District Council (2)

Respondents

**Niall Blackie (Solicitor Advocate, FBC Manby Bowdler LLP) for the Appellant
Sarah Sackman (instructed by The Treasury Solicitor) for the First Respondent
The Second Respondent did not appear and was not represented.
Hearing date: 27 January 2016**

HHJ David Cooke :

Introduction

1. The appellant appeals under s 289 Town and Country Planning Act 1990 ("TCPA") against the decision dated 16 July 2015 of Mr. PN Jarrett, a planning inspector appointed by the Secretary of State, upholding subject to some corrections an Enforcement Notice issued by the second respondent ("the Council") relating to land at Maplebrook Lane, Chorley, Lichfield, of which she is a joint owner. Such an appeal now requires permission (see s289(6) TCPA) which was given by Lang J on 28 October 2015.
2. The land in question is in the Green Belt. In March 2012 the Council granted planning permission for a change of use from "agricultural land to paddock for grazing and exercising of horses with manege facility (20m x 40m)". The manege facility is a prepared surface on which horses are exercised and schooled. The permission was subject to a number of conditions; inter

alia they restricted the use of the facility to the private purposes of the appellant and her family (later extended to include her co-owner and his family) and excluding any commercial purpose.

3. Condition 6 was in the following terms:

“... no additional temporary structures, field shelters, horse boxes, trailers, caravans, jumps, lighting, fencing or other means of enclosure shall be brought onto the land to support the use of the land hereby approved without the prior written consent of the Local Planning Authority...”

The reason for this condition was stated to be to “safeguard the rural character of the area...”. The private use restriction was because “[an] unrestricted permission could result in an unacceptable intensification of use...”.

4. The appellant had previously written to the Council asking for an indication whether planning permission would be given for the manege, and confirmation that permission would not be required for “four skid mounted mobile stables”. In response the Council wrote on 26 November 2011 saying that planning permission would be required for the manege, but subject to certain conditions there was no reason why it would not be given. The letter also said:

“In order for the stables to be exempt from planning permission they would have to be truly mobile, comprising just walls and a roof with no floor or hardstanding, and would have to be moved regularly around the site. Fixed stables in the location indicated on your submitted plans are unlikely to be supported as they would not be closely related to existing buildings as is required under Policy DC10”

5. The application that led to the grant of permission was only for “formation of manege within existing paddock”. No mention was made of any stables. On 19 June 2012, after the permission had been granted, solicitors on behalf of the appellant wrote to the Council, stating that in the light of the earlier letter it had been assumed that it was not necessary to seek permission for mobile structures, and that “Our client was not warned that a condition would be imposed to take away the right to place mobile structures on the land. If this prohibition is applied it will negate the benefit of the consent.” Reasons were given why it was said that mobile structures for stabling and storage were required, together with the dimensions and proposed location of such structures.
6. In response, by e-mail dated 3 August, 2012 a planning officer said “I can confirm that the shelters detailed in your letter and attachments dated 19 June, 2012 would be acceptable provided they are truly mobile. To this end the shelters should be moved at least twice each year to a completely different location within this site and should not occupy the same position for more than six months in any 12 month period. Simply dragging them a few metres in any direction would not be sufficient, they must be moved to completely new ground so that it is clear to any casual observer that they have been moved.”
7. Following complaints from neighbours, the Enforcement Notice was served on 22 October, 2014. This alleged two breaches of planning control as follows:
 - i) Breach A: “The erection of field shelters and stables, shown in the approximate position edged in blue on the plan attached to the Enforcement Notice”, and
 - ii) Breach B: “the laying of hardstandings, shown in the approximate positions hatched black on the plan attached to the Enforcement Notice.”
8. The plan attached showed the whole site edged in red. In the northeast corner an enclosed area is marked. Within that, hatched areas denoting hardstandings are shown in the northwest and

southeast corners. On each hardstanding the location of the structures objected to is marked in blue. In the northwest corner is a group of structures that the Inspector came to refer to as “the main group”. This consisted of two stable blocks (each divided into two units) and a unit described as a “storage unit”, arranged in an “L” shape. Next to these, placed in what the Inspector described as a courtyard layout, was a separate unit that came to be referred to as “Field Shelter C”. In the Southeast corner there were two further structures, referred to as “Field Shelters A and B”.

