
Appeal Decision

Site visit made on 30 January 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 20th February 2017

Appeal Ref: APP/P0240/W/16/3163393

Builders Yard, Higher Rads End, Eversholt, Bedfordshire MK17 9ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr A Clarke against the decision of Central Bedfordshire Council.
 - The application Ref CB/16/02034/VOC, dated 11 May 2016, was refused by notice dated 15 July 2016.
 - The application sought planning permission for erection of replacement building and change of use of the site from B8 to B1 (offices) without complying with conditions attached to planning permission Ref CB/16/00360/FULL, dated 29 March 2016.
 - The conditions in dispute are Nos 3 and 5 which state that:
 - 3. The development hereby permitted shall not be brought into use until the existing stable building, which is currently in use as an office, has been demolished and the car parking plan shown on approved drawing no. 15-084-1000A has been implemented in full.*
 - 5. The development hereby approved shall not be brought into use until a 2m high, close-boarded fence has been erected along the full extent of the boundary of the site with No 18 Higher Rads End. The fence shall be retained thereafter.*
 - The reasons given for the conditions are:
 - 3. In the interests of protecting the openness of the Green Belt and to ensure sufficient parking on site.*
 - 5. To safeguard the amenity and privacy of the residents of No. 18 Higher Rads End.*
-

Decision

1. The appeal is allowed and planning permission is granted for erection of replacement building and change of use of the site from B8 to B1 (offices) at Builders Yard, Higher Rads End, Eversholt, Bedfordshire MK17 9ED in accordance with the application Ref CB/16/02034/VOC dated 11 May 2016 without compliance with condition 3 previously imposed on the planning permission Ref CB/16/00360/FULL dated 29 March 2016, but otherwise subject to the conditions set out in the Schedule attached to this decision.

Application for costs

2. An application for costs was made by Mr A Clarke against Central Bedfordshire Council. This application is the subject of a separate Decision.

Procedural Matter

3. The original application sought the removal of Condition 3 and the variation of Condition 5. The variation to Condition 5 sought was for the close-boarded fencing to be required along the rear of the office building and not along the
-

entire length of the common boundary with the adjacent property at 18 Higher Rads End. Since the decision the appellant advises the 2m high, close-boarded fence has been provided in accordance with condition 5 and the Council's statement does not appear to contest this. The appellant has confirmed in the statement that the appeal relates only to the removal of condition 3. I have dealt with the appeal on this basis. However, condition 5 contains a retention clause in respect of the fencing which I consider to be necessary. Therefore this condition has been re-applied in the planning permission granted through this decision.

Background and Main Issue

4. The appeal relates to a site of some 0.8 hectares situated in countryside, between the Higher Rads End and Witts End settlements, which falls within the South Bedfordshire Green Belt. The entrance is from Higher Rads End and an access drive runs between land used for the keeping of horses and serves a development at the far end of the site which comprises two main buildings. There is a single-storey rectangular office building along the south-west side of the site at its southern end. North of this, and at the head of the access, is car parking associated with this office development and immediately beyond a stable building.
5. The appeal relates to the part of condition 3 of the planning permission for the office building requiring demolition of the stables, as the applicant wishes to retain the use of this building. The car parking plan shown on approved drawing no. 15-084-1000A has been provided and consequently the second part of condition 3 has already been satisfied.
6. The Council refused permission for two reasons. The first reason is that the cumulative effect and impact of the two buildings would result in inappropriate development within the Green Belt and have a detrimental effect on its openness. The second was the proposal would result in an unacceptable form of development which would have a detrimental effect on the amenities and privacy of the occupiers of No. 18.
7. The National Planning Policy Framework (the Framework) states in paragraph 206 that planning conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.
8. Consequently, the main issues in this case are whether condition 3 is necessary and reasonable having regard to:
 - Whether the existing development would be inappropriate in the Green Belt, having regard to the Framework;
 - The effects on the living conditions of the occupiers of No 18 Higher Rads End, with particular regard to privacy and disturbance.

Reasons

Whether the existing development would be inappropriate in the Green Belt

9. As set out in Part 9 of the Framework, the Government attaches great importance to the Green Belt, where the fundamental aim of policy is to prevent urban sprawl by keeping land permanently open. Paragraph 89 states

that the construction of new buildings should be regarded as inappropriate in the Green Belt, subject to a number of exceptions.

