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## Appeal Decision

Hearing held on 23 and 24 November 2016

Site visit made on 24 November 2016

**by L Gibbons BA (Hons) MRTPI**

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

**Decision date: 23 December 2016**

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**Appeal Ref: APP/W1525/W/16/3147459**

**Land on the east side of Downham Road, Stock, Essex CM4 9RD**

- 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 Mr & Mrs Timothy and Nicola Cruse against the decision of Chelmsford City Council.
  - The application Ref 15/00966/FUL, dated 5 June 2015, was refused by notice dated 16 October 2015.
  - The development proposed is the erection of a 5 loose box stable for the purpose of stabling horses.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - i) Whether the proposed development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
  - ii) The effect of the proposed development on the openness of the Green Belt and character and appearance of the area; and,
  - iii) If the proposal is inappropriate development, whether the 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.

### Reasons

#### *Whether inappropriate development*

3. The proposal is for a 5 loose box stable for the purposes of stabling horses. The appeal site is within a field which lies within the Metropolitan Green Belt. Paragraph 89 of the Framework sets out that local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions relevant to this application are bullets one and two of that paragraph. The first bullet refers to buildings for agriculture and forestry. There is no qualification and I agree with the appellants that should the use fall under this exception, openness would not be a consideration. The second bullet refers to the provision of appropriate facilities for outdoor sport, outdoor
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recreation and cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.

4. The appellants argue that the first paragraph of Policy DC1 of the Core Strategy and Development Control Policies Development Plan Document (CSDCP) is at odds with the Framework and also contains some internal inconsistencies. The first paragraph of Policy DC1 refers to all development proposals must preserve the openness of the Metropolitan Green Belt and not conflict with the purposes of including land within it. The second bullet of Part A) of Policy DC1 is the same wording as the Framework. I acknowledge there are slight differences between the wording of the Framework and the policy.
5. Nevertheless, in 2013 the Council undertook a Focussed Review of the CSDCP. This sought to ensure that the document was consistent with the Framework and only dealt with specific policies to bring them in line with the Framework. This included Policy DC1. The examining Inspector concluded that Policy DC1 was sound subject to a main modification relating to material change of use of the land<sup>1</sup>. No other main modifications were proposed. Moreover, in commenting on the item relating to a material change of use, the examining Inspector also considered that the effects of paragraph 87,89 and 90 of the Framework when read together is that all development in the Green Belt is inappropriate unless it is comes under the categories in paragraph 90 and the exceptions listed within paragraph 89. I consider that the relevant parts of the policy are consistent with the Framework. I therefore afford the policy due weight.

#### Agriculture

6. The field is not currently managed, is unkempt and slightly overgrown. The appellants submit that the field would be in agricultural use and that the proposed stables would be ancillary to that use, therefore falling under the first bullet of paragraph 89 of the Framework. Case law has established that the definition of ancillary in these terms is one of a functional relationship. The intention is that the land would be used for the grazing of horses. The Council accepts that the definition of agriculture<sup>2</sup> includes the use of land as grazing land. However, the Council considers that the proposal would amount to a recreational use and that the second bullet of paragraph 89 of the Framework would apply.
7. The appellants refer to two court judgements in relation to agricultural use. These are *Sykes v Secretary of State for the Environment and other* [1981] 42 P. & C.R and also *Fox v First Secretary of State* [2003] EWHC 887 (Admin). The facts of these cases are not directly comparable with the circumstances before me as both of these were enforcement cases with some activity already taking place in one form or another. In this case, there are no horses on the site at present. Although *Sykes* established principles about the use of land for grazing each individual case will need to be decided on its own facts in the light of the principles.
8. In *Sykes* the question asked was 'what is the purpose for which the land is being used'. *Sykes* set out that if horses are being kept on the land and are

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<sup>1</sup> Report on the Examination into Chelmsford City Council Core Strategy and Development Control Policies Focused Review Development Plan Document (Local Plan) 2013

<sup>2</sup> s.336 of the Town and Country Planning Act 1990

being fed wholly or primarily by other means then plainly the land is not being used for grazing but merely being used for the keeping of animals. One of the outcomes of the *Fox* decision was that a racehorse or 'kept' horse could still be considered to be grazing the land if this was its primary source of food.

