
Appeal Decision

Site visit made on 24 October 2016

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 21st November 2016

Appeal Ref: APP/K3415/W/16/3153006

Land at the junction of Watery Lane and Maplebrook Lane, Gentleshaw, Lichfield, Staffordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Christine Davis against the decision of Lichfield District Council.
 - The application Ref 15/01428/FUL, dated 10 December 2015, was refused by notice dated 20 May 2016.
 - The development proposed is permanent retention on the land of a timber storage unit measuring 4.8m x 3.6m x 2.85m in height (first stationed on the land in 2012); Permanent retention on the land of a single stable unit measuring 3.6 x 3.6m x 2.85m in height; stationing on the land 4 individual stable units each measuring 3.6 x 3.6m x 2.85m in height, to replace the two large double units currently stationed on the site. Permanent retention of an area of hardstanding beneath the stables and storage unit and to provide access to those units from the adjacent parking area and between the units and the manege.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The site is in the West Midlands Green Belt. It has a complex planning history and there has been extensive correspondence between the Council and the appellant. Planning permission was granted on the land Ref 12/00162/COU (the original permission) for the change of use of agricultural land to paddock for grazing and exercising of horses with a manege facility. In 2013 a variation of condition 7 of the original permission allowed the use of the land by the two joint land owners. A Certificate of Lawfulness (Existing) Ref 14/00680/CLE for the stationing of two horse shelters incorporating tack storage and a single unit on the land in association with the permitted use of grazing, exercising and keeping of horses was refused in September 2014.
3. Appeal decisions Ref APP/K3415/C/14/3000480 and 3000481 (the May 2015 appeals) in respect of an enforcement notice Ref 14/00179/ENFDE and a subsequent decision by the High Court¹ set precedents which are particularly relevant. These decisions established that: two field shelters which existed when the appellant purchased the land were moveable and not development;

¹ Davis v Secretary of State for Communities and Local Government and another [2016] EWHC 274 (Admin)

that a storage shed measuring 4.8m x 3.6m, a single stable measuring 3.6m x 3.6m, larger stables/tack rooms and hardstanding constituted operational development for which planning permission is required²; that the development which was considered for the 2015 appeals had an adverse effect on the visual amenities of the Green Belt that other considerations did not outweigh. The very special circumstances necessary to justify that development did not exist.

4. The proposed development would result in the permanent siting of a storage unit (Unit D) plus five individual stable units on the land, and an area of hardstanding of about 450 sqm.
5. From all that I have seen and read, and in accordance with the Cherkley judgement³, I consider the main issues in this case to be:
 - whether or not the appeal buildings and hardstanding are inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies and the effect of the appeal buildings and hardstanding on the openness and visual amenities of the Green Belt and the rural area; and
 - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, and if so, would these amount to the very special circumstances required to justify the proposals.

Reasons

Whether the appeal buildings and hardstanding are inappropriate development and the effect on openness and visual amenity

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this appeal the development plan is the Lichfield District Local Plan Strategy 2015 (the LPS)⁴.
7. Policy BE1 requires development to have a positive impact by good design layout and scale and include appropriate landscaping. The now adopted Rural Development Supplementary Planning Document (RDSPD) adds that permitted new buildings should be of the minimum size necessary and ancillary to the change of use proposed to limit the impact on the openness of the rural area. Policy NR2 relates to development in the Green Belt and reflects the fundamental aim of preventing urban sprawl by keeping land permanently open as set out in Paragraph 79 of the Framework. Core Policy 1 encourages the efficient use of land and recognises the importance of the Green Belt. Policy NR2 says that opportunities to enhance the beneficial use of the Green Belt will be supported provided they are not inappropriate development and character and openness is protected. Paragraph 89 of the Framework indicates that the construction of new buildings in the Green Belt is inappropriate other than for the listed exceptions which includes buildings for the provision of appropriate facilities for outdoor sport and recreation so long as it preserves the openness

² the purposes of s55 of the Town and Country Planning Act 1990

³ *R (on the application of Cherkley Campaign Ltd) v Mole Valley District Council* [2013] All ER (D) 180

