



Appeal Decision

Site visit made on 4 June 2019

by J Williamson BSc (Hons), MPlan, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2019

Appeal Ref: APP/P2365/D/19/3226316

Gibbons Barn, Plex Lane, Halsall L39 7JZ

- 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 Miss Kirsty Breakell against the decision of West Lancashire Borough Council.
 - The application Ref 2018/0721/FUL, dated 7 July 2018, was refused by notice dated 26 March 2019.
 - The development is described as: A 1.8 metre fence, along the western boundary at the rear of Gibbons Barn. The fence complies with permitted development regulations, but due to restrictive conditions placed by West Lancashire Council in 1991 when the building was converted from offices to residential, planning permission is now required. The section of fence requiring planning permission runs from the rear wall of the house, to a point joining an existing fence in place along the southern boundary. The existing southern fence is built under permitted development regulations, as this part of the land is not under any restrictions. The fence is constructed of open wooden slats to allow for landscaping and for plants to grow through, up and around the fence and to provide support for the same.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The fence has been erected and therefore I am considering this appeal retrospectively.
3. The development as described above goes beyond a description of the development, which can be succinctly described as a 1.8m high fence along the western boundary at the rear of Gibbons Barn. approx. 21 metres in length.
4. The appeal relates only to the section of fence described above, although I note that the fence erected is much longer than this. I understand that the fence as erected was originally applied for, but the applicant and the Council agreed that the planning application would relate only to a section of fence approx. 21m in length, measured from the point at which the fence joins the host property at its north western corner. The other section of fence was deemed to be outside the domestic curtilage identified with planning permission 8/95/0011, which had a condition attached removing certain permitted development rights preventing, amongst other things, the erection of any means of enclosure. The condition was attached as the Council considered that the character and location of the property are such that it wished to exercise control over such development in the future.

5. The appellant submitted additional evidence after the deadline for submissions had passed, part of which relates to a recent decision of West Lancashire Borough Council (WLBC) to grant a Lawful Development Certificate (LDC), Ref 2018/1283/LDC, for a proposed garage outbuilding at the appeal site address, sited outside of the area the Council previously considered to be the domestic curtilage boundary. This information was not available before the original submission deadline. I considered it relevant to being able to fully appreciate the appeal site circumstances. The Council was provided with the opportunity to comment on the information.

Main Issues

6. The main issues are: -
 - whether the development 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 development on the openness of the Green Belt;
 - the effect of the development on the host dwelling, its setting and the character and appearance of the area;
 - if the development is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations that amount to the very special circumstances required to justify the development.

Reasons

Inappropriate development

7. The site is located within a designated Green Belt. As noted above, the development consists of a 1.8m high fence along the western boundary at the rear of Gibbons Barn, approx. 21m in length. The fence consists of horizontal slatted timber panels attached to vertical timber posts fixed such that there are small gaps between each timber strip. The fence has been treated/stained a reddish-brown colour on the side facing within the site of the host dwelling but has not been treated/stained on the opposite side.
8. The Council has drawn upon s336 of The Town and Country Planning Act 1990 (TCP Act) to categorise the development as a building. Although the appellant contests the Council's categorisation of the fence as a building, as the term 'building' in the TCP Act includes "*any structure or erection, and any part of a building, as so defined...*", in the absence of any other compelling legislative guidance I accept the Council's contention that the structure can be defined as a building.
9. Paragraph 145 of the Framework directs LPAs to regard new buildings in the Green Belt as inappropriate development (though the term 'building' is not defined in the Framework), with some identified exceptions, and paragraph 146 lists certain other forms of development that are also not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it.