9. There would be some hay and feed storage areas provided within the stable. I acknowledge that the amount of storage provided is based on conversations with the British Horse Society (BHS). The storage would provide enough space for the amount of hay each horse would consume during the winter months. The appellants consider that the horses would be grazed on the land between 75 and 85% of the year with times when they would be fed on other feed limited to the winter months. The Council consider that the amount of time that the horses would be able to use the land would be much more limited and would result in the need for additional supplementary feed beyond what is suggested by the appellants.
10. The appellants refer to the amount of land that is generally thought to be needed to accommodate horses on permanent pasture as set out in the BHS Guidance relating to Pasture Management. This indicates that 1 to 1.5 acres per horse would be needed, based on factors such as horse size, type of pasture, soil quality, and the time of year amongst other things. The field is a total of 5.7 acres, which would indicate that it could theoretically accommodate 5 horses. However, the stables and hard standing would remove some of that area from the total amount available. There is also a small pond within one corner and landscaping is proposed which would reduce this amount further.
11. The appellants confirmed at the Hearing that the intention was that the horses would be in this field year on year although they do not own any horses at present. Based on figures referred to in the BHS guidance the appellants consider that even less than 1 acre per horse could be sufficient to feed horses off the land wholly or permanently. However, I am not persuaded that the BHS guidance necessarily leads to this conclusion. Indeed, the guidance later states that over-grazing, over-stocking and poor management can result in the pasture becoming horse-sick and that the more acres available the easier it is to maintain good quality pasture through rotation and resting. The existing condition of the land is such that it would need preparation. I have not been provided with any information relating to how the pasture would be managed over the long term in order to accommodate the number of horses.
12. The quality of the grazing land is an important factor. The Council indicated that the soil within the field is heavy and that the County is a dry county with limited rainfall. Both of these could affect the quality of the grass and availability of grass. I consider this would affect the potential for the land to feed 5 horses wholly or permanently by reducing the number of months when pasture is available.
13. I consider it is also necessary to look at the whole circumstances of the proposal and not solely the proposed feeding arrangements for the horses. I accept that no sand pit or manege is proposed. It is common ground between the parties that the horses would need some form of shelter. The Council refer to field shelters which allow horses or other livestock to freely roam and graze but at the same time providing shelter during more adverse weather conditions. In this case, the building would be a permanent structure which would also incorporate a cart store, tack room and toilet facilities. I accept that

these features could potentially be provided on the site in other structures such as portacabins and that there may be a need for them. However, there was no information to indicate that the size of these features arise directly from the needs of stabling of five horses for agricultural purposes. Moreover, due to the type of doors on the stable this would have the potential to be restrictive in terms of the horses' ability to feed and roam at leisure. This would further reduce the potential for the horses to be feeding wholly or primarily from the field.

14. Therefore, I conclude that it has not been demonstrated that the field would be capable of accommodating of 5 horses being fed wholly or primarily from the land on a permanent grazing basis. The purpose for which the land would be used would not be for agriculture as related to the grazing of the land. The stable building would not have a functional relationship with an agricultural use and the scheme would not fall under the first bullet of paragraph 89 of the Framework.

#### Provision of appropriate facilities for outdoor sport, outdoor recreation

15. The Framework and Policy DC1 of the CSDCP allow for appropriate facilities for outdoor sport and recreation. This is providing the proposal preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
16. The appellants refer to the judgement of *Fordent Holdings*<sup>3</sup>. I have had regard to the purpose as well as the size of the proposed building. The Council acknowledge that stables are capable of being considered as an appropriate facility for outdoor sport or outdoor recreation. I consider that the stable in this case would provide a facility for outdoor sport and recreation. In terms of whether it is appropriate for the intended purpose, the Council questions that the need for five loose boxes would appear excessive in relation to the recreational needs of most households. The tack room and cart store would amount to a significant part of the proposal. There is no evidence to support the justification for these or that the size would be needed to meet the reasonable requirements of the proposed use. To my mind the building would be larger than is necessary and would not be appropriate for the intended purpose.
17. The Framework at paragraph 79 indicates that openness is an essential characteristic of the Green Belt. Openness is the absence of built or otherwise urbanising development. By reason of the inclusion of this bullet point within paragraph 89 there must be some acceptance that there would be some impact on openness as it allows for new buildings. The appellants accept that the stable would have a modest impact on openness. However, if the use could be accommodated within a smaller structure with less volume, impact on openness could be minimised. In this case, the proposed building would be large with additional volume given over to features such as the tack room and cart store. I consider that it would not preserve the openness of the Green Belt.
18. The purposes of the Green Belt are set out in paragraph 80 of the Framework. In this case, the relevant purpose of the Green Belt is that to safeguard the countryside from encroachment. The appellants accept that encroachment would occur to a very limited extent. The proposed access road would not add

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<sup>3</sup> *Fordent Holdings Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2844

to the size of the proposal. Nevertheless, this would be a considerable area and would contribute to the site having a more developed and urbanised appearance than is the current situation. In combination with the large size of the stable, the development would encroach into an undeveloped field within the countryside. The development would conflict with that purpose of the Green Belt. For the above reasons, I conclude that the proposal would not meet the exception set out in the second bullet of paragraph 89 of the Framework.

#### Conclusion on whether inappropriate development

19. I have found that the proposal would not fall into the exceptions set out in the first and second bullet of paragraph 89 of the Framework. It would be inappropriate development in the Green Belt. It would be contrary to Policy DC1 of the CSDCP. The Framework advises that inappropriate development is harmful to the Green Belt and should not be permitted except in very special circumstances.

#### *Character and appearance*

20. The appeal site is a field located on the corner of Lower Stock Road and Downham Road. There are a small number of houses located at the junction of these two roads. Development along Lower Stock Road close to the appeal site is very limited. The northern side of Lower Stock Road is free from development for some distance after the appeal site heading east. Sweetdrops, a small bungalow is opposite part of the site. The wider area has a verdant appearance with clusters of wooded areas and open fields. It has a rural quality which is apparent in the areas' character and appearance.
21. I have been referred to the West Hanningfield Village Design Statement (VDS). The Council acknowledged that it should be treated as informal guidance only. The VDS refers to the presence of agricultural businesses and their modest farm buildings. I have found that the use of the field as associated with the stables would not be agricultural. Nevertheless, I accept that stables are found within the area.
22. The appeal site has a planning history which includes a previous planning application for stables and access. This was refused in March 2015. The scheme before me sought to overcome the concerns of the Council including reducing the volume, height of the stable and hardstanding associated with the building.
23. The stable building would be located within the south east corner of the site some distance away from Downham Road. I accept that the intention of the design of the building was to provide quality accommodation for the horses and that the dimensions of each loose box are in line with BHS guidance. I note that the materials to be used in the construction of the stable would match that of the local vernacular.
24. However, the site is not viewed in a residential context and I consider it bears no strong visual or physical connection with Sweetdrops other than being located opposite. It appears as part of the countryside and is lacking any development. Moreover, the proposed stable building would be of a similar height to the bungalows of Sweetdrops and also Ravenstor a little further to the east along Lower Stock Road. It would be similar in overall size and scale

to these properties and would not be small. Even with the hedgerow and proposed native landscaping, I consider the size and bulk of the building would be noticeable in the street scene for some distance travelling towards the east. The building would be prominent from this location as it would be fairly close to the road. The introduction of native planting within the open field would also appear as a more formal arrangement and as such I do not agree that it would have a minor positive benefit. In addition, the entrance gate and access road would draw the eye and would have a more formal and urbanised appearance than exists at present. Lighting and vehicle movements would also add to the presence and visibility of the development.

25. Due to the distance of Downham Road from the stable and the intervening hedgerow which would provide some screening for the building. I accept that in this context, the stable would be only seen in brief glimpses. However, this does not outweigh the harm I have found.
26. The appellants refer to a retrospective planning application for a stable at land at Ragged Robins, Lower Stock Road. I note that this was approved in 2011 and was considered acceptable to the Council in terms of its effect on the character and appearance of the area. However, those stables are located close to a very obvious cluster of dwellings and the area has a more built up character and appearance than the location of the appeal site. As such I consider it is not directly comparable to the circumstances before me.
27. For the reasons given above, I conclude that the proposed development would cause considerable harm to the character and appearance of the area. It would be contrary to the Framework where it relates to recognising the intrinsic character and beauty of the countryside.

#### *Other considerations*

28. The welfare of horses is a potential factor which would weigh in favour of the appeal scheme. Government guidance in relation to keeping horses indicates that horse owners have a responsibility to provide a suitable place for them to live. However, as there are no horses on the site at present, I give this consideration very little weight. No other considerations were put forward in favour of the appeal scheme.

#### **Conclusion**

29. The proposal would be inappropriate development in the Green Belt, which is harmful by definition, and to which substantial weight should be attached. In addition there would be loss of openness and the scheme would cause harm to the character and appearance of the area. The consideration relating to animal welfare does not clearly outweigh this harm. Consequently, very special circumstances do not exist, and the proposal is contrary to Policy DC1 of the CSDCP. Therefore, for the reasons given above and having regard to all other matters raised, the appeal should be dismissed.

*L Gibbons*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT

|         |                            |
|---------|----------------------------|
| T Cruse | Appellant                  |
| M Green | Green Planning Studios Ltd |
| R Reed  | Green Planning Studios Ltd |

### FOR THE LOCAL PLANNING AUTHORITY

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|-----------------|-------------------------|
| S Hill-Sanders  | Chelmsford City Council |
| P Chillingworth |                         |

### DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

- 1 Suggested conditions for a) storage of vehicles and b) landscaping
- 2 Ragged Robins Plans and photographs