
Appeal Decision

Site visit made on 21 November 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 28 November 2017

Appeal Ref: APP/A4520/W/17/3181035

Red Lodge, Sunnyside Lane, Cleadon Village, Sunderland SR6 7XD

- 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 Francis Moore against the decision of South Tyneside Metropolitan Borough Council.
 - The application Ref ST/0089/16/FUL, dated 13 January 2016, was refused by notice dated 6 February 2017.
 - The development proposed is described as "to use a paddock area and turn into a temporary surface horse arena/enclosure. Note: without lighting".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The proposed horse arena has already been constructed.

Main Issues

3. The main issues are:
 - i. Whether or not the proposal is inappropriate development in the Green Belt;
 - ii. the effect upon the openness of the Green Belt and the purposes of including land within it; and
 - iii. 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 development.

Reasons

4. The appeal site is located to the south of No 34 (Red Lodge) Sunnyside Lane and falls within the South Tyneside Green Belt. The proposal relates to the formation of a horse arena which has a black rubberised surface and which is enclosed by timber post and rail fencing. There are stables and a container immediately to the south east of the horse arena and within land in the ownership of the appellant.

Whether the proposal would represent inappropriate development

5. Paragraph 89 of the National Planning Policy Framework (the Framework) states that *"a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt"*. Exceptions to this are listed in the bullet points of paragraph 89 and this includes 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"*. Whilst I would accept that the proposal does enable an outdoor recreational activity to take place, Paragraph 89 of the Framework relates solely to buildings. This aforementioned exception relates only to "facilities" and therefore these have to be buildings. As the proposal does not amount to a building, I do not agree with the appellant that the proposal is not inappropriate development in the Green Belt simply because recreational development is proposed.
6. Paragraph 90 of the Framework states that *"other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of the Green Belt"*. Such developments are listed in bullet point form and include *"engineering operations"*. I consider that the formation of the horse arena, which includes a rubberised surface, does amount to an engineering operation in so far that it has changed the physical nature of the land. However, there is no reference within this exception to any associated material change of use of the land. If there is an associated material change of use of the land, the proposal would not be capable of constituting an engineering operation in the Green Belt that is not inappropriate.
7. The Council contend that the proposal amounts to a material change of use of the land from an agricultural use to an equine use. The appellant states that the appeal site has been in use for equine purposes for more than 10 years and that this has included *"keeping, grazing and exercising horses"*. According to the Council, there is no planning permission for the site relating to an equine use.
8. The appellant has submitted aerial photographs of the site from 2005 to 2015. The photographs are snap shots in time, but they do show that the land was fenced off from the remainder of the land in the appellant's ownership. I cannot be sure that the identified structures on the land were in fact horse jumps and, in any event, I do not have evidence of structures being on the land at all times. Furthermore, I have not been provided with conclusive evidence to indicate whether a horsiculture or agriculture use has taken place on the site having regard to the definition of agriculture in Section 336 of the Town and Country Planning Act. In any event, the conclusive means of establishing the lawful use of the land is to obtain a lawful development certificate (LDC).
9. On the basis of the evidence that is before me, which does not include a LDC or any reasonable evidence to suggest continuous equine use for ten or more years, it has not been reasonably established that the proposed development would not also result in a material change of use of the land. For this reason, and notwithstanding the description of development, I conclude that I have insufficient evidence to demonstrate that the proposal would not amount to inappropriate development in the Green Belt.

10. At paragraph 87 of the Framework it states that *"inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances"*. Paragraph 88 of the Framework states 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"*.

Openness

11. As this is a retrospective proposal, it is difficult to fully assess the proposal in terms of what effect it has had on the openness of the Green Belt in relative terms. However, I have considered the appeal statements from the main parties and note that there is no disagreement that the proposal has had a very limited impact upon the openness of the Green Belt in so far that the fencing has historically been positioned around the land and as the rubberised surface does not constitute a built form. However, there is no doubt that the use of horse jumps would have some impact upon the openness of the Green Belt.
12. The existence of an all-weather surface is likely to mean that horse jumps would very likely to be on the site for large parts of the year. The appellant states that horse jumps would not in themselves require planning permission and hence contends that any impact upon the openness of the Green Belt would essentially be irrelevant. However, I do consider that this is a relevant material planning consideration as the use of horse jumps or other paraphernalia would likely be associated with the use of the land as a horse arena which is development that requires planning permission.