10. A fence is not listed in the Framework as being a form of development that is not inappropriate; therefore, in my opinion, the Council is able to logically conclude that the appeal fence is therefore inappropriate development in the Green Belt.
11. The appellant considers that the fence could fall within any of 3 exceptions listed in the Framework, ie i) partial redevelopment of previously developed land (145.g), as the conversion of the building has already previously been granted permission, ii) an alteration to the existing building (145.c), as the fence is attached to the host dwelling and iii) the provision of appropriate facilities for outdoor sport or recreation (145.b), as the fence creates a boundary to enable the patio and garden to be used for outdoor recreation safely.
12. I note the appellant's assertions regarding paragraph 145 of the Framework. However, I consider that the development does not a) constitute partial redevelopment of previously developed land; the site has been previously developed but now comprises a residential property and associated domestic curtilage; b) comprise an alteration to the building, as the building is not being altered, it is simply that a boundary fence is being attached to it, and c) amount to the provision of facilities for activities usually defined as outdoor sport or recreation, eg a shower block on a camp site or horse riding stables.
13. Hence, I consider the fence to be development that can be defined as a 'building' as outlined in the TCP Act. Such development is not one of the exceptions listed in the Framework. I therefore conclude that the development is inappropriate development in the Green Belt.
14. Policy GN1 of the West Lancashire Local Plan 2012-2027 Development Plan Document, adopted October 2013 (WLLP) states that development in the Green Belt will be assessed against national policy and any relevant Local Plan policies. Paragraph 143 of the Framework states that inappropriate development is harmful to the Green Belt by definition and should not be approved except in very special circumstances. Unless there are very special circumstances the development does not accord with Policy GN1 of the WLLP or national Green Belt policy as outlined in the Framework.

Openness

15. Within the context of Green Belt policy openness can refer to both spatial and visual aspects. The erection of any additional building/structure in the Green Belt can reduce both spatial and visual openness.
16. The fence is located to the rear of the property, Gibbons Barn, within the confines of the small group of dwellings referred to above. Within this context, and given the physical size of the fence, the mass of which covers a relatively small area of land, I consider the development to result in a limited reduction in the spatial openness of the Green Belt.
17. The fence can be clearly seen from the open access into the site, off Plex Lane, immediately south of the host dwelling and it is clearly visible within the wider site complex from the 2 neighbouring properties, Gibbons Farm and Gibbons

Cottage. However, from most viewpoints the fence is seen against the backdrop of built form. As such I consider the fence to result in a limited reduction of visual openness both into and out of the wider site.

18. Paragraph 133 of the Framework states that the essential characteristics of Green Belts are their openness and permanence. As the development has a limited spatial and visual impact on the openness of the Green Belt, I consider it accords with WLLP Policy GN1 and the Framework in this regard.

Character and appearance of the area - other harm

19. The host dwelling, Gibbons Barn, was originally an agricultural barn forming part of a small farmstead. The original farmstead now comprises 3 dwellings - Gibbons Barn, Gibbons Farm and Gibbons Cottage - a stable building and gardens & parking areas associated with the respective properties. The host building appears to have been sympathetically converted to a dwelling thereby retaining its identity as a former agricultural building.
20. Plex Lane is a typical country lane with a mix of residential properties and agricultural buildings interspersed along its length. Boundary treatments around residential properties within proximity to the site comprise a mix of trees, hedges, post and rail fences, dwarf walls and vertically boarded timber panels supported by concrete or timber posts. The predominant boundary treatments around the triangle of land enclosing Gibbons Barn, Gibbons Farm and Gibbons Cottage are trees and hedges. The fields on the eastern side of Plex Lane, opposite the site, have hedges or post and rail fencing along their boundary with Plex Lane.
21. I note that the Council considers the host building to be a non-designated heritage asset and as such appraise the development against Policy EN4, which seeks to protect and enhance historic assets to preserve local distinctiveness. Bullet point 'c' of the Policy deals specifically with the protection of non-designated heritage assets, which are to be identified through an adopted local list. I have no evidence before me that the host property is on any such local list. Consequently, I have dealt with the appeal on the basis that the appeal site is not a non-designated heritage asset.
22. Policy GN3 of the WLLP outlines a list of criteria against which development is to be assessed as part of the means of achieving sustainable development. Amongst other things, the Policy requires development to: i) be of high quality design, having regard to the West Lancashire Design Guide Supplementary Planning Document (WLDG SPD); ii) have regard to the historic character of the local landscape and iii) to compliment or enhance local distinctiveness through sensitive design, including appropriate boundary treatments.
23. Given the historic character of the site and its immediate surroundings, ie the historic farmstead and converted agricultural buildings, and the sympathetic conversion of the agricultural barn to the residential use now known as Gibbons barn, I consider the design of the fence, ie horizontally slatted timber panels, and its attachment to the host dwelling, to jar with the host dwelling and to be out of keeping with its setting. The style of fence is more common with boundary treatments now often seen in suburban areas. Consequently, I consider the development to be significantly harmful to the host dwelling, its

historic setting, the character of the local landscape and local distinctiveness. As such the development does not accord with Policy GN3 of the WLLP.

24. I note the examples of timber fence boundary treatments at other residential properties the appellant refers to, some within proximity to the site and others located within the more built up area of the village of Halsall. However, I consider the properties these relate to are very different in design and setting to the appeal site. As such the circumstances are not directly comparable. Notwithstanding this, I do not know the full details of each of the sites and I must determine the appeal on its own merits. Consequently, I give little weight to this evidence.

Other considerations & very special circumstances

25. The appellant proposes other considerations in support of the development. In summary these include: security; privacy; limited public views of the fence; not harmful to the character and appearance of the area; little impact on the openness of the Green belt; other properties within the area have timber panel fence boundary treatments similar to the development; planting a hedge would be difficult and financially prohibitive as the site is constrained by a deep underlying layer of concrete; the recently granted LDC and conclusion regarding the extent of the domestic curtilage leads the appellant to conclude that the other section of fence erected simultaneously with the appeal fence is permitted development and therefore the design of the appeal fence is in keeping with an existing fence. The appellant also proposes that not being allowed to retain the fence would be a contravention of Article 8 of the Human Rights Act.
26. As regards security, privacy, public views and the option of planting a hedge, I note that the patio area to the rear of the property is still readily accessible from the existing access point off Plex Lane as well as being highly visible from this point and from within the historical farmstead. In addition, I have not been provided with any conclusive evidence that a more suitably designed boundary treatment (eg a hedge) cannot be provided. Consequently, I give limited weight to these factors.
27. I have concluded above that I consider the development to be inappropriate development in the Green Belt but that its effect on openness is limited. However, in accordance with the Framework, substantial weight is attached to any harm to the Green Belt. I have also concluded that the development is significantly harmful to the character and appearance of the area.
28. I have noted that in granting the LDC the Council has concluded that the extent of the domestic curtilage is much larger now than what it understood to be the case when granting permission for the change of use under application 8/95/0011. However, the conditions of that permission still apply. As such I give little weight to this consideration.
29. Article 8 of the Human Rights Act (the Act) provides that everyone has the right to respect for private and family life. This right is qualified, where it is necessary, to protect the rights and freedoms of others. I am satisfied that as the planning system operates in the public interest, the protection of the Green Belt and the character and appearance of the area in this instance outweigh the

private interests of the appellant, and that refusal of permission is a proportionate response. In addition, I am confident that an acceptable solution to treating the boundary could be realised. Consequently, I attach little weight to this consideration.

Conclusion

30. Paragraph 143 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 states that substantial weight should be given to any harm to the Green Belt and 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.
31. I have concluded that the proposal is inappropriate development in the Green Belt and that the development would have a significantly detrimental effect on the character and appearance of the area.
32. There would be no social and very limited economic benefits resulting from the development. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. As such the development does not accord with policies GN1 and GN3 of the WLLP or national Green Belt policy as set out in the Framework.
33. For the above reasons the appeal is dismissed.

J Williamson

INSPECTOR