
Appeal Decision

Site visit made on 7 February 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 20 April 2017

Appeal Ref: APP/E3715/W/16/3156198

Gypsy Lane, Wolvey, Leicestershire LE10 3HQ

- 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 Heather Mac against the decision of Rugby Borough Council.
 - The application Ref R16/0951, dated 23 March 2016, was refused by notice dated 13 July 2016.
 - The development proposed is new stables and ménage.
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Decision

1. The appeal is allowed and planning permission is granted for new stables and ménage at Gypsy Lane, Wolvey, Leicestershire LE10 3HQ in accordance with the terms of the application, Ref R16/0951, dated 23 March 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) Unless modified under the conditions below the development hereby permitted shall be carried out in accordance with the following approved plan: B16/04/P01B.
 - 3) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the stables hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
 - 4) No element of the building hereby permitted shall exceed 3.9 metres in height.
 - 5) The container sited towards the southeast corner of the application site which is used for general storage in association with the existing stable shall be removed within 3 months of the substantial completion of the building hereby permitted.
 - 6) No external lighting shall be erected except in full compliance with details submitted to and approved in writing by the local planning authority.

Preliminary and Background Matters

2. I noted at my site visit that a ménage and stable block have been constructed on the site. The stable block as built is not in accordance with the submitted plans. Planning permission was granted in 2013 for a stable block and the formation of a ménage on the appeal site but the development as constructed is also not in accordance with that permission (2013 permission). In 2015 a
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planning application for the stable block as constructed was refused and an enforcement notice was served. Appeals were made against the enforcement notice and the refusal of the planning consent (2015 scheme).¹ These appeals were dismissed. Consequently, I will determine this appeal on the basis of the submitted plans.

3. In April 2016 a foundation trench for the 2013 permission stable block was dug and an application made to discharge Condition 4 of that permission. The Council states that this permission has lapsed as even though a submission has been made for the discharge of Condition 4, in relation to archaeology, it has not been discharged yet and the condition requires the condition to be discharged before the development commences. The Council have subsequently confirmed that its archaeological advisor has stated that once it has had confirmation that the site archive has been deposited it will recommend full discharge of the archaeological condition.
4. The appellant considers that the 2013 permission is still extant and has submitted a legal opinion in support of this matter. The Council have been given the chance to comment on the legal opinion but have not responded. The legal opinion states that the application for discharge of Condition 4 having been submitted within 3 years of the grant of the 2013 permission, it is entirely permissible under the Whitley² principle for the condition still to be discharged by the Council. As it would appear likely that the condition could be discharged the works carried out in April 2016 should be sufficient to have lawfully implemented the 2013 permission. Taking into account the legal opinion the 2013 permission represents a realistic fallback position.

Main Issues

5. The main issues are:-

- Whether the proposal would constitute inappropriate development in the Green Belt, having regard to the effects on openness and the purposes of including land within the Green Belt and the development plan and national planning policy;
- The effect on the character and appearance of the area;
- 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 the proposal would be inappropriate development in the Green Belt

6. Apart from certain clearly defined exceptions set out in paragraph 89 of the National Planning Policy Framework (the Framework) the construction of new buildings in the Green Belt is to be regarded as inappropriate development. Such development is harmful by definition and should not be approved except in very special circumstances. One exception defined within paragraph 89 of the Framework is the erection of buildings which provide appropriate facilities for outdoor sport and outdoor recreation, as long as they preserve the openness of the Green Belt and do not conflict with the purposes of including

¹ APP/E3715/C/15/3132197 & 198 and APP/E3715/W/15/3130827 – 19 February 2016

² F G Whitley & Sons v SSW and Clwyd CC [1992]

- land within it. There is no dispute between the parties that the proposal would be defined as facilities for outdoor recreation.
7. Although based on previous national policy, Policy CS1 of the Rugby Borough Core Strategy 2011(CS) states that new development will be resisted in the Green Belt and only where allowed by national policy on Green Belt will development be permitted. As such this policy is broadly consistent with the Framework and should be given significant weight under paragraph 215 of the Framework.
 8. In establishing whether or not the proposal would be inappropriate in the Green Belt, it is necessary to consider whether it would be 'appropriate facilities' for equestrian activities and whether it would preserve the openness of the Green Belt and not conflict with the purposes of including land within it.
 9. There is no definition of what constitutes 'appropriate facilities' within the Framework. I note that there is no detailed evidence before me to justify the size in equestrian terms or why there is a need for a six bay stable block in this location. However, I noted at my site visit that there were a number of horses in the adjacent paddocks and that there were jumps laid out within the ménage. The Council's Officer Report states that the original application for the stables included limited information in relation to the number of horses involved and it goes on to state that the stables would be for the private use of the appellant.
 10. The Council is also concerned about the method of construction proposed and whether it is appropriate for the use proposed. This issue was also raised in relation to the stables as constructed. The Inspector on the 2015 appeal decisions stated the Council *"has pointed to the construction of the building with cavity wall insulation, RSJs over the wall openings and decorative brickwork detailing not usually found in stable buildings to support this contention. However, I do not find these sufficient to lead me to doubt the Appellants' intentions and, in any case, any future change of use would be subject to control by the Council"*. I noted at my site visit that the existing building is clearly being used in relation to an equine use and I have no reason to disagree with these findings.
 11. Even with masonry internal walls the timber cladding and general appearance of the building would reflect its intended use. Taking into account all of the above I consider that the proposal would constitute 'appropriate facilities' for this outdoor recreation use.
 12. To qualify as an exception under paragraph 89, the development would also have to preserve the openness of the Green Belt and not conflict with the purposes of including land within it. The concept of openness is related to but not entirely the same as visual prominence and it can be taken as the absence or otherwise of buildings or development.
 13. The proposed building would be sited on an area of open land and its construction would result in a built structure where there is no existing authorised structure. Consequently, the footprint of the proposal and its bulk and massing would inevitably lead to a loss of openness. There are views into the site from outside its boundaries above and through the existing hedgerows and landscaping and the increase in built form and resulting loss of openness would be clearly visible from Gypsy Lane.

