
Appeal Decision

Site visit made on 4 April 2017

by B Bowker Mplan MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/E3715/W/16/3164698

Spinney Farm, Main Street, Withybrook CV7 9LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John Mac against the decision of Rugby Borough Council.
 - The application Ref R16/2070, dated 5 October 2016, was refused by notice dated 10 November 2016.
 - The application sought planning permission for erection of a new 6 bay stable with associated feed and tack rooms and creation of a manege (amendment to a previously approved application R13/2310) without complying with a condition attached to planning permission Ref R14/0618, dated 24 April 2014.
 - The condition in dispute is No 2 which states:
The development shall not be carried out other than in accordance with the plans no. B13/26/L01 and B13/26/P01B received by the Local Planning Authority on 20 March 2014.
 - The reason given for the condition is:
For the avoidance of doubt.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a new 6 bay stable with associated feed and tack rooms and creation of a manege (amendment to a previously approved application R13/2310), at Spinney Farm, Main Street, Withybrook CV7 9LX, in accordance with the application Ref R16/2070, dated 5 October 2016, without compliance with condition No 2 previously imposed on planning permission Ref R14/0618, dated 24 April 2014, but subject to the attached schedule of conditions.

Background and Preliminary Matters

2. In light of the 3 year time limit condition attached to the original permission, comments were sought from the parties to ascertain whether the permission is valid. Based on the comments received, I am satisfied that the original permission is valid.
 3. The appeal is made under Section 73 of the Planning Act and seeks to replace plans approved by the original permission with plans that reflect an amended design. The Council have raised no issue in respect of the proposed manege, and based on all I have seen and read, I have no reason to question the Council's acceptance on this matter. Accordingly, the proposed stable remains the point of concern for the Council and based on its reason for refusal, the main issues are as below.
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Main Issues

4. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- The effect of the proposal on the openness of the Green Belt;
- The effect of the proposal on the character and appearance of the surrounding area; and,
- If the development is inappropriate, 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

5. The stable built on site is not in accordance with that approved in the original 2014 planning permission. Consequently, the Council issued an enforcement notice which was subsequently dismissed at appeal¹. The upheld enforcement notice requires the stable built on site to be demolished and the land reinstated to its former condition, or the stable to be built as approved under Planning Ref R14/0618. A separate section 78 appeal² followed, which owing to its larger mass than that approved, was dismissed.
6. The proposal before me seeks to amend Planning Ref R14/0618 by relocating the approved stable to the location of the stable constructed on site, albeit with reduced dimensions when compared with the previous appeal proposals. Whilst the appeal before me seeks to amend an existing planning permission, the Inspectors dealing with the previous cases concluded that the stable comprised inappropriate development in the Green Belt having regard to Core Strategy (CS) Policy CS1 and the Framework. As both national and local policy remains the same, I have no reason to conclude differently.
7. Consequently, the proposal would be inappropriate development having regard to the Framework and relevant development plan policies.

Green Belt Openness

8. Paragraph 79 of the Framework identifies openness as an essential characteristic of the Green Belt.
9. The Council contend that the amendment proposed involves a stable larger than that already approved. The appellant refutes this and states that the amendment involves the relocation of the stable only.
10. The dimensions (18 metres in length, 10.2m in width, and 5.75m in height) annotated on the previously approved stable plan are identical to the annotations in the amended plan. Scaled plan measurements of the approved and amended stable elevations are also identical (18.6m in length, 10.8m in

¹ APP/E3715/C/15/3132713 & 714.

² APP/E3715/W/16/3160264

width and 5.75m in height). In both drawings, the scaled measurements are larger than the dimensions indicated by the annotations.

11. Scaled measurements of the approved and proposed stable are also identical when including the stable roof overhang and when comparing the ground floor plans. Conversely, scaled measurements taken from the amended site plan give the stable a length of 18.5 metres compared with a scaled measurement of 18 metres in the approved site plan. However, this measurement would be within the scaled measurements of the stable length obtained from the approved elevational drawings. Therefore, the proposed amendment would not result in a building larger than already approved.
12. The amended siting would be a short distance away from that approved and would be sited on similar topography with similar levels of screening. Consequently, taking into account the original permission, the proposal would not have a harmful effect on Green Belt openness.
13. Therefore, taking into account the approved stable, I conclude that the proposal would not have a harmful effect on Green Belt openness.

Character and appearance

14. The Council's concern relates to the positioning and size of the proposed door and window openings and the amended location of the stable building. However, the positioning and size of the openings would remain as approved. In addition, the amended siting would not result in the stable being more visible from the wider area. Therefore, I conclude that the amendment would not have a harmful effect on the character and appearance of the surrounding area.

Other considerations

15. Paragraph 87 of the Framework sets out the general presumption against inappropriate development within the Green Belt and states that such development should not be approved except in very special circumstances. In this context, the appellant considers that the approved stable is a fall-back position that represents the very special circumstances necessary to justify the proposal.
16. The Framework outlines that very special circumstances to justify inappropriate development will not exist unless the potential harm to the green belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. As reasoned above, the proposal would be inappropriate development which by definition is harmful to the Green Belt.
17. Based on my reasoning above, the effect of the amended proposal on Green Belt openness would remain the same as the fall back permission. In this case, the substantial weight given to the Green Belt harm arising by virtue of the proposal comprising inappropriate development is clearly outweighed by the considerable weight afforded to the fall-back position.
18. Consequently I conclude that the fall-back position represents the very special circumstances necessary to justify the proposal.

Conclusion

19. Without prejudice to its case, the Council have suggested 9 conditions to be imposed on the amendment. A number of these conditions did not form part of the original permission.
20. The Planning Practice Guidance (PPG) Paragraph 31 is clear that in section 73 cases, 'the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question'. PPG paragraph 31 goes on to state that 'In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission'.
21. No substantive reasoning is before me to justify imposing the Council's suggested conditions nos 2, 3, 6, 7, 8 or 9 which include a three month commencement condition; a time limit that would not have been imposed on the original planning permission. These suggested conditions were not included in the original permission and in the absence of any substantive justification or explanation of any material changes in circumstance; they fail the test of being reasonable in all other respects as required by the Framework at paragraph 206.
22. The PPG makes it 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. Consequently, I shall impose all those that I consider remain relevant. This includes the originally imposed pre-commencement condition relating to external materials as this appeal decision will in effect create a new planning permission. In the event that some conditions have been discharged is a matter which can be addressed by the parties.
23. For the reasons given above I conclude that the appeal should succeed. As a result I will vary the planning permission by replacing the disputed condition.

B Bowker

INSPECTOR

Attached – Schedule of conditions

Schedule of Conditions

- 1) The development to which this permission relates must not be begun later than the expiration of three years from the date of this permission.
- 2) The development shall not be carried out other than in accordance with the plans Nos B13/26/L01 and B16/16/P01.
- 3) No development shall commence unless and until samples of the facing bricks and roof tiles to be used in the stable building have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.
- 4) Unless otherwise agreed in writing by the Local Planning Authority the proposed stable and manege shall only be used for the stabling and exercising of animals for private purposes and shall not be used for the holding of competitions, exhibitions, hiring of horses or other business activities.
- 5) The development hereby permitted shall proceed in accordance with protected species method statement for great crested newts as set out in the document 'Report for Great Crested Newt H.S.I Survey, Land' prepared by 'Curious Ecologists' dated 28 November 2013 and received by the Local Planning Authority on 20 March 2014. The approved measures shall be implemented in full.