



Appeal Decision

Site visit made on 2 July 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/B2355/W/19/3226418

Land off Belgrave Street, Rising Bridge, Haslingden BB4 5JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Paul Canavan against the decision of Rossendale Borough Council.
 - The application Ref 2018/0512, dated 15 October 2018, was approved on 5 December 2018 and planning permission was granted subject to conditions.
 - The application sought planning permission for erection of a stable block with a variation to the facing materials of the stable block following planning permission Ref 2012/0555 granted on 21 November 2012.
 - The condition in dispute is No 2 of application ref: 2018/0512 which states that: *Prior to first use of the stable block hereby permitted the scheme of hard-landscaping and boundary treatment submitted and approved under Application 2013/038 shall be implemented, entailing provision of the area of hard-surfacing to enable a vehicle (with horse-trailer) to park and turn within the site (without obstruction of the public footpath crossing the site) and the replacement of the existing boundary fences with 1.5m high timber post-&-wire perimeter fencing, unless a variation has first been agreed in writing by the Local Planning Authority. In the first available planting season thereafter the hawthorn/blackthorn hedge forming part of scheme of landscaping and boundary treatment submitted and approved under Application 2013/038 shall be implemented and any plants which are removed, die or become seriously damaged or diseased within 5 years of planting shall be replaced in the next available planting season by others of the same siting/size/species unless a variation has first been agreed in writing by the Local Planning Authority.*
 - The reason given for the condition is: *To safeguard the essentially open and rural character of the Green Belt/Countryside.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a stable block at land off Belgrave Street, Rising Bridge, Haslingden BB4 5JH in accordance with the terms of application 2018/0512, dated 15 October 2018, subject to a varied Condition 2 and subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Paul Canavan against Rossendale Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The address given on the application form did not include the postcode. For clarity, in the banner heading, I have therefore included the postcode given on the appeal form as this is more precise.

4. On 19 February 2019, the Government published an updated revised version of the National Planning Policy Framework (the Framework). In relation to the main issue in this appeal, Government policy has not materially changed, and no parties have been prejudiced by my having regard to it.
5. This appeal follows the Council's decision to approve an application submitted under section 73 of the Town and Country Planning Act 1990 (TCPA) to vary a condition associated with a previous planning permission. The Planning Practice Guidance (PPG) advises that where an application under section 73 is granted, the effect is the issue of a new planning permission. This sits alongside the original permission, which remains intact and unamended¹.
6. In deciding an application under section 73, the PPG clarifies that a 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 proposal². However, the PPG is also clear that new conditions can be imposed, as long as they do not materially alter the development that was subject to the original permission and are conditions which could have been attached to the earlier planning permission³. This is how the Council determined the application and it was correct to do so.

Background

7. In January 2013, the appellant secured planning permission⁴ for a stable block on the appeal site, which lies within the Green Belt. Condition 2 of that decision required the development to be carried out in accordance with the approved drawings. Condition 5 required details of hard and soft landscaping and boundary treatment to be submitted to and approved by the Council.
8. Such a scheme of landscaping and boundary treatment was subsequently agreed in June 2013⁵. The approved plan included the provision of a wood post and wire fence around the majority of the site as well as tree and shrub planting to the rear and north-west facing elevation of the stable block.
9. However, in December 2018, the Council approved an application⁶ submitted under section 73 of the TCPA 1990, to vary the approved plans pursuant to Condition 2 of the January 2013 permission cited above. It sought to change the proposed external stonework for the stable block from coursed to random natural stone.
10. In approving the variation to the materials, the Council imposed an amendment to Condition 5 of the original permission, requiring the implementation of the previously approved hard landscaping and boundary treatment cited above. This condition, which is No 2 of the new permission, also included a specific requirement to replace the existing boundary fences with 1.5m timber post and wire perimeter fencing, unless a variation were agreed by the Council. It is this Condition 2 that is the subject of this appeal.
11. Having regard to the guidance within the PPG, Condition 2 does not materially alter the development of the stable block. Furthermore, in the planning history

¹ PPG Paragraph: 015 Reference ID: 17a-015-20140306 (Revision date 06 03 2014)

² PPG Paragraph: 031 Reference ID: 21a-031-20180615 (Revision date 15 06 2018)

³ PPG Paragraph 40 Reference ID: 21a-040-20190723 (Revision date 23 07 2019)

⁴ Council ref: 2012/0555

⁵ Council ref: 2012/0424

⁶ Council ref: 2018/0512

of the stable block before me, the plans and information consistently show a wood post and wire fence to delineate the majority of the site. Consequently, a condition requiring the provision of this type of fence or another type to be submitted to and approved by the Council could reasonably have been imposed on the earlier permission.

Main Issue

12. In light of the above, the main issue is whether Condition 2 is necessary, relevant to planning and to the development to be permitted, enforceable, sufficiently precise and reasonable in all other respects, in order to protect the openness of the Green Belt and the character and appearance of the countryside.