9. The appeal to the Inspector was conducted by way of the written representations procedure. The Inspector held a site visit on which, with the agreement of all parties, he was unaccompanied. Appeals were brought both by the present appellant and her co-owner, although the co-owner did not pay the required fee for consideration of an appeal under ground (a) (that is to say under s 174(2)(a) TCPA on the basis that planning permission ought to be granted) so the appeal on that ground proceeded by the present appellant alone.
10. Substantial written submissions were presented to the Inspector. In summary, these set out the contentions of the appellant and her co-owner that:
 - i) There was no breach of planning control by formation of hardstandings; “the Appellant has simply spread a thin layer of chippings over the surface of the ground (‘the Chippings’) for the purpose of ensuring that... the shelters... and the manege are and continue to be accessible...”
 - ii) Field Shelters A and B were mobile structures that had been present on the site prior to the grant of planning permission and accordingly they had not been “erected” as alleged and their placement in their current position did not constitute “development”
 - iii) Field Shelter C was a replacement for another mobile structure, previously on the land at its western end, but which was so dilapidated that it could not be resited. The replacement was said to be of the same size, design and materials, save that it had a half-door where the previous structure had been three-sided.
 - iv) Field Shelter C, the stables and storage unit were all mounted on skids and so mobile and thus did not constitute buildings or development.
 - v) Alternatively to the extent that any of the matters complained of were found not to be lawful, planning permission should be granted because they were all needed for the safe and suitable operation of the permitted use at the site, ie the manege, their visual impact was acceptable and they were similar to others permitted in the locality.
11. The Inspector concluded that Field Shelters A and B did not constitute development requiring permission, and so amended the terms of the Enforcement Notice so as to exclude them from it. He accepted that they had been on the site prior to its acquisition by the appellant, and said at paragraph 9:

“Field Shelters A and B have been moved to their current position and are being used for storage purposes. As they have previously been on the land their retention does not conflict with the limitations of Condition 6 of the 2012 planning permission. I consider on the balance of probability that so long as they meet the requirements associated with movable field shelters, they are not in breach of planning control.”

It must in my view be implicit in his decision that he did not consider that these two shelters had ceased to be mobile structures by reason of their current placement and use.

12. At paragraphs 15 and 16 of the decision letter the Inspector rejected the appellants' contention that hardstandings had not been formed, finding as a matter of fact that they had been and that they constituted operational development requiring permission.

Ground 1: Erroneous conclusion the Field Shelter C was in breach of control

13. Ground 1 of the appeal attacks the Inspector's decision in relation to Field Shelter C. I confess I found the written statement of this ground somewhat confusing, but as developed in argument I think Mr Blackie's submissions can be summarised as follows:

- i) The Inspector failed to determine whether Field Shelter C had the necessary degree of permanence to be considered a building (and therefore development subject to planning control);
- ii) If he did determine that it was a building, he was wrong to do so;
- iii) If he considered it to be a mobile structure as distinct from a building he was wrong to conclude that it was an "additional" shelter requiring the consent of the Council under Condition 6; and
- iv) His reasons were inadequate.

14. Field Shelter C is said to be similar to Field Shelters A and B. If they were accepted as mobile structures, the same conclusion should have been reached in respect of it. Further, it was a direct or very similar replacement for a structure previously on site, thus reinforcing the argument that it was mobile. The fact that it was a replacement meant that it should not be considered to be "additional", and accordingly that it was outwith the restrictions of Condition 6. "Additional" should be interpreted as meaning that after placement of a new shelter there were more shelters in number than there were before.

15. The relevant parts of the decision letter are as follows:

"2. ... An enclosed area contains two groups of single-storey timber structures in areas of hardstanding. The group to the north part of the site (the main group) consists of four separate structures: two structures containing two stables and a tackroom each (both measuring 8.5m by 3.6m and 2.6m high); a shed (4.8m by 3.6m and 2.9m high) used for storage between the two stable units; and a single stable (3.6m by 3.6m); all positioned in an open courtyard arrangement. Some of these structures have electric power and substantial guttering and downpipes. The other group consists of two open fronted structures measuring 3.6m by 3.6m each (Field Shelters A and B), one for storing jumps and the other for equipment, which the appellants state were pre-existing field shelters and moved to their current position since they acquired the site. Most of the structures have a rubber mat floor except for the storage shed that has a timber floor. They sit upon a hardstanding made up of a variety of solid materials including stone and road planings ...

9. [see above]

10. By the appellants' own admission the third field shelter collapsed and has been replaced with a new shelter in a different position. As the original field shelter no longer exists, it has to be considered as an additional field shelter that needs to meet the requirements of Condition 6.

11. Turning to the main group, section 55(1) states that development means the carrying out of building ... operations ... on ... land ... The term 'building' in s336(1) has a wide

definition which includes ‘any structure or erection’. In considering whether the shelters and stables are buildings, their size, permanence and physical attachment to the ground are relevant and no one factor is decisive.