14. I have found that the development would have an adverse impact on openness. I therefore consider that the proposal would conflict with the purpose of safeguarding the countryside from encroachment.
15. I have no evidence before me to show that the scheme would fulfil any of the other categories as set out at paragraph 89 of the Framework. Against this background the proposal would be inappropriate development within the Green Belt.

Character and appearance

16. The proposed building would be located in a similar position to the 2013 permission. However, it would be slightly further away from Gypsy Lane and the existing timber stables and container that are adjacent to the boundary of the site. But it would be considerably closer to those structures than the 2015 scheme. As such, its prominence and intrusion into the country side would not be appreciably greater than the 2013 permission and it would be seen in conjunction with these existing structures. These factors would limit the amount of harm caused to the site's existing rural character and appearance.
17. The previous Inspector stated that *"although a building of substantial size and height, it still has the general appearance of a stable building and is well designed for its intended use. From the point of view of its general appearance, provided it was clad with timber boarding as indicated, its effect on the rural character and appearance of the area would not be significantly different from the stable building for which planning permission was granted in 2013"*. I consider these findings to be persuasive in this case.
18. Consequently, the proposal would not significantly harm the character and appearance of the area. It follows that there would be no conflict with CS Policy CS16 which, amongst other things, seeks high quality design that does not cause material harm to the character of the area.

Other considerations

19. As stated above, it is highly likely that the 2013 permission has been commenced and is still extant. Taking into account that the equestrian use has commenced and that the existing stables are unauthorised there would appear to be a reasonable prospect of the 2013 permission being implemented if this appeal is dismissed. This constitutes the fallback position and I have attributed considerable weight to it.
20. The appellant considers that the proposal would be only slightly larger than the 2013 permission and as such the effect on openness would be similar. However, the Council considers that the proposals have more in common with the 2015 scheme. The building would have a similar footprint to the 2015 scheme and as such it would be larger in footprint than the 2013 permission. Moreover, it would be only slightly lower in height than the 2015 scheme and therefore the mass of the building would have a similar impact on openness of the Green Belt as the 2015 scheme.
21. However, the appellant has stated that they are willing to accept the imposition of a condition to restrict the height to 3.9 metres, the same height as the 2013 permission. Furthermore, the proposed building would also be located in a similar position to the 2013 permission. Consequently, whilst the footprint would be larger the height (3.9m) and location of the building would be similar to that of the 2013 permission. As such, I consider that its impact on the openness of the Green Belt would not be appreciably greater than the 2013

permission/fallback position. This lends substantial weight in favour of the appeal proposal. In addition paragraph 81 of the Framework identifies the provision of opportunities for outdoor sport and recreation as one of the beneficial uses of the Green Belt to which I attach moderate weight.

22. I note that the appellant considers that the method of construction is in the interests of animal welfare as '*poorly designed stables can contribute to the rapid spread of disease, cause injury and pose significant fire risks*'. However, in my experience many stables are constructed of timber and I do not consider that any significant weight can be attributed to the method of construction in animal welfare terms.
23. The appellant has drawn my attention to an appeal decision³ for a masonry stable on a nearby site. Whilst there are parallels with this scheme each case has to be determined on its own merits. As such I give it limited weight.

Conclusion and Conditions

24. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. Substantial weight should be given to the harm to the Green Belt. I have not found any other material harm.
25. For the reasons given above, I find that the substantial weight to be given to the fallback position, the moderate weight to the beneficial use of the Green Belt and the limited weight to the nearby appeal decision clearly outweigh the substantial Green Belt harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.
26. No conditions have been suggested by the Council therefore, I have based the conditions on those applied to the 2013 permission. I have considered those conditions against the requirements of the Planning Practice Guidance (PPG) and the Framework.
27. I have imposed a condition specifying the relevant drawings as this provides certainty. The conditions in relation to materials, lighting and the removal of the container are necessary in the interests of amenity and character and appearance of the area. The appellant has suggested that a condition can restrict the height of the building to that of the 2013 permission to minimise the impact on the openness of the Green Belt. I consider that this is reasonable and necessary in the interests of the openness of the Green Belt.
28. For the reasons given above, and having regard to all other matters raised I conclude that the appeal should be allowed.

D. Boffin

INSPECTOR

³APP/E3715/W/15/3131299 – (linked appeal with APP/E3715/C/15/3132617 & APP/E3715/C/15/3132547 & 548)