10. In this case, the planning history on this site is a material consideration. In summary, both the stables and the offices were permitted as replacements of original buildings, considered acceptable by the Council in the light of Green Belt policy applying at those times. The appellant advises that the office building approved under Ref CB/16/00360/FULL was the equivalent size of the storage building permitted under earlier consent Ref CB/10/02462/FULL, which had not been subject to the same condition requiring removal of the stables.
11. The Planning Officer's delegated report for the proposed office building refers to the relevance of the exception to inappropriate development in the Green Belt, given in the sixth bullet point in paragraph 89 of the Framework. This refers to the limited infilling or the partial or complete redevelopment of previously developed sites which would not have a greater impact on the openness of the Green Belt, and the purpose of including land within it, than the existing development.
12. This exception would have been a reasonable basis for the Council to have considered the office building as not inappropriate development in the Green Belt. However, in granting approval the Council had also construed that this proposal involved the demolition of the existing stable block and its replacement with car parking. On this basis the Council considered the proposal would have a net positive impact on the openness of the Green Belt as the replacement building would be no larger than that it would replace and the proposal also included the demolition of the existing stables. Consequently I infer from the delegated report, although it erroneously refers to paragraph 80 of the Framework, that the offices were considered not inappropriate development within the Green Belt by virtue of the sixth bullet point in paragraph 89.
13. However, I am not persuaded that the fact the stables were not shown on the plans for the replacement office building adequate evidence that its demolition was intended as part of this proposal. The fact that the car parking has since been provided and is clearly not in a location which would have required the demolition of the stables adds weight to my conclusion that the Council might have misconstrued the proposals in this respect.
14. The Council's appeal statement refers to a telephone conversation with the appellant's agent prior to finalising the delegated report for CB/16/00360/FULL, advising that the stable was to be removed as part of the development. However, it would still be incumbent upon the Council to consider the reasonableness of a condition to this effect.
15. The exception to inappropriate development in the sixth bullet point of Framework paragraph 89 refers to limited infilling or the partial or complete redevelopment of previously developed sites. It further caveats that such development should not have a greater impact on the openness of the Green Belt, and the purposes of including land within it, than the existing development. It does not further require a net positive impact on the openness of the Green Belt that the Council considers would be provided by the demolition of the stables. Consequently, the office building would satisfy this exception without the further requirement of condition 3 that the stables be removed.

16. The Council now considers to retain the existing stables would have a detrimental impact on the openness of the Green Belt and are therefore considered inappropriate. However, this conflicts with the Planning Officer's delegated report concerning the replacement stables (reference CB/12/02849/FULL, permitted on 2 October 2012) that these would replace an unattractive building and result in only minimal increase in footprint and have no adverse harm to the openness of the Green Belt.
17. The replacement stables would be not inappropriate buildings in the Green Belt by virtue of paragraph 89 of the Framework, published at the time of this decision, as either the replacement of a building in the same use and not materially larger than that replaced or the provision of an appropriate facility for outdoor recreation which preserved the openness of the Green Belt and did not conflict with the purposes of including land within it. Either way, it is clear from the delegated report that the replacement stables were not considered by the Council at that time to be inappropriate development in the Green Belt.
18. On the basis of the planning history, and the permissions that have been given, I am not persuaded by the Council's case that either the existing office building or the stable building would comprise inappropriate development in the Green Belt. The impact of these developments on the openness of the Green Belt is implicitly taken into account through applying the relevant exceptions to inappropriate new buildings set out in paragraph 89 of the Framework.
19. Consequently, the lifting of condition 3 requiring the removal of the stables would not result in an inappropriate development in the Green Belt based on the evidence provided. The Council's reasons for not removing the condition refer only to Part 9 of the Framework and not any development plan policies. Where the development plan is silent, as in this case in respect of Green Belt policy, the fourth bullet point in paragraph 14 of the Framework applies.
20. This would mean granting permission unless either any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or where specific policies indicate development should be restricted, for example in land designated as Green Belt. The adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits and, for the reasons given, it would not result in inappropriate development and so the specific policies in the Framework concerning the Green Belt would not indicate development should be restricted.