12. The size and nature of the structures have been described above and they have a significant total floor area of about 86 sqm. The main group of stables and shelters are constructed of robust materials and give the appearance of permanence. They have a degree of physical attachment to the ground by virtue of their own weight and they have been transported to the site as prefabricated sections and built on site. They are on metal skids, have towing eyes and are capable of being moved by a vehicle such as a tractor. One of the structures has a floor and the remaining structures have rubber matting which functions as a floor.
13. It has been established in [*Skerritts of Nottingham Ltd v SSETR (No 2)*] [2000] PLR 102] that the concept of ‘permanence’ needs to be considered in the light of what is known about the structure and the likely intentions of the owner. The decisive factor is not the fact that they are capable of being moved, but it is more a question of how permanence is construed in terms of significance in the planning context. The shelters are permanently in the enclosure and the ability to move them around the enclosure does not remove the significance of their presence in planning terms and the visual and landscape impacts would not be affected to any material extent by any periodic changes to their positions on the site, particularly in view of the sloping nature of much of the site limiting the options available. The movement of the shelters would be unlikely to be done other than as a completely artificial exercise simply to prove that they could be moved.
14. I conclude as a matter of fact that with the exception of Field Shelters A and B the erection of the shelters have a significant degree of permanence and constitute operational development within the meaning of s55 and for which planning permission is required.”
16. The appellant accepts that the Inspector applied the correct test and was entitled to reach the conclusion that the larger structures in the “main group” were buildings subject to planning control. In so far as that conclusion was reached in respect of Field Shelter C however, it is challenged.
17. Mr Blackie submitted that Field Shelter C was only dealt with in paragraph 10 of the decision letter. In that paragraph he submits the Inspector stated that it was to be considered as a mobile structure, but then wrongly construed Condition 6 and determined that it was to be regarded as an “additional” shelter. Paragraphs 11 to 13, he said, dealt with the structures in the “main group” other than Field Shelter C. However paragraph 14 appeared to relate to all of the main group including Field Shelter C, with the result that the Inspector had inconsistently reached the conclusion that Field Shelter C was a mobile structure but also that it was a building, and that in so far as he had concluded that it was a building, had given no reasons for doing so.
18. It was agreed that the “new shelter” referred to in paragraph 10 was Field Shelter C. There were two principal points taken in support of the argument that paragraphs 11 to 13 referred to the other three structures but not Field Shelter C. These were:
 - i) Having referred to Field Shelter C in paragraph 10, paragraph 11 then begins “Turning to the main group...” implying that this is something different from what has been referred to in the previous paragraph and
 - ii) The floor area referred to (86 sqm) does not correspond with the combined floor area of the four structures including Field Shelter C, which Mr Blackie calculated as 91.44 sqm.

19. Ms Sackman submits that Condition 6 applies both to permanent and temporary field shelters, as long as they are “additional”. The Inspector was, she says, in any event right to construe Field Shelter C as an additional structure. Having done so, it was not strictly necessary for him also to consider whether it was a permanent building, but he did so and correctly concluded that it was.
20. I do not agree that in using the words “additional temporary structures, field shelters, horse boxes, trailers, caravans...” Condition 6 is to be interpreted as applying to fixed or permanent as well as temporary or mobile field shelters. “Field shelters” comes in the middle of a list of items that would otherwise be at least likely to be regarded as temporarily present and so uses of the land rather than operational development on it. The purpose is (as Ms Sackman herself submitted in support of her further argument) to enhance the degree to which the Council could control possible intensification of use, and not the superfluous emphasis of the already existing requirement for consent to operational development by erection of fixed buildings.
21. Subject to that however, in my view Ms Sackman is right on both points. Taking the second point first, it is in my view sufficiently clear on the required broad reading of the decision letter as a whole that the ‘main group’ referred to in paragraph 11 is the same as is defined by reference to that term in paragraph 2, that is to say one consisting of four structures including Field Shelter C. The Inspector goes on to refer to the structures whose permanence he is considering as “the shelters and stables” in paragraph 11, “the main group of stables and shelters” in paragraph 12, and “the shelters” in paragraphs 13 and 14. In paragraph 2, he had referred to the structures as “two stables... a shed... and a single stable (3.6m x 3.6m)”. It is obvious (and accepted) that the “single stable” is Field Shelter C.
22. Although the appellant in her submissions had sought to use particular terminology in relation to particular structures with a view to differentiating between them, in my view it is clear that the Inspector did not do so, and used the terms “stables” “shelters” and “shed” interchangeably. Everything that he said by way of description of the characteristics of the structures he was referring to in paragraphs 12 and 13 is applied equally to all four structures. It makes sense that he should consider whether Field Shelter C was a permanent building just as he did with the other structures adjacent to it; it was a new structure and he had to consider the nature of what had in fact been placed on the site, in the situation and in the circumstances in which it had been so placed. The fact that there had previously been a different structure on a different part of the site seems to me to be, for these purposes, irrelevant.
23. I do not accept that the Inspector was bound to reach the same conclusion for Field Shelter C as he did for A and B. The last two were pre existing structures that the Council accepted had previously been mobile or temporary structures. In their case the issue would be whether they had now changed in character and become permanent buildings. The Inspector must, as I indicated above, have concluded that they had not. Field Shelter C was a new structure, in a different place and part of an associated group of structures. He was entitled to assess its nature accordingly.
24. I do not consider that Mr Blackie gets any assistance from the incorrect reference to the floor area. The figure of 86 sqm given does not correspond with the combined area of the four structures (91.44 sqm), but neither does it correspond with the area of the three structures excluding Field Shelter C (78 sqm). It appears that the Inspector may have lifted this figure from the Council’s statement of case to him, since that is the only document that either counsel was able to identify containing it. As used in that document, it is clearly intended to refer to the area of all four structures combined so if that is the source, the inference from use of that figure is against Mr Blackie’s point.
25. Given that paragraphs 11-13 deal with all four structures in the main group, it can be seen that when the Inspector said he was “turning to the main group” he meant that he was now