⁴ Specific policies referred to are from the LPS

- of the Green Belt and does not conflict with the purposes of including land within it. Paragraph 81 of the Framework requires local planning authorities to plan positively to enhance the beneficial use of the Green Belt.
8. The footprint of unit D is 4.8m x 3.6m (some 17 sqm) and the retained stable unit is 3.6m x 3.6m (some 13 sqm). The proposed four individual stable units would also be 3.6m x 3.6m (total footprint some 52 sqm). All would be about 2.85m high. The hardstanding area would provide a more durable surface beneath the units and would provide access to those units from the highway and between the units and the manege.
 9. Openness can be epitomised as freedom from buildings and not by buildings that are unobtrusive or camouflaged or screened in some way. The total floor space for which permission is sought would amount to about 82 sqm and I conclude that the proposed units would together be of substantial scale and mass. I recognise the proposed units would have a footprint some 9 sqm smaller than those considered under the 2015 appeals, and that the Timmins judgement held that some degree of impact on openness is deemed acceptable⁵, but the fact that the scale is reduced compared to earlier proposals does not alter my conclusion about the magnitude of the current proposals.
 10. I consider that the area of hardstanding would not affect openness but the scale of the appeal buildings would be substantial as they would have a significant footprint and massing such that there would be a significant loss of openness. I therefore conclude that due to the loss of openness, the erection of the appeal buildings would be inappropriate development in the Green Belt and would conflict with one of the purposes of including land in it namely safeguarding the countryside from encroachment.
 11. The appeal site is a sloping field with a highway frontage at its eastern boundary. The field slopes steeply down to a valley at the bottom and the land rises up beyond. The units would sit on the higher eastern part of the site in a row parallel to and facing the roadside hedge and close together to allow the horses to see each other. They would be some 4m inside it to provide protection from weather particularly high winds to which the site is prone. They would be of timber construction painted green and have a design typical of stable units.
 12. The units would be largely screened by hedging from views from the adjacent road but their visual impact would be experienced over longer distance views from vantage points on Watery Lane and from Windmill Bank. Notwithstanding the colour and separation into individual units, in my judgement, arranged in a row in the manner proposed, they would be noticeable and intrusive in the Green Belt and rural area to a similar extent as the development considered in the 2015 appeals. Although they would not be prominent in the landscape from longer distance views they nevertheless would introduce built development in the countryside to the detriment of its open character. I have taken account of the proposed reduction in floor space, the position closer to the hedge, that they would be painted green and that the wooden stable design would not conflict with the requirement of Policy BE1 in respect of design. However, none of these matters would be sufficient to lead me to a different conclusion.

⁵ *Timmins & Anr v Gedling Borough Council & Anr* [2014] EWHC 654 (Admin)

13. As an engineering operation that does not affect openness, a hardstanding may not be inappropriate. However, I conclude that 450 sqm of hardstanding changes the nature of the ground and results in a physical change to the character of the land that adversely affects the character and appearance of the countryside even though grass is growing through in places. This is the case irrespective of whether a further 300 sqm area of hardstanding would be removed. I conclude that the proposed development would have a harmful effect on the visual amenities of the Green Belt and the rural area whether or not it would be visible from Cannock Chase Area of Outstanding Natural Beauty.

Other considerations

14. The appellant asserts the proposals would not increase the level of development beyond that which existed before the 2012 permission. However, the evidence indicates that there were two, and three or possibly four mobile field shelters on the site, which cumulatively were of a much smaller scale than the proposed units and do not set a precedent for the permanent structures proposed.
15. Two of the field shelters have been removed but two are retained as they are moveable shelters which existed on the site at the time of the 2015 appeals. The proposals would reduce the amount of floor space compared to that currently on the site. However, the shed/stable units and hard standing on the site require planning permission and are the subject of an enforcement notice requiring their removal so they do not set a precedent for considering the proposed development.
16. The appellant asserts that the units and hardstanding area are similar to those envisaged during pre-application discussions with the Council in 2011 when the principle of the stationing of mobile stabling and storage was considered acceptable by the Authority. The appellant considers the Council should have been aware, when granting planning permission for the manege, that the types of horses most commonly exercised with a manege facility are the type of horses now kept on the land with these welfare needs and that the appeal site is not located in close proximity to alternative secure stabling facilities.
17. These points were addressed in the 2015 appeals and in the High Court judgement. It was found that a temporary structure would not have the same impact as a permanent building and that the permitting a manege facility did not imply approval of extensive additional facilities. The appellant was well advised by the Council about what may require planning permission and that the use of the site was anticipated by the Council to be a relatively low key operation without the need for the extensive development. The Inspector in the 2015 appeals found *"... that the considerations raised by the appellant do not carry any significant weight as they represent the personal choice of the appellants in the way in which they wish to keep and exercise horses"*.
18. The appellant explains the proposals are the minimum required for the health and wellbeing of the five competition horses owned by the two landowners. The horses need to be stabled to control their diet rather than allowed to graze freely and mares need to be kept separate from geldings. Keeping horses for a manege is different to keeping them for grazing. The hardstanding is required as the ground becomes waterlogged. Storing valuable tack and equipment for the horses, feed, jumps and schooling equipment, ground maintenance

equipment such as a tractor, rakes and so on is necessary for security and improves the appearance of the site. There is 24 hour surveillance equipment and the horses are visited daily but there is a need for undercover accommodation for farrier visits and for recovery from injury as alternative stables may not be available at short notice.

