
Appeal Decision

Site visit made on 8 November 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 14th December 2016

Appeal Ref: APP/P4605/W/16/3157082

Land off Oxleys Road, Sutton Coldfield, Birmingham, West Midlands B76 9PA

- 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 The Partnership T/A Aston House against the decision of Birmingham City Council.
 - The application Ref 2015/09691/PA, dated 15 November 2015, was refused by notice dated 13 January 2016.
 - The development proposed is described as an 'Equine Rehabilitation Unit with Residential Facilities on land previously used as commercial nursery (horticultural) *Re-submission of 2015/01998/PA Roof Height Reduced'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development given on the Council's decision notice differs from that on the application form. In accordance with normal practice I have used the latter in my decision.
3. At the time of my site visit, the emerging Birmingham Development Plan (BDP) had been considered by an Inspector at an Examination in Public, who had concluded that it provides an appropriate basis for the planning of the city provided that a number of modifications are made. However, the Government had issued a Holding Direction which prevented the Council from adopting the Plan. On 24 November 2016 the Planning Minister sent a letter to Birmingham City Council confirming that the Holding Direction had been withdrawn. The effect of this letter is that the Council may now proceed to adopt the BDP.
4. I arranged for the parties to be given an opportunity to comment on any implications of this change of circumstances, and have considered the comments received.

Main Issues

5. The main issues are:
 - (a) Whether or not the proposed development would be inappropriate development in the Green Belt; and
 - (b) If the proposal would be inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm,
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would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Policy Background

6. The site is in an area designated as Green Belt in the adopted Birmingham Unitary Development Plan (BUDP) 2005. The emerging BDP proposes to retain the Green Belt designation of the site. Given its advanced stage, the emerging BDP, whilst not yet adopted, carries substantial weight in my decision.

Inappropriate development

7. Paragraph 89 of the National Planning Policy Framework (the 'Framework') establishes that the erection of new buildings in the Green Belt is, subject to specified exceptions set out in its 6 bullet points, inappropriate.
8. The proposed building would provide an equine rehabilitation unit, which would cover about 45% of its floor space¹ and be used for the treatment and rehabilitation of horses, ponies and donkeys. The remainder of the building would provide residential accommodation, which the Appellant states is required to provide 24 hour veterinary cover for the rehabilitation unit.
9. The Appellant has stated that the proposal would be a suitable form of development in the Green Belt as it would be for 'horsicultural' use.
10. Under the first bullet point of paragraph 89, a new building for agriculture is not inappropriate in the Green Belt. Under bullet point 2, a new building which provides appropriate facilities for outdoor sport or outdoor recreation is not inappropriate as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. However, whilst the proposed facility may provide a service to support agriculture, outdoor sport or recreational uses elsewhere, it has not been demonstrated that the site itself would be used solely or primarily for any of these purposes. The proposed residential use also falls outside the scope of these uses.
11. Furthermore, the proposed building would be of considerable height and massing, and be much higher and larger than the existing structures which would be removed, whether these are considered alone or in combination. Whilst an external horse walker and paddock area would be provided this would be of limited extent.
12. The proposed development would be located between 2 existing dwellings. I have also noted the Appellant's proposals to retain much of the existing substantial tree and hedgerow screening including along the boundaries of the site and to undertake new planting. However, these points would only mitigate the effect of the proposal on the visual aspects of openness to a certain degree and would not substantively limit its effects on the spatial aspect of openness.
13. Having regard to these points, the proposal would not, even if considered to constitute a facility for outdoor sport or outdoor recreation, fall within the exceptions to inappropriate development in either of the first 2 bullet points of paragraph 89 of the Framework. For similar reasons, the proposal is outside the range of uses supported by Saved Policies 3.45 and 8.63 of the BUDP.

