
Appeal Decision

Site visit made on 16 July 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2019

Appeal Ref: APP/N4720/W/19/3225547

None Go Bye Farm, Old Otley Road, Leeds LS18 5HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Nigel Rushworth against the decision of Leeds City Council.
 - The application Ref 18/07918/DPD, dated 21 December 2018, was refused by notice dated 15 February 2019.
 - The development proposed is: Change of use from agricultural to registered nursery.
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Decision

1. The appeal is allowed and approval is granted under the provisions of the Town and Country Planning (General Permitted development) (England) Order 2015, Schedule 2, Part 3, Class S, for the change of use from agricultural to registered nursery at land at None Go Bye Farm, Old Otley Road, Leeds LS18 5HZ in accordance with the terms of the application Ref 18/07918/DPD, dated 21 December 2018, and the plans submitted with it and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Nigel Rushworth against Leeds City Council. This application is the subject of a separate Decision.

Procedural Matter

3. The Council refers to Policies in the Unitary Development Plan Review (2006) and the Leeds Core Strategy (2014) in its reasons for refusal. Prior approval applications are not subject the requirement of Section 38(6) of the Planning and Compulsory Purchase Act 2004, since the principle of development is established through the Order. Given this context I have taken these policies into account as material considerations.

Main Issues

4. The appeal site is located within the Green Belt. The Framework¹ set out national policy on the Green Belt. Paragraph 146 sets out certain types of development which do not comprise inappropriate development, including the re-use of buildings of permanent or substantial construction. Given this exception, there is no dispute that the proposal is not inappropriate development.

¹ National Planning Policy Framework February 2019

5. The application was made under the Town and Country Planning (General Permitted development) (England) Order 2015 (the Order). Under Class S of Part 3 of Schedule 2 of the Order, the change of use of a building on any land within its curtilage from use as an agricultural building to use as a registered nursery is permitted development, subject a prior notification procedure.
6. The Council does not argue that any of the conditions of the Order are not satisfied, accordingly, the principle of the use proposed use of the building is not at issue and the matters must be limited to those set out in the order:
 - i) The transport and highways impact of the development;
 - ii) noise impact of the development;
 - iii) contamination risks on the site;
 - iv) flooding risks;
 - v) whether the location or siting of the building makes it impractical or otherwise undesirable for the proposed use as a registered nursery.
7. The reasons for refusal relate to matters concerning the suitability of the location and siting of the building for the use, which accordingly form the main issues in the appeal.

Reasons

Siting

8. The building which would be used as a nursery would be located within a range of buildings at the site which provide a farm shop, and a base for the leisure activities provided such as the children's' farm, wildlife walks and fishing ponds.
9. The area to the front of the building functions primarily as a parking area for the farm shop and visitors using the leisure facilities. One of the buildings adjacent to the site was previously used for the keeping of livestock, and the appellant would have no objection to a condition which required that the building be either demolished or not used for the keeping of livestock in the future.
10. In view of this, there would be no significant risks to the safety of patrons of the proposal, or existing visitors to the site, from any residual agricultural activities. However, in the interests of safety it would be beneficial to mark out the parking spaces shown on the submitted plan, both within the red line area, serving the proposal, and also within the other land controlled by the applicant.
11. I therefore conclude that the siting of the proposal would be acceptable, taking into account Policy GP 5 of the Unitary Development Plan Review which seeks to ensure that developments are satisfactory in terms of site specific planning matters.

The suitability of the location

12. None Go Bye is located on Otley Old Road, within the rural hinterland of Leeds, approximately 2km outside of the suburb of Cookridge, and a similar distance from the village of Bramhope. It is also close to Leeds Bradford International Airport. Otley Old Road is well used by local traffic, although there is no

suggestion that the proposal would give rise to any significant effects on traffic flows, or that access to the site is unsatisfactory.

13. It is not suggested that the site is well served by public transport, although there is an infrequent daily bus service. As a consequence, most patrons of the nursery would be likely to use private cars to drop off and pick up their children. The Framework promotes modes of transport other than the private car and says that new development should provide safe and suitable access for all users. It also recognises that the opportunities to promote transport options other than the private car will differ between urban and rural areas.
14. Whilst the opportunities to promote the use of other transport modes are limited, it would run counter to the logic behind the permitted development right in part S of Schedule 2 of the Order if the location of a nursery within a farm building was judged to be unacceptable simply because of a rural location, let alone on a farm located in relatively close proximity to urban areas such as the appeal site.
15. I therefore conclude that the proposal would be in a suitable location, taking into account Policy T2 of the Leeds Core Strategy which seeks to ensure that developments are in accessible locations.