Reasons

13. The appeal site occupies an elevated position above Rising Bridge, accessed via a long track that continues from Belgrave Street, across Back Lane. On my site visit, I observed that construction of the stable block had started but it was not complete. A static caravan was sited between the stables and the track, within the red line boundary of the appeal site. This has been the subject of a recently dismissed appeal decision, requiring its removal within a specified period⁷.
14. The south-western boundary of the site is presently delineated by a curved top timber fence of varying height, which sits behind a stone wall. Adjoining the track, there is a flat top timber fence that has been stained in a red/brown colour. Both parties agree that this latter fence is permitted development. This was confirmed in the appeal decision cited above and I have no reason to take a contrary view.
15. In imposing Condition 2, the Council have sought the implementation of the hard landscaping and boundary treatment previously found to be acceptable in 2013, but not yet implemented on the basis that the first use of the stables has not yet occurred. However, Condition 2 also requires the 'replacement of the existing boundary fences with 1.5m high timber post-&-wire perimeter fencing unless a variation has first been agreed in writing by the Local Planning Authority'.
16. The condition is unclear as to which boundary fences should be replaced. Moreover, in the event that the existing fences on the site are unauthorised, their removal and replacement should, in my view, be remedied through the planning enforcement process rather than by means of a condition attached to a planning permission.
17. There is also no planning mechanism to agree any subsequent variation to the boundary treatment 'in writing', other than through the formal submission of details as a discharge of condition. For these reasons, I consider that Condition 2 as worded is neither sufficiently precise nor enforceable, nor reasonable in all other respects and it therefore fails to meet the tests set out within the Framework.
18. However, the Framework confirms that the essential characteristics of Green Belts are their openness and their permanence. Openness is, in effect, the absence of development and it has both a spatial and visual aspect to it. A

⁷ Appeal Ref: APP/B2355/C/18/3215251

fence would serve to enclose the site, particularly given its elevated position within the surrounding area, which has an open and rural character and from which any boundary treatment would be visible.

19. The existing curved top fence along the boundary to the rear of the stable block is particularly noticeable on the approach to the appeal site along the track. It demonstrates that fencing can impact upon openness. The form, height and appearance of any enclosure to the perimeter of the stable block, as well as landscaping, would therefore be relevant to planning and to the development being permitted, as it would enclose the stable block.
20. Consequently, having regard to the site's prominent location within the Green Belt/countryside, I consider that a varied landscape and boundary treatment condition would be necessary and relevant to planning and to the development being permitted, to safeguard the essentially open and rural character of the area. If appropriately worded, it would also be enforceable, precise and reasonable in all other respects.

Conditions

Disputed condition

21. I will therefore delete the disputed Condition 2 and substitute it for a varied condition pursuant to the landscaping and boundary treatment. For precision and to ensure that it would be enforceable, this would include a requirement to submit full boundary details, to comprise the height and appearance of any enclosure to each boundary of the site, as well as the materials to be used in its construction.

Other conditions

22. I have imposed a condition pursuant to the approved plans and the use of random natural local stone in the construction of the stable block, which is not disputed, in the interests of certainty. For precision, I have added a detailed reference to the planning statement identified in the wording of the condition put forward by the Council.
23. However, the Council also propose that this condition be worded to include a requirement that any other buildings or structures not authorised by the appeal decision, or a previous decision⁸ relating to an agricultural building, be removed from the site, unless otherwise agreed in writing by the Council. I note that the appellant does not object to this. Nonetheless, I consider that the removal of 'unauthorised' buildings would be a planning enforcement matter and the return of any such buildings or structures duly considered through the planning process, rather than by agreement in writing. As written, it would therefore fail to meet the tests of precision or reasonableness, as set out in the Framework. I have therefore omitted these considerations from the condition.
24. I have imposed the remaining non-disputed conditions from the permission. These relate to its use for the stabling of horses for private domestic purposes only, a restriction on external illumination and sound amplification, and a condition relating to construction hours. These are all reasonable and necessary in the interests of the character and appearance of the area and having regard to the living conditions of nearby occupiers.

⁸ Council ref: 2013/0424

Conclusion

25. For the above reasons, I therefore allow the appeal, subject to the amended and non-disputed conditions set out in the formal decision.

Kate Mansell

INSPECTOR

Schedule of conditions

- 1) The development shall be completed in accordance with the approved drawing by Rae Connell Associates, dated 21 November 2012 by the Local Planning Authority, excepting that the external walls of the stable block shall be constructed with random natural local stone matching the photograph in the submitted Planning Statement prepared by Hartley Planning and Development and Associates Ltd, dated October 2018.
- 2) Prior to the first use of the stable block hereby permitted, a landscaping and boundary treatment scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include full details of the following:
 - a. A plan showing details of the means of enclosure to each boundary of the site, to include its overall height and appearance as well as the materials to be used in its construction;
 - b. A scheme of soft landscaping to the rear and north-west facing elevation of the stable block as shown on the site plan, to include details of species and size of plants;
 - c. A scheme to demonstrate a reduction in the amount of hardstanding to a size proportionate to the needs of the stables hereby permitted to facilitate a vehicle (with horse trailer) to park and turn within the site without obstruction of the public footpath crossing the site.

The approved details (a) and (c) shall be completed prior to the first use of the stables hereby permitted and thereafter retained. The soft landscaping approved in accordance with (b) shall be implemented and completed in the first planting season following the first use of the stables hereby permitted. Any plants that are removed, die or become seriously damaged or diseased within 5 years shall be replaced with plants of the same size/species in the following planting season, unless otherwise approved by the local planning authority.

- 3) The stables hereby permitted shall be used for the stabling of horses for private domestic use only and shall not be used for commercial purposes.
- 4) At no time shall any form of external illumination or sound amplification be attached, erected or used in association with the development hereby permitted.
- 5) Prior to first use of the stables hereby permitted the manure store shall be made available for use and thereafter retained for use as such.
- 6) Any construction works associated with the development hereby approved shall not take place except between the hours of 7:00 am and 7:00 pm Monday to Friday and 8:00 am and 1:00 pm on Saturdays. No construction shall take place on Sundays, Good Friday, Christmas Day or Bank Holidays.

End of Schedule of Conditions