
Appeal Decision

Site visit made on 17 January 2017

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 13 February 2017

Appeal Ref: APP/W3005/W/16/3158945

Land off Blidworth Road, Kirkby-In-Ashfield, Nottinghamshire.

- 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 Mrs S Weaver against the decision of Ashfield District Council.
 - The application Ref V/2016/0410, dated 14 June 2016, was refused by notice dated 16 August 2016.
 - The development proposed is for equine use, with erection of a stable block, yard and access track.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs S Weaver against Ashfield District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and development plan policy;
 - The effect of the proposal on the openness of the Green Belt; and,
 - 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

Inappropriate Development in the Green Belt

4. The appeal site consists of an open field stretching between Blidworth Road and a farmstead to the north. These buildings are accessed via a track which leads to the east of the appeal site.
 5. The appellant states that the site has an established use for the keeping and grazing of horses which would therefore negate the need for a change of use to be considered as part of this appeal. In support of this, I have been provided
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- with a number of images from Google Earth dating back to 2004 which she states show horses being grazed on the field. I have also been referred to linkages between the appeal site and adjacent land holdings, as well as the type of means of enclosure around the site.
6. However, the Council state that animals are absent from the appeal site in at least one of the images and it is not apparent from the other images that the animals are horses. They also refer to evidence of agricultural uses within the site over that period. Although this variation in the management of the site may be compatible with the keeping of horses as contended by the appellant, the Council state that this could also be used for other purposes rather than merely equine use.
 7. I am also mindful that the description of the proposal given on the planning application refers to the development being "For equine use...". I note that the current use and last use of the site as described on the planning application form is stated to be "Agriculture". Furthermore, the submitted Site Plan refers to a "Proposed Grazing Paddock" rather than an existing one.
 8. It is not for me to determine whether a use is lawful in the context of an appeal made under S78 of the Town and Country Planning Act 1990 (TCPA). I must deal with the appeal as made. Should the appellant wish to establish the lawfulness of the use of the land, the most appropriate method is to apply for a Certificate of Lawfulness of Existing Use or Development under S191 of the TCPA. However, without prejudice to the lawfulness or otherwise of the use of the land for the keeping of horses, I have given very limited weight to this due to the identified inconsistencies. I have therefore determined the appeal on the basis of the proposal as submitted i.e. as a proposal "for equine use, with erection of a stable block, yard and access track".
 9. Paragraph 89 of the Framework states that the construction of new buildings in the Green Belt is inappropriate, subject to a number of exceptions. One such exception is the provision of appropriate facilities for outdoor sport or outdoor recreation, so long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. However, paragraph 89 specifically relates to new buildings. As the proposal includes a change of use from agricultural to equine use, the development, as a whole, does not comply with the provisions of paragraph 89 or the specified exceptions.
 10. Paragraph 90 of the Framework refers to other forms of development which are not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. However, the proposal does not fall within the scope of the specified exceptions in paragraph 90.
 11. In relation to the interpretation of paragraphs 89 and 90, I have been referred to the High Court judgement of *Timmins v Gedling Borough Council* [2014]¹. However, the courts have determined in *Fordent Holdings v SSLG and Cheshire West and Chester Council* [2013]² that paragraphs 89 and 90 are closed lists.

¹ *Timmins and Lymn Family Funeral Service v Gedling Borough Council and Westerleigh Group Limited* [2014] EWHC 654 (Admin)

² *Fordent Holdings Ltd v Secretary of State for Communities and Local Government & Cheshire West and Chester Council* [2013] EWHC 2844 (Admin)

The Court of Appeal³ in *Timmins* did not come to a view either way as to whether paragraph 90 is a closed list in relation to the categories of development which are inappropriate, notwithstanding that this case related to a cemetery rather than an equine related development. The *Fordent* judgement has therefore not been set aside and continues to hold good in this regard.

12. Any proposal which does not fall within the specific exceptions in paragraphs 89 and 90 of the Framework is inappropriate development in the Green Belt. The proposal includes a material change of use of land which is not within the scope of the specific exceptions detailed. Therefore the proposed development amounts to inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt.

Openness

13. The fundamental aim of Green Belt policy, as set out in paragraph 79 of the Framework, is to keep land permanently open. At my site visit, I saw that the appeal site consists of an open field which contains no buildings. The proposed development would therefore result in built development consisting of stables and a yard where there is currently none. The built development would be readily visible from the farmstead to the north and the access leading to it. Although the stables and yard would be located at the edge of the field furthest from Blidworth Road and set down within the landscape, I saw at my site visit that the stables would be visible in fleeting views through the hedge from the public highway.
14. The access to the stables would consist of grass and reinforced grass surfacing and would not be readily apparent. However, this would introduce a small number of traffic movements on an extended route through the site which would be in addition to those on an existing access track nearby.
15. I conclude that, overall, the scheme would have a moderate harmful effect on the openness of the Green Belt.

Other Considerations

16. The appellant has referred to two permissions in the vicinity of the site - one for the erection of a stable block and manège and change of use from agricultural to equestrian use granted in 2008⁴, another for a stable block and tack room in 2009⁵. These proposals were assessed against Policy EV1 of the Ashfield Local Plan Review 2002 (LP) and both of the permitted schemes were considered by the Council to be acceptable. However, the LP is of some age and predates the Framework; as do both of the decisions referred to by the appellant. The publication of the Framework represents a material change in circumstances since these decisions, particularly in regard to policy on the change of use of land in the Green Belt. Therefore, the circumstances in relation to these decisions are not directly comparable to the appeal proposal.
17. The appellant emphasises that there are similar equestrian uses and buildings in the immediate area and that the proposal would not be out of character with

³ *Timmins and Lymn Family Funeral Service v Gedling Borough Council and Westerleigh Group Limited* [2015] EWCA Civ 10

⁴ Ref V/2008/0602

⁵ Ref V/2009/0405

these. However, I saw on my site visit that the landscape around the appeal site consists of a mixture of uses, including agriculture. Also, as stated previously, the developments relating to equine uses that have been brought to my attention were approved prior to the publication of the Framework.

18. My attention has been drawn to paragraph 81 of the Framework which refers to the enhancement of the beneficial use of the Green Belt, such as opportunities for outdoor sport and recreation. I acknowledge that the use of the site for equestrian purposes could be a beneficial use under the terms of paragraph 81. However, I am mindful that the development is for the private use of the appellant rather than the wider public benefit. I therefore consider that the proposal would make a very limited contribution to the beneficial use of the Green Belt.

Other Matters

19. I have taken into account the local objections relating to the potential use of the site as well as the effects of the proposal on the outlook from nearby properties, noise, dust, smells and vermin. However, consideration of these matters has not led me to a different conclusion on this appeal.

Conclusion

20. I conclude that the other considerations in this case do not clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the proposal do not exist and the proposal is at odds with Policies ST1 and EV1 of the LP and the guidance in the Framework. I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR