



Appeal Decision

Site visit made on 24 July 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 16th August 2017

Appeal Ref: APP/R1845/W/17/3174380

Land Off Eleanor Harrison Drive, Cookley, Kidderminster DY10 3RZ

- 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 M Stanton against the decision of Wyre Forest District Council.
 - The application Ref 17/0042/FULL, dated 17 January 2017, was refused by notice dated 17 March 2017.
 - The development proposed is the change of use to equestrian and the construction of stable block; manege; and associated parking and turning area.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - whether the proposal is inappropriate development in the Green Belt having regard to relevant development plan and national planning policies, taking into account the effect on the openness of the Green Belt and the purposes of including land within it;
 - the effect of the proposed development on the openness of the Green Belt and the character and appearance of the surrounding area;
 - the effect of the development on biodiversity and protected species, with particular regard to birds; and
 - if the proposal is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and if so, whether this amounts to the very special circumstances required to justify the proposal.

Reasons

Inappropriate Development

3. The appeal site lies within the Green Belt. Paragraph 79 of the National Planning Policy Framework (the Framework) states that the essential characteristics of Green Belts are their permanence and openness. Paragraph 89 of the Framework states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. However, there are exceptions to this presumption against development in the Green Belt. One

such exception is the *provision of appropriate facilities for outdoor sport, outdoor recreation and for 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. Paragraph 90 of the Framework sets out further exceptions, which includes engineering operations, providing *it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.*
5. Policy SAL.UP1 of the Wyre Forest District Site Allocations and Policies Local Plan (the LP) 2013 sets out similar exceptions. However, whilst it includes the above exception in paragraph 89, it continues to state '*...or for other uses of land which preserve the openness of the Green Belt, and do 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. Furthermore, the proposed change of use does not fall within the exceptions set out in paragraph 90.
6. In relation to the interpretation of paragraphs 89 and 90, I have been referred to various judgements. The courts have determined in *Fordent Holdings v SSLG and Cheshire West and Chester Council* [2013]¹ that paragraphs 89 and 90 are closed lists. The High Court judgement of *Timmins v Gedling Borough Council* [2014]², also established that whilst a building may not be inappropriate under paragraph 89 it does not cover the use of the land.
7. I note the appellant's argument that in *LB Bromley V SSCLG and Rookery Estates Company* [2016]³ it was found that providing new buildings fall within the use and other restrictions of the applicable indent of paragraph 89 the mere fact that permission for a new building may also involve a material change of use does not mean that it ceases to be appropriate development. However, it also confirmed that this does not bring in via the back door the general material change of use of land category. It was also found that the only changes of use permitted in paragraph 89 are those arising from the new buildings defined as appropriate under it and in accordance with the conditions there set out. However, this is with regard to the use of the building, not any other land.
8. Whilst paragraph 89 does allow the provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, this is with regard to the construction of buildings only. For example, facilities in association with an existing recreational use could be considered not inappropriate under this exception. I do not consider that it allows for a change of use of land in association with the provision of such facilities.
9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the appeal to be determined in accordance with the development plan unless material considerations indicate otherwise. I have had regard to the

¹ *Fordent Holdings Ltd v Secretary of State for Communities and Local Government and Cheshire West and Chester Council* [2013] EWHC 2844 (Admin)

² *Timmins and Lymn Family Funeral Service v Gedling Borough Council and Westerleigh Group Limited* [2014] EWHC 654 (Admin)

³ *The London Borough of Bromley v Secretary of State for Communities and Local Government and Rookery Estates Company* [2016] EWHC 595 (Admin)

appellant's argument that the LP post-dates the Framework and therefore should be given greater weight. I agree that the Inspector did consider Policy SAL.UP1, having made a suggested modification to it. However, following the adoption of the LP, the case law I have referred to above has provided significant judgements on how national Green Belt policy should be interpreted. In light of this, SAL.UP1 is clearly inconsistent with paragraph 89 of the Framework as it allows changes of use of land in the Green Belt and is therefore less restrictive than the Framework. Accordingly, I therefore attribute limited weight to Policy SAL.UP1 and significant weight to paragraph 89.