¹ Appellant's 'Planning Revision Statement'

14. The proposed building would not be an extension of an existing building, replace an existing building in the same use, be within a village or provide affordable housing to meet local needs. Therefore, it would not fall into any of the exceptions set out in bullet points 3, 4 or 5 of paragraph 89.
15. The Appellant has drawn attention to the previous use of the site as a commercial horticultural nursery and to the existing building and remnants of other buildings which previously occupied the site. However, if as seems likely based on the description of their use as 'horticultural'² the existing and previous structures were agricultural buildings, the site would fall outside the definition of 'Previously developed land' (PDL)³. Furthermore, as the proposal would have a substantially greater impact on the openness of the Green Belt than the existing structures which would be removed, it would not, even if the site is within the definition of PDL, fall within the scope of bullet point 6 in paragraph 89.
16. As the proposal does not fall into any of the exceptions set out in paragraph 89 of the Framework or in Saved Policies 3.45 and 8.63 of the BUDP, it would constitute inappropriate development in the Green Belt. Under paragraph 87 of the Framework inappropriate development in the Green Belt is, by definition, harmful and should not be approved except in very special circumstances.

Other Considerations

17. The proposal would provide 3 full time equivalent jobs, associated training opportunities and a rehabilitation service for horses, ponies and donkeys. These would be material benefits, particularly in view of the emphasis that the Framework places on promoting economic development. However, little evidence has been submitted concerning the level of need for this facility in the area or why such a need would require a new building in the Green Belt.
18. The Appellant has stated that the proposed residential use is required to provide veterinary support for the equine rehabilitation unit for 24 hours each day, 7 days per week. However, the submitted evidence includes for example no substantive business plan or financial information demonstrating that the rehabilitation unit would provide a viable business or that new on-site residential accommodation provides the only practicable way to provide the necessary support.
19. By providing a new dwelling the proposal would, even in the absence of a proven need for a rural workers dwelling to support the equine rehabilitation use, contribute to achieving the objective, set out in paragraph 47 of the Framework, of significantly boosting the supply of housing. Whilst this benefit would be material, it needs to be viewed in the context of the limited nature of the evidence which has been submitted to demonstrate why a new dwelling should be allowed in this location in the Green Belt.
20. The proposal would secure the re-use of a currently disused site. However, there are likely to be many areas of such land in the Green Belt and this factor does not weigh heavily in favour of allowing the development in this location. The proposal would also secure the removal of the existing building and other

² Application form, question 3

³ The definition of 'agriculture' in Section 336 of the Town and Country Planning Act 1990 includes '...horticulture...'. The definition of 'previously developed land' in Annex 2 of the Framework excludes '...land that is or has been occupied by agricultural or forestry buildings...'.

remnants of previous development from the land. However, these are of limited scale and impact and do not detract substantially in their existing form from the visual appearance of the surrounding area.

21. The design of the new building itself would have a strong sense of symmetry and visually distinctive glazed areas. The proposals also include the retention of hedging around the boundaries of the site and other vegetation together with new planting proposals. However, some of the existing mature trees would also be removed and the effects of the proposal on the character and appearance of the area as a whole would not be sufficiently positive as to weigh heavily in favour of permission being granted.
22. Whilst the proposal would use sustainable construction methods, this would only mitigate its effects, for example in relation to carbon emissions, rather than constitute a net benefit that would result from it. Although solar panels could be installed on the roof of the building the evidence does not demonstrate that any resultant low carbon energy generation would be sufficient to weigh substantially in the planning balance.
23. Although the proposal would use an existing site access this would only provide mitigation, for example by avoiding the need for landscaping to be removed to form a new access, rather than constitute a substantive net benefit of the proposal.
24. Whilst the Appellant has stated that the emerging BDP encourages development on some agricultural land, no emerging policies have been drawn to my attention which would have this effect on the appeal site.

Planning balance and conclusion

25. I have found that the proposed building would, having regard to the provisions of the BUDP and the Framework, constitute inappropriate development in the Green Belt. Inappropriate development is by definition harmful. Paragraph 88 of the Framework requires that substantial weight be attributed to this harm.
26. Against this the proposal would provide 3 full time jobs and associated training opportunities, an equine rehabilitation service and one new dwelling and other benefits which I have referred to earlier. However, whilst these benefits would be tangible, having regard to the points which I have set out earlier I do not consider that they would collectively clearly outweigh the identified harm to the Green Belt.
27. There are therefore no very special circumstances which justify allowing the proposed development. The appeal proposal would therefore conflict with the provisions of the Framework, Saved Policy 3.45 and 8.63 of the BUDP and Policy TP10 of the emerging BDP related to this matter.
28. For the reasons set out above, I dismiss the appeal.

Jonathan Clarke

INSPECTOR