



Appeal Decision

Site visit made on 17 September 2019

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 19 September 2019

Appeal Ref: APP/V4630/C/18/3204561

Land south of 171 Erdington Road, Aldridge WS9 0RZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr W Barnaby against an enforcement notice issued by Walsall Metropolitan Borough Council.
 - The enforcement notice was issued on 9 May 2018.
 - The breach of planning control as alleged in the notice is the material change of use of the land for a) the siting of caravans and associated domestic paraphernalia; b) the grazing of horses and livery stabling and the siting of associated structures, fencing and equipment; and c) the storage of farm machinery, associated equipment and storage container.
 - The requirements of the notice are 1. Permanently cease use of the land for the siting of caravans and remove the caravans and all associated domestic paraphernalia from the land, including but not limited to seating, fencing and barbeque; 2. Permanently cease the use of the land for horse grazing and livery stables and remove all associated fencing, structures and equipment; 3. Permanently cease the use of the land for the storage of farm machinery and remove all farming equipment, structures and containers; and 4. Leave the land in a clean and tidy condition, disposing of any waste materials generated from the above works to a suitable facility licensed to accept these items.
 - The period for compliance with requirements 1 and 2 is two months and with requirements 3 and 4 is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is varied by the deletion of 'and livery stabling' in section 3 and by the deletion of 'and livery stables' in section 5. Subject to these variations the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

The ground (b) appeal

2. The ground (b) appeal relates only to the 'livery stabling' alleged in the breach of planning control. The Council claims that a van body seen on the land during a site visit in April 2018 was "...in use as stabling for horses...". The photograph submitted to support this claim is wholly inconclusive and does not give any indication that the van body was in use for stabling. The ground (b) appeal thus succeeds and the enforcement notice has been varied accordingly.

The ground (c) appeal

3. The Appellant claims that the grazing of horses is an agricultural activity and that this use therefore accords with the lawful agricultural use of the land, which is a roughly rectangular field of about 4.7 hectares. The 'use of land as grazing land' is within the definition of agriculture set out in Section 336 of the Town and Country Planning Act 1990. Photographs taken on 13 April 2018, about four weeks before the date of issue of the enforcement notice, show a significant part of the land subdivided by fencing into small paddocks. One of the photographs shows one paddock to be almost devoid of grass and the horse within it to be eating hay. This evidence indicates that the horse, and probably most others on the land at that time, was not grazing the land and was not on the land to support the agricultural use of the land. There is reason to suppose that the land, or at least a significant part of it, was, as alleged in the notice, in use for the grazing of horses.

4. The fencing referred to in the alleged breach of planning control is clearly that which was erected to subdivide the land into paddocks. This fencing is associated with the unauthorised use of the land for the grazing of horses and is therefore also unauthorised, and cannot be considered to be development permitted under the provisions of Class A of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended. The land is used for the storage of farm machinery that far exceeds that which could be associated with, or be ancillary to, the agricultural use of the land. The storage of farm machinery not required for the agricultural use of the land constitutes an unauthorised material change in the use of the land.

5. The grazing of horses, the siting of fencing and the storage of farm machinery not associated with the lawful use of the land for agriculture are material changes in the use of the land and planning permission has not been granted for these uses of the land. The ground (c) appeal therefore fails.

The ground (a) appeal

6. Reference has been made to the Appellant's intention to submit a planning application for a building within which to store his farming equipment. The Appellant claims that it is necessary for him to live on site in a caravan, for a temporary period of 12 months, to provide security for the farm equipment whilst he submits such an application. No evidence has been submitted to support the grant of planning permission for any other unauthorised uses of the land so the ground (a) appeal therefore relates to the siting of a static caravan for a temporary period of 12 months.

7. It is national policy, generally as set out in the National Planning Policy Framework (NPPF), that a static caravan can only be sited on agricultural land for residential purposes if it is associated with a viable farming business or a business that could become financially viable. It is claimed that the farm equipment is "...used by the Appellant in the farming of his 32 hectares". It is not clear, other than the appeal land, where this land is located or what farming is carried out. It is not known whether the Appellant has a registered farm holding or whether his farming activity is, or even could be, a viable farming business.

8. In these circumstances it must be concluded that the static caravan is not associated with agriculture. The static caravan on the appeal land, either of the two that are on the land, must therefore be regarded to be, with reference to paragraph 145 of the NPPF, inappropriate development. Paragraph 143 states that

"...inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances", and paragraph 144 states that "'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations". The static caravan would not be for the purposes of agriculture so conflicts with saved policy ENV2 of the Walsall Unitary Development Plan (UDP).

9. The main issues in the ground (a) appeal are; first, whether the static caravan causes any other harm, with regard to, principally, the openness and visual amenity of the Green Belt, in addition to that caused by reason of inappropriateness; and second, whether other considerations clearly outweigh the harm caused by the static caravan such that very special circumstances exist.

The first issue – other harm

10. The appeal land is generally flat as is the surrounding farmed landscape to the north, south and east. To the west, beyond Erdington Road, ground levels rise and between that road and Knights Hill there will be views from residential properties across the landscape within which the static caravan is sited. In these views and from the surrounding landscape the static caravan, which is not screened to any significant degree, is an intrusive feature that has an adverse effect on the visual amenity of the Green Belt. The static caravan also undermines the openness of the Green Belt. The static caravan thus conflicts with the thrust of policies CSP4 and ENV3 of the Black Country Core Strategy and with saved UDP policies GP2 and ENV3.

The second issue – other considerations

11. The only consideration mentioned is security of the farm machinery. It is claimed that theft and vandalism has occurred in the past but no details, such as Police reports, have been submitted to support this claim. This factor notwithstanding, security can be provided by means other than the occupation of a static caravan, such as CCTV and secure gates at the access off Erdington Road. Security of farm machinery does not clearly outweigh the harm caused by the static caravan. Very special circumstances do not exist in this case.

Conclusion

12. The static caravan causes harm to the visual amenity and openness of the Green Belt and also by reason of inappropriateness. The harm caused is not clearly outweighed by other considerations and very special circumstances do not exist in this case. The ground (a) appeal thus fails.

The ground (f) appeal

13. Reference to 'livery stables' and 'livery stabling' has been deleted from the enforcement notice as a consequence of the successful ground (b) appeal. The notice does not require the cessation of the use of the appeal land as grazing land for purposes associated with or ancillary to the lawful agricultural use of the land. It does require the cessation of the unauthorised use of the land for the grazing of horses and this requirement, given that this use of the land is unauthorised, is not excessive. The ground (f) appeal therefore fails.

The ground (g) appeal

14. The Appellants case under ground (g) is the same as that made under ground (a) and has been considered above. Varying the period for compliance with the requirements of the notice to twelve months would be, in essence, the same as granting temporary planning permission and this has been found to be unacceptable. The periods for compliance with the requirements of the notice are reasonable and the ground (g) appeal thus fails.

John Braithwaite

Inspector