10. I have had regard to the planning permissions referred to me by the appellant which suggest that the Council have previously considered the change of use of land in the Green Belt as not inappropriate development. Notwithstanding the lack of details regarding these schemes before me, I have considered the proposal on the basis of its own merits.
11. I have had regard to the Council's argument that the level of stable and shelter provision is excessive compared to the size of the site with regard to the recommended horse to acreage ratio set out in the British Horse Societies 'Guidelines for the Keeping of Horses'. The Council state that the guidelines suggest the provision of 1 hectare per horse. However, my understanding of the guidelines, which have been presented to me by the appellant, is that it states approximately 2 horses per hectare. Based on the proposed horse management system set out by the appellant and the guidelines, I consider that the proposed level of stable and shelter provision would be appropriate facilities to serve the proposed use.
12. The change of use of the land and the construction of the buildings, including the stables and the manege that would be used in conjunction with this use, would be for outdoor recreational use. However, the exceptions set out in paragraphs 89 and 90 of the Framework do not permit such changes of use. I therefore find that the proposal would be inappropriate development, which is, by definition, harmful to the Green Belt.

Character and Appearance

13. The appeal site is an open field on the edge of a built-up settlement, Cookley. Running along the western boundary is a public footpath on the western side of which are boundary fences, hedging and trees that form the rear boundaries of dwellings on the edge of the settlement. The site contains a small number of timber sheds, generally located in the northern section. The field is one of a number of other similar small fields that appear to have once formed part of a larger field. Each field is divided by post and wire fencing.
14. Whilst the site is located adjacent to the edge of Cookley, it is nevertheless clearly read as open countryside and is characteristic of a rural setting. The proposed stables would be relatively large; however, they would have a low profile and would sit within proximity of existing vegetation to the west. The manege would have a large footprint; however, only its perimeter fencing would be readily seen from medium to long distances and given that it would be post and rail fencing, it would be visually permeable, allowing views through it. For similar reasons, the hardstanding would also not be visually intrusive.

15. In addition to these features, the site would also contain a muck store, mobile hay feeder and mobile field shelters. Whilst I accept that these features may not require planning permission in themselves, they nevertheless make a contribution to the use of the sites overall effect on the character and appearance of the area. However, these features and their use in conjunction with equine activities are typically found in the open countryside.
16. The site is relatively small, particularly where the bulk of the built form would be. However, the site forms part of a large collection of fields that are only separated by visually permeable fencing. Therefore, the proposed development would be read in the wider site context. Dues its limited visual intrusion, I do not consider that the development would appear cluttered or represent overdevelopment.
17. Policy CP12 of the Wyre Forest District Core Strategy (the CS) 2010 identifies a number of landscape types. The appeal site is located within the 'Sandstone Estatelands' landscape type. I have not been presented with the Landscape Character Assessment referred to by the Council and the appellant. However, the appellant states that the assessment identifies the key characteristic of the 'Sandstone Estatelands' landscape type as being arable land use, hedgerow boundaries to fields and planned enclosure pattern. I do not find that the proposal would significantly harm this landscape type.
18. Whilst the stable block would restrict views of the surrounding countryside, this would only be limited to public views from the adjacent footpath, which would only be for a brief moment whilst users of the path pass the building.
19. I find therefore that the proposal would not significantly harm the character or appearance of the area and as such would comply with Policy CP12 of the Wyre Forest District Core Strategy (the CS) 2010 and Policy SAL.UP13 of the LP, which sets out specific requirements for equestrian development.

Openness and the Purpose of Including Land within the Green Belt.