Any other harm

13. The introduction of a black rubberised surface into the area has changed the prevailing landscape which is characterised by fields which have a green/arable appearance and which are befitting of their rural location. In this sense, the proposal has caused some visual harm to the rural character and appearance of the area. Such a visual impact would not be very significant when viewed from Sunnyside Lane given the position of the horse arena and the existence of solid wooden boundary fencing and some evergreen hedging. Nonetheless, the arena can be seen from the gated entrance fronting Sunnyside Lane.
14. I have considered the photographs provided by the Council. Owing to the black colour of the rubberised surface, the horse arena appears stark and intrusive in the wider landscape setting particularly when viewed from Cleadon Hills. I consider that this adverse harm would be compounded if a number of horse jumps were regularly positioned on the site. The existence of a significant number of horse jumps and a black rubberised surface would contrast starkly when compared to the previous character and appearance of the appeal site as shown in the aerial photographs provided by the appellant.
15. Overall, and for the above reasons, I consider that the development has resulted in encroachment in the countryside thereby conflicting with one of the purposes of the Green Belt. Even if I had sufficient evidence to demonstrate that a material change of use had not occurred on the land, for the above reason, I would have still concluded that the engineering operation was inappropriate development in the Green Belt as paragraph 90 of the Framework states that engineering operations are *"also not inappropriate in Green Belt"*

provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt”.

Other considerations

16. I acknowledge that the proposal would improve access to opportunities for recreation in the Green Belt. This would be in accordance with the recreational aims of paragraph 81 of the Framework. However, the horse arena would be used only for domestic purposes and so this diminishes the weight that I attach to this matter. Nonetheless, this is a factor which I weigh positively in the overall planning balance.
17. The appellant has drawn my attention to the approval of planning permission number ST/0748/12/FUL for a show jumping arena with boundary fencing at Bow Meadows Farm in East Boldon which falls within the South Tyneside Green Belt. In approving planning permission, the Council took the view that it was not inappropriate development referring to the *"provision of appropriate facilities for outdoor sport and recreation, outdoor recreation and cemeteries"* exception in paragraph 89 of the Framework.
18. Notwithstanding the above, and in respect of this appeal, I have taken into account the judgment of *Fordent Holdings Ltd v SSCLG & Cheshire West and Chester Council* [2013] EWHC 2844 (Admin) as well as subsequent judgments. As paragraph 89 refers to buildings, the aforementioned exception can only relate to 'facilities' which are buildings: the proposed horse arena is not a building. When the Council made its decision in respect of ST/0748/12/FUL it did not have the benefit of the above judgment. For the reasons already outlined in the reasoning of this decision, I have concluded that the proposal does amount to inappropriate development in the Green Belt. Furthermore, I have considered this appeal on its individual planning merits. Therefore, I afford the existence of similar approved development elsewhere in the Green Belt very limited weight in the overall planning balance.
19. The appellant has referred me to the case of *Lee Valley Regional Park Authority v Epping Forest DC* (2016). However, I agree with the Council that this case cannot reasonably be compared to the appeal proposal: it related to the construction of agricultural buildings within the Green Belt.

Other Matters

20. I have taken into account the representations made by the occupiers of No 30 Sunnyside Lane. The comments made have been addressed in the reasoning above.

Balancing Exercise

21. I have found that the proposed development would constitute inappropriate development in the Green Belt and that it would cause harm to the openness and visual amenity of the Green Belt. Furthermore, the proposal would lead to countryside encroachment thereby conflicting with the purposes of the Green Belt. Collectively, these matters carry substantial weight in the overall planning balance. Against this has to be balanced the other considerations as outlined above. The substantial weight to be given to Green Belt harm, and the other identified harm, arising from the development is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances. For these reasons, I conclude that the proposal would not

accord with the Green Belt aims of the Framework or Policy EA1 of the adopted South Tyneside Local Development Framework Core Strategy 2007.

Conclusion

22. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Daniel Hartley

INSPECTOR