considering that group. Insofar as the expression implied that he was “turning” away from what he had previously considered, that must be referring to Field Shelters A and B, which he addressed at para 9.

26. What is to be made of para 10? I accept that its interposition between the consideration of Field Shelters A and B on the one hand and the “main group” on the other is somewhat awkward, and that in using the words “it has to be considered as an additional field shelter that needs to meet the requirements of Condition 6” the Inspector was not being as clear as he might have been. What did he mean for instance by Field Shelter C having to meet “the requirements of Condition 6”? Condition 6 did not impose any “requirements” on things such as the field shelters or caravans it referred to (eg that they would be permitted if under a specified size, or kept in a specified area). Instead it prohibited their placement on the land without permission. Insofar as there was a “requirement” it was to be met by the land owner, not the thing he put on the land.
27. The explanation is in my judgement that the Inspector was intending in this paragraph to set out why he considered Field Shelter C to be different from Field Shelters A and B. In contrast to them, he notes in the first sentence that it is a new shelter. The second sentence means, in my view, that the question to be considered on the appellant’s case to him was whether it was a shelter potentially subject to Condition 6, in which case it was an “additional” shelter. The “requirements” he is referring to must be the considerations to be applied as to whether it was a temporary or a permanent structure. He then goes on in paras 11-13 to consider it together with the other structures in the main group, concluding that they have such a degree of permanence that they are to be regarded as operational development.
28. This then is the Inspector’s primary conclusion about Field Shelter C. It is clear however that if he had instead found it to be a temporary structure the Inspector would in any event have held that as an additional shelter it required permission under Condition 6.
29. Ms Sackman submitted that the latter was in fact his primary conclusion, and that although he had gone on to consider whether Field Shelter C was a permanent structure and decided that it was, he need not have done so. I do not think she is right in that respect. Firstly the two findings she submits the Inspector made would be inconsistent. The Inspector nowhere says that he considers (and the Council had not argued) that Condition 6 applied to permanent structures, so if he had concluded that the shelter was subject to Condition 6 it would have been on the basis he found it to be temporary. He would not then have gone on to find it permanent. Secondly, the Inspector nowhere states that the reason Field Shelter C is in breach of planning control as alleged in the Enforcement notice is because of a breach of Condition 6. Had that been his primary conclusion, he would have needed to do so.
30. I conclude then that the Inspector did decide that Field Shelter C was a permanent structure. That conclusion is set out at para 14 of the decision letter. The appellant was not in any real doubt that this conclusion had been reached in that paragraph, as shown by her case to me. His reasons for that conclusion were set out in paras 11-13, and the appellant should not have been in any real doubt that this was so. The submission that there was such a doubt is based on the type of over analysis of the text of para 10 of the decision letter that the authorities make clear is impermissible. There was no error of law in considering Field Shelter C separately from A and B. Having so considered it, the conclusion reached on the facts was a matter of planning judgement and so entirely for the Inspector. The reasons given were sufficient to enable the appellant to understand what decisions had been made and why. Ground 1 accordingly fails.
31. Before moving on I should say briefly why I agree with Ms Sackman’s submission that, had Field Shelter C been considered a temporary structure, it would have been an “additional” one requiring permission under Condition 6. It is clear in my view from reading Condition 6 that its purpose was to increase the ability to control matters that related to possible intensification of

the use of the site (and so would be capable of increasing the impact of such use on the Green Belt rural setting) but which would not or might not themselves require planning consent. The circumstances of this case show why that was a proper concern. It would be inconsistent with such a purpose to have a condition that allowed the existing relatively small and open sided field shelters to be replaced by new structures of any size, shape, materials, construction, placement and purpose, as long only as the total number was not increased.

32. That was the effect of the construction Mr. Blackie argued for. He submitted that the court need not be concerned about such a possibility because the structure actually put in place was the same size as and (he said) of similar materials and appearance to the one it replaced. But on his construction it need not have been, and the meaning of the Condition cannot be affected by the steps the appellant has in fact taken.
33. On the other hand it would be perfectly consistent with that purpose for the Council to wish to have the ability to examine any proposed new structure on the site and consider its actual impact having regard to all the circumstances, of which the fact that an older structure was to be removed might be one, but only one, of the relevant matters.
34. In that context, in my view, an “additional” structure (or field shelter) means one which was not already on the site, whether or not one of the old structures is removed to keep the number the same.

Ground 2: planning permission ought to be granted

35. Ground 2 is divided into a number of separate points made as to why it is said that the Inspector was wrong not to allow the appeal on Ground (a), ie not to have concluded that permission ought to be granted. These were:
 - i) Ground 2A: the Inspector had wrongly accepted the Council’s case that the development that had occurred was significantly different from what had been envisaged when permission was granted. The appellant had made clear in her pre application letter that she intended to put skid mounted stables on the land, and in her correspondence after the permission had been granted she had set out the intended size of the units in question. There had been no apparent objection to the number or size of the units, but only that they should be truly mobile. Thus the development that had occurred was the same as what had been envisaged. This correspondence was part of the planning history of the site and should have been taken into account.
 - ii) Ground 2B: the Inspector had not accepted the argument of the appellant as to the need for the additional facilities to make effective use of the manege facility that had been permitted. She intended to keep competition horses that had to be stabled to control their diet rather than allowed to graze freely and so as to keep mares separate from geldings. Keeping horses for a manege was different from keeping them for grazing. Dry and secure storage was required for tack and equipment for all the horses, their food, jumps and schooling equipment, and for ground maintenance equipment such as a tractor, rakes and so on. Leaving these items in the open would be insecure and have a greater visual impact. Transporting equipment or horses to and from the site would cause additional impact by traffic movement.
 - iii) Ground 2C: the Inspector gave no sufficient reasons for not accepting the appellant’s case that other equine facilities in the area had similar stabling facilities and consistency required that they be permitted here.
36. The Inspector’s conclusions, set out in paras 20-30 of the decision letter, were in summary:

- i) The 'main group' of structures, which he had held to constitute development by buildings, affected the openness of the Green Belt and so constituted "inappropriate development".
 - ii) The hardstandings did not affect openness but both they and the structures had a detrimental impact on the visual amenity of the area. He did not expressly state that the hardstandings themselves constituted "inappropriate development" and a separate point is made in relation to this under Ground 4, below.
 - iii) He rejected the argument that the manege facility could not be used without the additional range of facilities the appellant wished to create, holding that the keeping grazing and exercising of horses, which was what the permission authorised, could take place without such facilities. He noted that it was not uncommon for the number of animals on land to be restricted by the capacity of the land, and said that he did not consider the appellant's submissions in this respect carried any significant weight "as they represent the personal choice of the appellants in the way they wish to keep and exercise horses."
 - iv) At para 27 he said "I have had regard to the submitted aerial photographs, other equine development in the vicinity and the consistency of the Council's decision making but this does not alter my conclusions on this appeal which have been made on the merits of the case."
 - v) His overall conclusion is stated at para 28: "I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist."
37. In my judgement, Ground 2A is misconceived. The Council's correspondence stated that structures for stabling and storage would be acceptable, but only if they were truly mobile and so not permanent buildings. This requirement was emphasised by setting out minimum requirements as to the actual movement of the structures to completely different locations on the site at no less than six monthly intervals. However, the deemed planning application considered in the appeal to the Inspector under ground (a) must proceed on the basis of his finding that what had been constructed, and therefore required permission, were permanent buildings and not temporary structures.
38. Accordingly, permission was now sought for what the Council had clearly stated would not be acceptable, and the correspondence to that effect is against the appellant's contentions and not in her favour.
39. It is of no assistance to the appellant to say that the permanent structures now in place were no bigger or had no greater visual impact than the temporary structures that had been indicated to be acceptable. It is no doubt the case that the visual impact, for instance, of a given structure at any point in time is a function of its size, shape, appearance and location at that time, and is not affected by the degree to which it is attached to the ground or whether it is in principle capable of being moved. It may therefore be thought anomalous, taking a general view, that structures that can be moved may be subject to less strict controls than those that cannot. That anomaly has no doubt contributed to the industry that clearly exists to manufacture quite large structures mounted on skids that seek to give the owners as many as possible of the advantages of permanent buildings but which may be argued to be merely temporary and so outside planning control or less rigorously controlled.
40. If there is any real difference in the impact in planning terms between the two categories of structure, it must be because of the genuinely temporary and movable nature of those that are presented as such. If genuinely movable and intended to be moved on or removed from the site,

their visual impact over time may be lessened accordingly. Genuinely temporary structures may also be likely to be less intensively used if, for example, they do not have doors, an electrical supply, drainage or a floor. But it is an important function of planning authorities (and Inspectors on appeal) to determine whether a particular structure, in its actual position and circumstances including the intentions of its owner, is truly a temporary or mobile one having a reduced impact for that reason or in substance a permanent building. The more closely structures approximate in form, function and use to permanent buildings the more likely it must be that that is what they will be found to be.

41. It is perverse in my view to argue that where a temporary structure is permitted, or could not be objected to, it will in practice have the same impact in planning terms as a fixed building, and accordingly a fixed building must be permitted. If it were genuinely a temporary structure, it would not have the same impact. The owner may hope to achieve most of the advantages of having a permanent building, for instance by professing an intention that he does not hold that the structure he puts up will be only temporarily placed or will be moved about, but the fact that his real intention may be to go beyond what he has announced does not mean he should be entitled to permission to do so.
42. A similar attempt to argue that a permanent entitlement to place a caravan on a site should lead to permission to replace it by a permanent dwelling was rejected by the Court of Appeal in *Lloyd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 839, see at paras 55 ff and para 68 where the important distinction in planning terms between temporary and permanent structures is noted.
43. So far as ground 2B is concerned, in my judgement the Inspector was right to conclude that the permitted development of a manege facility did not necessarily imply approval of the extensive additional facilities the appellant wished to install. It was clearly, as he said, a matter of her personal choice to use the facility for the number of horses that she did, and for horses that were not in fact suitable to be allowed to graze on the land (its primary permitted purpose) but apparently required permanent stabling. It may well have been the case that other equine facilities were used in that way, but that does not mean that this facility could not be used without such extra facilities. He was entitled to make the point that it is for the owner to adapt his or her actual use to the capacity of the land (and its permitted use) rather than for the planning authority to extend permission to accommodate the particular type of use the owner wishes. The weight to be attributed to those matters in determining whether the necessary “very special circumstances” had been shown was a matter for his planning judgement.
44. In relation to Ground 2C, Mr. Blackie referred in his skeleton to submissions made by the appellants (pages 188-9 in the bundle) regarding other sites in the area. Those submissions are very general in nature. They are made by way of response to material provided by the Council in its “final comments” listing other equestrian facilities in the locality, and make the appellants’ point that, in their view, other sites had similar or larger stabling and storage structures to those they sought, so that the Council must in their view either have inconsistently concluded that the other sites did not require permission or failed to take enforcement action against them. Ironically, the principal objection the appellants made to the Council’s list (to which I have not been referred but which the Council presumably relied on in support of its position) is that it provides too little information to be of use to the Inspector. The appellants themselves made specific comments about only one such site, identified as “Site D”.
45. It appears therefore that in dealing with this material at para 27 of the decision letter the Inspector was responding to conflicting submissions by both parties that were made in very general terms, and not simply dismissing a case put forward by the appellant as her case to me seemed to imply. Mr. Blackie did not identify to me any particular example of a site said to be directly comparable to the appellant’s on which the Council had reached a decision said to be inconsistent, still less point to any detailed comparison which might have demonstrated why

this was so. Nor did he submit that the Inspector was given any such comparison but failed to engage with it by stating reasons why he did not consider it truly comparable.

46. Mr. Blackie relied on *North Wiltshire DC v Secretary of State for the Environment* [1992] 3 PLR 113, but that was a case in which the Inspector was referred to a specific previous appeal decision that directly related to the appeal site and reached a contrary conclusion to his own. It was held that he should have given reasons for departing from it, even though the planning authority (whose position it supported) had not relied on it.
47. Mr. Blackie further submitted that reasons given in such general terms were insufficient in that they did not enable the reader to discern whether the Inspector considered the evidence before him irrelevant to the issues or not credible or whether he thought it not necessary to reach consistent conclusions or that the weight to be given to consistency was insufficient to outweigh the harms he identified. He relied on *South Bucks DC v Porter (No 2)* [2004] 1 WLR 1953. That case however makes clear that while reasons need to identify what has been decided and why on the principal issues, they can be brief and the degree of particularity required depends on the nature of the issues addressed.
48. In the circumstances of this case, the Inspector cannot in my view be criticised for responding in a general way to generalised submissions of the parties, based on the same alleged comparators but drawing conflicting conclusions from them. They do not appear to have been suggested to him to be a “principal issue” in circumstances where they seem to have arisen by way of tit for tat in the parties’ respective final submissions to him.
49. It is of course commonplace for a disappointed applicant to allege that his proposal should be permitted as it is similar to other development in the area. The cases referred to would have their own particular circumstances, and would not necessarily be directly relevant to the facts of the case under appeal, as had been the case in *North Wiltshire*. If the parties had not set out any detailed case to him of the alleged similarities of the sites and inconsistency or otherwise of the Council’s approach to them, the Inspector is not in my judgement required to make such a case for them by engaging in a detailed analysis of his own of the various alleged comparators put forward. The decision before him is primarily one to be made on the specific facts of the case, and he is entitled to say, as this Inspector did, that that is what he has focussed on and the general submissions made do not cause him to alter his conclusions.
50. Accordingly, I reject Ground 2.

Ground 3: Split Decision

51. Ground 3 alleges that the Inspector should have made a split decision on the deemed application for planning permission, considering separately each of the buildings in the “main group”. It is accepted he would have had power to do so; s 177(1)(a) enables him to grant permission for all or any part of the matters constituting a breach of control.
52. Mr. Blackie submits that the Inspector had considered the main group of buildings only as one entity in addressing its visual impact and necessity for operation of the manege facility. He had “ignored the question of whether some aspects of the welfare and safety issues could have been met by leaving in place some but not all of the stabling and smaller scale structures. Given that the case on need was advanced in this way, it was a case where having identified that the structures were buildings he needed then to make findings on each building separately.”
53. I am not persuaded that the appellant’s case on need was in fact put to the Inspector on the basis that it could be satisfied by permission for some but not all of the structures. Certainly no specific case was put either that the appellant could do without some of the structures (and if so which) or inviting the Inspector to exercise his powers under s 177(1)(a). If he were to do so,

either the appellant would have had to identify which structures he should permit or he would have had to make his own selection. She did not, expressly at least, suggest either option to him in her statement of case.

54. Mr. Blackie points to four passages in that statement of case which he says do put the case in this way. The first two (paras 34 and 47) are at best oblique. Para 34 is the general introduction to the appeal on ground (a) and is followed by a number of paragraphs setting out why all of the structures in place should be permitted. The “high water mark” (as Ms Sackman put it) is in para 47 which reads:

“In respect of alleged breach B [ie the hardstandings] irrespective of whether the Appellant succeeds in retaining the Shelters and/or the Field Shelters at the Property (or an alternative scheme for stabling at the Property is permitted) the Chippings [the term by which the appellant sought to describe the alleged hardstandings] remain essential...”

At best it seems to me this is an implied recognition (not a positive case) that a distinction might be drawn between “the Shelters” and “the Field Shelters”. The reference to an alternative scheme seems to anticipate a future application, rather than an invitation to the Inspector himself to devise an alternative to the scheme before him.

55. The second two (paras 50 and 53) were suggestions that conditions might be imposed limiting the number of units on site or specifying where they could be situated and how often they must be moved. The Inspector said (para 29 of the decision letter) that the latter condition missed the point that he had found that the structures were permanent buildings. None of the conditions proposed would overcome the harm he had identified. He might also have said that a condition limiting the number of structures similarly missed the point. Having found them to be buildings, if he were to give permission it would be for the buildings then existing (or some specified ones of them) and a condition limiting numbers would be either useless (if it specified the same number as he had permitted) or contradictory.
56. Mr. Blackie accepted that since the power to make a split decision is discretionary, the Inspector can only be found to have erred if his failure to exercise it can be found irrational in the Wednesbury sense, ie that no reasonable decision taker could have failed to do so. It is in my judgement impossible to suggest that a decision taker to whom no alternative scheme is put is bound to seek to devise one by making his own selection from the elements before him. He would have no basis to do so, particularly where the appellant is urging that all the elements are necessary parts of a package required to exercise the permitted use. Accordingly I reject Ground 3.

