



Appeal Decision

Site visit made on 19 July 2019

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 August 2019

Appeal Ref: APP/W3005/W/19/3227091

Land at Felley Mill Lane South, Underwood, Nottingham NG16 5DQ

- 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 Ms Deborah Roe against the decision of Ashfield District Council.
 - The application, ref. V/2019/0111, dated 5 December 2018, was refused by notice dated 2 April 2019.
 - The development proposed is the retrospective planning permission for a temporary plastic polytunnel structure 3x6 metres in diameter, glass greenhouse 6ft x 4ft in diameter and moveable wooden chicken coup 6 x 4 ft (which was a small child's playhouse).
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Decision

1. The appeal is allowed and planning permission is granted for a temporary plastic polytunnel structure 3x6 metres in diameter, glass greenhouse 6ft x 4ft in diameter and moveable wooden chicken coup 6 x 4 ft (which was a small child's playhouse); at Land at Felley Mill Lane South, Underwood NG16 5DQ, Ref: V/2019/0111, dated 5 December 2018, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Elevations; Site Layout; Floor Plans.

Preliminary Matters

2. The polytunnel, chicken coup and greenhouse were all in situ at the time of my site visit. I have therefore made my decision on this basis.
3. I note the submission of further information from the appellant as part of this appeal which provides further evidence of an agricultural operation being undertaken on the land. These include a letter from the Rural Payments Agency¹ stating County Parish Holding number (CPH) and Single Business Identifier (SBI); and also a document² showing the movement of lambs to the appeal site.

¹ Letter from Rural payments Agency to Ms Deborah Row, Dated 1 August 2018, Ref: CPH Notif CPH (5.0)F

² Movement Document under the Sheep and Goats Order 2009, Capita on behalf of the Department of Environment Food and Rural Affairs, dated 22 December 2018

The additional documents do not result in any changes to the scheme, and provides further clarification of the use which is part of one of the main matters for discussion. I find that the acceptance of this further information would be appropriate and not deprive those who should have been consulted or the opportunity of such consultation in accordance with the 'Wheatcroft Principles.'³ As such, I will accept this further information and will base my decision upon it.

Main issues

4. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and
- The effect of the buildings on the character and appearance of the area.

Reasons

Whether the proposal is inappropriate

5. Paragraph 145 of the Framework states that the construction of new buildings within the Green Belt should be regarded as inappropriate, unless the development falls within certain listed exceptions. The relevant exception which is sought to be applied to the appeal site is the construction of buildings for agriculture.
6. The parties dispute whether the extant buildings on the appeal site would constitute an agricultural use. In this regard, the Town and Country Planning Act 1990 (the Act) provides a definition of agriculture at section 336(1). This states that 'agriculture' includes '*horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.*'
7. The Council state that there is insufficient evidence to demonstrate that the appeal site is currently used as part of an agricultural business and whether the proposed buildings where they are essential and where the need has been established. A CPH number and an SBI number have been submitted which provide some evidence of agricultural use and the keeping of animals on site. It was also evident from the evidence before me and from my site visit that a small flock of sheep are kept at the property for grazing, and that the existing 'Wendy House' is now utilised as a chicken coup and that the polytunnel and greenhouse is utilised for planting seeds. The agricultural operations are at their beginning and suitable for this particular scale at this moment in time. Whilst the Council note that the scale of the operations on site are small and more domestic in nature than agricultural, I must determine the proposal as it is applied for, which in this case is for agricultural buildings.

³ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

8. In any event, the Act, the Framework or Saved Policies ST4 or ENV1 of the Ashfield Local Plan 2002 do not identify the scale of operation in order to be defined as an agricultural enterprise, and therefore some flexibility should be given to the establishment of small-scale agricultural operations for new agricultural businesses which could be then expanded as the business develops.
9. I note that Saved Policy ENV1 of the LP seeks that all development in the green belt, regardless of whether it is appropriate or not, not adversely affect the purposes of the green belt and its openness. I also note relevant case law⁴ where it was expressed that with regards to an assessment of openness, that *'Firstly, it is to be noted that agricultural buildings are not the subject of any such qualification. Secondly, if an assessment of openness is a gateway in some cases to identification of appropriateness, it is strongly suggestive, in my view, that once appropriate, the question of the impact of the building on openness is no longer an issue.'*⁵
10. That said, whilst the current buildings might be viewed as 'makeshift' or 'temporary' in appearance, they are well positioned close to the boundary hedge so that their impact on the landscape and openness of the green belt is reduced. Despite this, if the business is not successful, then the operations are reversible, given that the proposed buildings are small and could be easily dismantled and the land reinstated if the use no longer continued.
11. For the above reasons, I conclude that the existing buildings are in agricultural use and would not be inappropriate development in the Green Belt or that not adversely affect the purposes of the green belt and its openness. The proposal would therefore be in accordance with Saved Policy ST4 of the LP (which seeks that outside the urban area development appropriate to the green belt would be permitted); and Saved Policy ENV1 which defines appropriate development in the green belt; and guidance in the Framework relating to development in the Green Belt.

Character and appearance

12. The development would be largely screened from view from Felley Mill Lane South. However, it would be visible in longer views from across the countryside, over mostly open land.
13. The existing buildings have design elements which one would anticipate within a rural context, and whilst they are visible in more distant views, it would be seen in the context of the surrounding farmland and the hedgerow along the boundary. The surrounding vegetation would also provide screening to the proposed buildings and as mentioned previously, the buildings are easily removed in the case that the business becomes established and expands and requires more permanent structures or in the case that it ceases to operate the buildings can be easily removed and the land reinstated. Accordingly, I do not consider that the existing structures are unduly harmful in this regard.
14. I conclude that the development would not significantly harm the character and appearance of the countryside. It would therefore be in accordance with Saved

⁴ Lee Valley Regional Park Authority v Epping Forest District Council [2015] EWHC 1471 (Admin)

⁵ Ibid Paragraph 61

Policy ST1 of the LP (which seeks that development not adversely affect the character, quality, amenity or safety of the environment).

Other Matters

15. I note comments from neighbouring residents regarding the erection of buildings and use is contrary to a covenant on the land. Covenants are civil matters and not a planning matter and as such cannot be taken into account in the determination of this scheme.
16. I also note comments with regards to a stable block and caravan on the land which is viewed by neighbouring residents as not having planning permission. These buildings are beyond the application applied for and as such has not factored into the determination of this scheme.

Conclusions and Conditions

17. In conclusion, the appeal proposal is not inappropriate development in the Green Belt and would not cause adverse harm to the openness of the Green Belt or the character and appearance of the area. This would be consistent with the general thrust of the housing strategy and the policies of the Framework.
18. For these reasons, and having considered all matters raised in evidence and from what I saw during my site visit, I conclude that the appeal should be allowed and planning permission granted, subject to the conditions as detailed in the annex accompanying this decision.
19. In addition to the standard time limit condition, I have imposed a condition that requires the development to accord with the approved plans. This is necessary for clarity and to ensure a satisfactory development.

J Somers

INSPECTOR