19. The letter from Pole House Equine Clinic details the welfare requirements for competition horses and confirms that it is usual for such horses, requiring such facilities, to be kept in connection with a manege. I have also been mindful of the welfare requirements set out in the Defra Code of Practice for the Welfare of Horses, Ponies, Donkeys and the requirements of the Farriers Registration Council.
20. I see no reason to disagree with the above points as they relate in principle to competition horses. However, I note that the Inspector in the 2015 appeals considered the appellant had set out in considerable detail the reasons why the stables, tack rooms, shelters and hardstandings were required. Nothing in the evidence I have seen leads me to disagree with that Inspector who concluded that the permitted use as a paddock for grazing and exercising of horses with a manege facility *"...is not dependent upon the range of facilities that the appellants seek to provide. It can be the case that the keeping and grazing of horses can take place without the provision of stables, storage facilities and hardstandings although the appellants disagree with this being appropriate for the care of their horses. It is not unusual where land is being used for livestock or for grazing, for the number of animals to be restricted by the capacity and condition of the land. Ground conditions are affected by animals and that is why it is necessary to employ moveable structures so that damaged ground can be left to recover."* This conclusion was supported in the High Court judgement.
21. The appellant asserts that the lawful use of the keeping and exercising of horses could not operate without the existence of these facilities. However this was addressed in Paragraph 43 of the High Court judgement which concluded 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"* and nothing I have seen or read leads me to a different view.
22. I have seen no evidence as to whether or not it would be unusual to find a manege facility without stabling. It is asserted that other equine facilities in the area have similar stabling facilities and that consistency requires that the appeal units be permitted. A small scale aerial photograph with locations highlighted has been provided but no evidence has been submitted to indicate the extent to which these are comparable to the appeal proposals. In the absence of such evidence and given that the only stabling facilities I saw during my site visit were much smaller than the ones on the appeal site I am not led to a different conclusion.
23. The clearance of rubbish and the planting of hedgerow plants helps improve the soft landscape, ecology and biodiversity of the site as envisaged by Policy BE1, Policy NR3 and Core Policies 3 and 13. Policies NR1 and the SPD seek to support and protect the countryside including equestrian activities to help the countryside economy provided it is not inappropriate development. However, the clearance of rubbish, planting of hedgerows and the authorised equestrian

activities can take place on the appeal site without the proposed development. These benefits therefore add little weight in favour of the proposal as they are not dependent on it taking place. Core Policy 10 encourages healthy and safe lifestyles through community sports and recreation facilities. The proposal is not for public use and the appeal buildings would not be required for the recreational use of the land so this policy has little relevance in the context of the appeal before me.

Other Matters

24. The appellant engaged in pre application discussions Ref 15/01265/PREAPP with the Council before submitting the application which is the subject of this appeal. Whether or not the Council rejected the proposals at that time is not a material planning consideration that can affect my decision. The planning history of a site is a material consideration and I have seen no evidence to suggest that the Council has incorrectly had regard to it.
25. I acknowledge that the appellant has invested in the site but this in itself does not lead me to any different conclusion. I have considered whether a split decision would be appropriate. However, the appellant says that the proposals are the minimum necessary⁶ and on that basis I consider a split decision would not be appropriate.
26. Third parties have suggested future intentions might be the development of a commercial centre with indoor riding arena and residential property. However, that is not a matter for the appeal before me. Extensive correspondence has been submitted in relation to the proposals. Where comments are relevant to the material planning considerations I have taken them into account.

Green Belt Balance

27. I have concluded that the proposed units are inappropriate development that affects the openness of the Green Belt which carries substantial weight against the proposals.
28. The positioning of the stables and the hardstanding affect the character and appearance of the rural countryside location and accordingly the proposals would conflict with Policies CPI and NR2 and would not meet the environmental dimension of sustainable development as defined in the Framework. I give moderate weight against the proposal.
29. The provision of shelter for the horses and storage for associated equipment would be benefits of the proposals, but the prime permitted use of the land for grazing and exercising of horses can take place without the extent of units and hardstanding proposed. Accordingly I give the provision of shelter and storage relatively little weight in favour of the proposals. Other benefits identified could take place without the development for which permission is sought.
30. I find that the other considerations in this case do not clearly outweigh the harm I have identified. Consequently the very special circumstance necessary to justify the development do not exist. The adverse impacts of the proposals would significantly and demonstrably outweigh the benefits when assessed against the development plan and the Framework taken as a whole.

⁶ Paragraph 14 of the Appellant's Appeal Statement

Conclusion

31. For the reasons set out above, and taking into account all relevant matters raised, I conclude that the proposals would be inappropriate development that would have a detrimental effect on the openness and visual amenities of the Green Belt and the rural area. It would be contrary to the provisions of the development plan taken as a whole and to the Framework. The appeal should not succeed.

SDHarley

INSPECTOR