Living conditions

21. The delegated report for the original approval (CB/12/02849/FULL) for the replacement stables found no harm to the living conditions of any neighbouring occupiers. In the current case, the Council's second reason for refusal is the adverse impact this proposal would have on the amenities and privacy of the occupiers of No 18. In the Council's statement it states that to allow the retention of the stables building in the office usage would result in a significant level of activity in terms of additional visits to the site by vehicles and daily activity associated with the keeping of horses in the stables, which would be detrimental to the residential amenity of occupants of neighbouring properties.
22. However, in the delegated report for CB/16/00360/FULL, it is clear that, subject to conditions requiring the 2m boundary fence and governing hours of

operation, the Council found the proposed office use unlikely to give rise to significant levels of noise and disturbance and the impact on the amenity of neighbouring occupiers would be limited and acceptable. The report did not identify that this conclusion was dependent upon the removal of the stables subsequently required through the imposition of condition 3. Furthermore, the reason for condition 3 given in the planning permission for CB/16/00360/FULL was in the interests of protecting the openness of the Green Belt and to ensure sufficient parking on the site. The reason for condition 3 did not include the need to safeguard the amenity and privacy of the residents of No 18, or indeed any other neighbouring occupiers.

23. Consequently, I do not consider it reasonable for the Council to now introduce planning reasons on grounds relating to the combined effects of the stables and the office building having a harmful effect on the living conditions of the occupants of No 18. The stables are sited beyond the very long rear garden at No 18, a significant distance from the occupied parts of this dwelling and adjacent to an access which does not appear to be part of any residential garden. The keeping of horses is a common and usual feature of the countryside. The existing stables are associated with the paddock areas on the appeal site, and the horses kept there, and this relatively remote location would be appropriate for this use.
24. The lifting of the condition requiring the removal of the existing stables would not result in an unacceptable form of development which would materially harm the living conditions of the occupiers of No 18, either through any loss of privacy or undue disturbance. It would therefore not conflict with Part 7 of the Framework requiring good design or be contrary to Policy DM3 of the Council's Core Strategy and Development Management Policies 2009, which seeks that all new development proposals respect the amenity of surrounding properties.

Other Matters

25. Consideration has been given to the further concerns raised by interested parties, made at both the application stage and in response to this appeal. Both the office building and stables are developments permitted by the Council. I find there to be insufficient grounds in respect of preserving the rural landscape and maintaining the separation between Higher Rads End and Witts End to require the condition for the removal of the stables to remain.
26. Concerns over any alternative use of the stables are outside the scope of this appeal and would be the responsibility of the Council to seek to address through its planning powers. Similarly, the levels of vehicular traffic, the car parking and other environmental concerns raised over the effects of the office development would not provide sufficient grounds to require the removal of the stables.

Conditions

27. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those previously applied but more suitably drafted where I consider this necessary. This is apart from the standard time limit for

commencement since the office development has clearly been completed and is in use. In the event that some of these conditions have in fact already been discharged, that is a matter which can be addressed by the parties.

Conclusion

28. The Framework (paragraph 206) states that planning conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. The condition would not be necessary for the development to be not inappropriate in the Green Belt or to provide acceptable living for neighbouring occupiers. It lacks precision also as the approved plans do not identify the stables to which the condition applies. On the basis of the above, I consider the condition requiring the removal of the stables fails to meet the necessary tests set out in the Framework. As a consequence, and having taken into consideration all other matters that have been raised, I conclude that the appeal should be allowed.

Jonathan Price

INSPECTOR

Schedule of conditions
Appeal Ref: APP/P0240/W/16/3163393
Builders Yard, Higher Rads End, Eversholt, Bedfordshire MK17 9ED

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 15-084-1001A, 15-084-100H, 15-084-1000 A, 15-084-101D.
- 2) The development hereby approved shall not be brought into use until a 2m high, close-boarded fence has been erected along the full extent of the boundary of the site with No 18 Higher Rads End. The fence shall be retained thereafter.
- 3) Prior to the development hereby permitted being brought into use the existing vehicle access shall be widened to 4.8m for a distance of 8m measured from the metalled edge of the public highway and be surfaced in a durable bond material in accordance with details that shall have first been submitted to and approved in writing by the local authority.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or alterations to the building or additional hardstanding shall be laid out on the site other than that expressly authorised by this permission.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the application site other than those expressly authorised by this permission.
- 6) Notwithstanding the changes of use permitted within Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the development shall only be used as offices within Class B1 of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order with or without modification).
- 7) The development shall only be used between the hours of 0900 to 1800 Mondays to Fridays, 0900 to 1300 on Saturdays and not at all on Sundays or Bank Holidays.

---End of Conditions---