Conditions

16. The Order attaches standard conditions at paragraph S.2 of Class S. These include the requirement that development must begin within 3 years of the date of approval and that the building shall be used solely as a registered nursery and for no other purpose. I do not repeat these conditions in the Schedule. Other conditions reasonably related to the subject matter of the prior approval may be attached.
17. For certainty, I attach a condition specifying that the development is to be carried out in accordance with the approved plans. I also attached a condition requiring the parking spaces shown on the application plans, both within the application site, and the other spaces within land controlled by the appellant, to be provided prior to the commencement of the nursery use. Details of disabled parking spaces, and cycle/motorcycle parking and an electric vehicle charging point, are to be approved and these facilities provided before commencement of the use and I attach conditions requiring this. I attach these conditions in the interests of the safe and convenient operation of the site.
18. The Council has suggested that planning conditions are attached requiring that details are submitted for foul and surface water drainage. The proposal would include a new toilet, therefore I attach a condition in relation to foul drainage. The proposal does not involve the provision of any additional hard surfaced areas and therefore there is no need for a condition in relation to that matter.
19. The Council suggests conditions in relation to possible contamination. Given the previous agricultural use of the site I agree that these conditions are prudent and attach them.
20. I also attach a condition requiring the approval of details of bin stores, waste storage and access for collection, in the interests of avoiding nuisance from litter and waste.

21. The appellant has stated that his preference is to demolish the former livestock building. In order to remove any uncertainty regarding the future use of this building for agriculture and any potential to affect the safe operation of the proposed nursery, I agree that it is necessary for the demolition of the livestock building to be secured via a condition. This building is outside the application site but within land controlled by the appellant. I therefore attach a condition requiring that it should be demolished prior to the commencement of the approved use, in the interests of the safety of users of the nursery.

Conclusions

22. For the reasons given, and having regard to all other matters raised, the appeal is allowed.

Tim Wheeler

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan scale 1-1250 drg no S336 PD 001; Existing Site Plan scale 1-500 drg no S336 PD 002; Existing Floor Plans scale 1-200 drg no S336 PD 003; Existing Elevations 1-200 drg no S336 PD 004; Proposed Site Plan 1-500 drg no S336 PD 005; Prior Notification Statement.
- 2) The nursery use shall not commence until all areas shown on the approved plans to be used by vehicles, including disabled spaces and cycle/motorcycle parking as approved by the Local Planning Authority, have been fully laid out. The 10 spaces to be provided for the nursery shall not be used for any purpose other than the parking of staff and patrons of the nursery.
- 3) Notwithstanding the details shown on the approved Proposed Site Layout, the nursery use shall not commence until a revised layout has been submitted to and approved in writing by the Local Planning Authority, demonstrating provision of disabled car parking (in accordance with current British Standard BS8300 unless otherwise agreed in writing) and the agreed layout implemented.
- 4) Notwithstanding the approved details, the nursery use shall not commence until full details of cycle/motorcycle parking and facilities, including details of dimensions of the proposed cycle store and information regarding the type of cycle stand proposed, have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the approved cycle/motorcycle parking and facilities have been provided. The facilities shall thereafter be retained for the lifetime of the development.
- 5) Notwithstanding the details shown on the approved Proposed Site Layout, the nursery use shall not commence until details of an electric vehicle charging point has been submitted to and approved in writing by the Local Planning Authority. The charging point shall be provided in accordance with the approved details prior to first use of the car park, and retained as such thereafter.
- 6) No development shall commence until a Phase I Desk Study has been submitted to, and approved in writing by, the Local Planning Authority and:
 - (a) Where the approved Phase I Desk Study indicates that intrusive investigation is necessary, development shall not commence until a Phase II Site Investigation Report has been submitted to, and approved in writing by, the Local Planning Authority; and
 - (b) Where remediation measures are shown to be necessary in the Phase I/Phase II Reports and/or where soil or soil forming material is being imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the Local Planning Authority. The Remediation Statement shall include a programme for all works and for the provision of a Verification Report.

- 7) Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works, the Verification Report shall be submitted to the Local Planning Authority in accordance with the approved programme. The site shall not be brought into use until such time as all verification information has been approved in writing by the Local Planning Authority.
- 8) There shall be no discharges of foul water from the development until a foul drainage scheme including details of the provision for its future maintenance has been implemented in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 9) The nursery use shall not commence until details for the provision of bin stores (including siting, materials and means of enclosure) and storage of wastes and access for their collection shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full before the use commences and shall be retained thereafter for the lifetime of the development.
- 10) The building adjacent to the proposed development, formerly used for the keeping of livestock, shall be demolished prior to the commencement of the approved nursery use.

End of Schedule