Ground 4: Incorrect test applied to the hardstandings

57. Mr. Blackie’s submission on this ground was that the Inspector had not expressly found that the hardstandings by themselves constituted “inappropriate development” in the Green Belt, and indeed that since he had stated that they did not impact on openness it was probably implicit in his decision that he did not regard them as “inappropriate”. If that was so, he said, it was wrong to assess the case for permission for the hardstandings against the special test set out in the National Planning Policy Framework (“NPPF”) for inappropriate development in the Green Belt, ie that

“87. ...inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’

will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”

Instead, he submitted, the hardstandings should have been evaluated against policies stated in the development plan and on the ordinary planning balance, in which the appellant’s contentions as to safe operation of the site would have had greater relative weight.

58. Essential to this submission was the argument in Mr. Blackie’s skeleton that “if the hardstanding does not impact on openness then the effect of the NPPF is that it is not ‘inappropriate development’.” Ms Sackman agreed that the Inspector had not made any express finding that the hardstandings were inappropriate development, and was prepared to concede that where development in the Green Belt did not impact on openness it could be inferred that it would not be treated as inappropriate.
59. In that regard she referred me to *R (Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567 at para 59, in which she said such a finding had been made in respect of a golf course. However, I do not agree that that decision supports the proposition advanced. At para 59 Richards LJ records that planning officers had stated that they did not consider the course itself to be inappropriate development as it preserved openness of the Green Belt, but that they had given separate consideration to the buildings to be associated with it. It is clear from para 63 that it was the agreed position of the parties that the course (as distinct from the buildings) was not inappropriate development. There is not therefore even a finding by the court on the facts of the particular case, still less any statement of general principle that development will be inferred not to be inappropriate if it does not affect openness.
60. This issue has been decided in the High Court. In *Timmins v Gedling BC* [2014] EWHC 654 (Admin) Green J held that (para 25):

“In my judgement, properly interpreted, section 9 NPPF means that any development in the Green Belt is treated as prima facie “inappropriate” and can only be justified by reference to “very special circumstances” save in the defined circumstances set out in paragraphs 89 and 90.”
61. His reasoning is set out at paras 24-40, in which he approves the earlier decision to the same effect of HHJ Pelling QC, sitting as a judge of the High Court, in *Fordent Holdings Limited v SSCLG* [2013] EWHC 2844 (Admin).
62. Green J accordingly held that a planning officer had erred in advising a planning committee that a cemetery should not be considered “inappropriate” because it did not impact on openness.
63. That case went on appeal to the Court of Appeal ([2015] EWCA Civ 10) where the decision was upheld. On this point, Richards LJ agreed entirely with Green J. At para 31 he said:

“I do not think that the NPPF gives any scope to local planning authorities to treat development as appropriate if it does not fall within paragraph 89 or paragraph 90. In particular, there is no general test that development is appropriate provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt. Had such a general test been intended, in my view it would have been spelled out in express terms and would also have affected the way in which the specific exceptions were expressed.”
64. Mitting J concurred in the result. He did not state an opinion on the issue of the “general test” that Richards LJ rejected in the passage above, and in giving a list of the paragraphs in Richards LJ’s judgement with which he stated his agreement (para 41) he did not include para 31. He went on however to state that the issue on which he disagreed was whether para 90 of the NPPF

set out a “closed list” of circumstances in which planning authorities could find that development was not inappropriate, such as would potentially be inconsistent with the positive obligations in para 81 of the NPPF. The inconsistency could arise for instance because para 81 required the authority to provide facilities for sport and recreation but para 90, if interpreted as a closed list, would require that a change of use of land for recreational purposes be permitted only in very special circumstances.

65. The difference did not affect the outcome, because para 81 did not impose any obligation to provide cemeteries, so no question of inconsistency arose on the facts of the case. Tomlinson LJ also concurred in the result, preferring to leave the specific question whether para 90 created a closed list undecided.
66. Neither Mitting J nor Tomlinson LJ therefore expressed a view as to whether there was any “general test” such as Richards LJ had rejected. But the clear inference must be that they did not consider that there was any such test, since if there had been it would have been relevant to the outcome of the case. The cemetery had been agreed not to affect openness; if it was to be presumed not to be inappropriate for that reason the appeal should have succeeded. Further, none of the judges in the Court of Appeal disagreed with Green J’s conclusion that *prima facie* all development in the Green Belt is to be regarded as inappropriate unless within the stated exclusions. The only scope for expanding the list of exclusions left open is development complying with the positive obligations in para 81.
67. It follows that Ground 4 cannot succeed. If the Inspector assessed the hardstandings against the “very special circumstances” test (and I would be inclined to agree with Mr. Blackie that he did) he was right to do so. There is no general principle that he should have applied a lower test simply because they did not affect openness. The possible exception from that test for development falling within para 81 of the NPPF cannot assist the present appellant because there has not been (and could not be) any suggestion that para 81 creates a positive obligation to provide such hardstandings.
68. In the result therefore, the appeal is dismissed.