20. The stable building would be approximately 18.3m x 7.3m and have a height of approximately 2.8m to the ridge height. Although it would have a low profile, the introduction of a building of that size and bulk onto a site with no significant existing built development would have an adverse effect on openness.
21. Furthermore, the hardstanding and the manege would occupy a large area. As these features would also represent built form, even though they would not be readily visible, they would also have an adverse effect on openness. This would be further exacerbated by other paraphernalia, including the hay feeders, shelters and muck store. In addition, the use of the site would likely involve the presence of cars and horse boxes on the site and parking in what is currently an open field. I appreciate that these would not be permanent. However, they would nevertheless add to the overall harm to openness.
22. Despite my finding that no visual harm arises from the development, I find that the erosion of three-dimensional space arising from the overall size of the stable building, the built form of the hardstanding and the manege and the associated paraphernalia and activities associated with the use would result in an erosion of openness, which would conflict with paragraph 79 of the

Framework which identifies openness as an essential characteristic of Green Belts.

23. The fundamental aim of Green Belt policy, as set out in paragraph 79 of the Framework, is to prevent urban sprawl by keeping land permanently open. In that the proposal would locate a building on the site where there is currently none, it would materially reduce openness thereby failing to preserve it. The proposal would also conflict with the purposes of safeguarding the countryside from encroachment. Accordingly, I attribute significant weight to the effect it would have on openness.
24. I find therefore that the proposal fails to preserve the openness of the Green Belt and conflicts with the purposes of including land within it, in particular safeguarding the countryside from encroachment.

Protected Species

25. Paragraph 99 of Circular 06/2005 'Biodiversity and Geological Conservation-statutory obligations and their impact within the planning system' ODPM states that developers should not be required to carry out surveys for protected species unless there is a reasonable likelihood of the species being present and affected by development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted.
26. The Council state that the site is on pasture land and there is a chance that semi improved grassland habitat may exist on the site and that similar habitats are nearby. The Council also confirm that there is evidence that there are a number of farmland bird species within the area. The appellant was given the opportunity to submit a Phase 1 ecological report. However, no such report has been carried out.
27. The appellant contends that as it is grazing land and there are no ponds within the vicinity, the appeal site has a low ecological value. He also notes that the site could be used for farming activities at any time. However, as there is evidence of farmland bird species nearby and the site is typical farmland within proximity of hedgerows and trees I consider that there is a reasonable likelihood of species being present and affected by the proposal.
28. I note that the appellant proposes to enhance the biodiversity of the area by planting a hedge along part of the western boundary of the site. However, in the absence of an ecological assessment it is not possible to ascertain whether or not this would sufficiently mitigate any harm to protected species.
29. I find therefore that in the absence of an ecological assessment of the appeal site it is not possible to ascertain the effect the dwelling would have on protected species. Therefore, the proposal would fail to comply with Policy CP14 of the CS and Policies SAL.UP5 and SAL.UP13 of the LP, which, amongst other things, seek to protect and enhance biodiversity.

Other Considerations

30. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt and that very special circumstances 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. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from inappropriate development in the Green Belt, the erosion of openness and the conflict with the purposes of including land within it so as to provide the very special circumstances required to justify a grant of planning permission.

31. The proposal would allow for the the site to be managed. However, I see no reason why it could not be adequately managed were it to be used for agricultural purposes.
32. The proposed planting of a hedgerow would also provide wildlife habitat. However, as I have referred to above, in the absence of an ecological assessment it is not clear whether this would adequately offset any harm the proposal would have on biodiversity.
33. I do not find that these matters, individually or cumulatively, amount to the very special circumstances required to clearly outweigh the harm to the Green Belt.

Conclusion

34. The appeal scheme has harmful implications for the Green Belt in terms of inappropriate development, the erosion of the openness of the Green Belt and the conflict with the purpose of including land within it. In accordance with national policy, such harm carries substantial weight, which the other considerations put forward by the appellant do not clearly outweigh. Consequently, the very special circumstances necessary to justify the development do not exist and therefore it is contrary to Policy SAL.UP1 of the LP and the Framework. Furthermore, it has potentially harmful implications on biodiversity and protected species.
35. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR