The Planning Inspectorate

Appeal Decision

Site visit made on 10 September 2019

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2019

Appeal Ref: APP/M1005/W/19/3231797
Field off Cromford Road, Langley Mill, Derbyshire NG16 4HE

- 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 Mr Joe Lowther against the decision of Amber Valley Borough Council.
- The application Ref AVA/2019/0339, dated 4 April 2019, was refused by notice dated 18 June 2019.
- The development proposed is replacement stable block (re-submission of AVA/2018/1216).

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site is a parcel of land, situated off a lay-by adjacent to Cromford Road. The building subject to the appeal proposal has some planning history, for which it is necessary to set out as background to the appeal.

3. I understand that the building subject to this appeal was approved as a storage building by a 2013 planning application but was found not to be constructed in accordance with that planning consent.

4. A subsequent application was submitted in 2015 to form a holiday let was withdrawn. A 2016 application to retain the building as a store was refused and dismissed at appeal (APP/M1005/W/16/3148138). A further appeal against a 2018 enforcement notice for removal of the building (APP/M1005/C/18/3195057) was also dismissed.

5. This current appeal seeks to retain the building, with alterations, as a stable block. The alterations proposed to the existing building include removal of a brick skin and cavity wall, reduction in overall height and a change in the external materials, by use of timber boarding.

6. 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;

   - The effect on the openness and purposes of the Green Belt;

   - If the development is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by

other considerations so as to amount to the very special circumstances necessary to justify the development; and

- The effect of the development on protected species.

Reasons

Inappropriate development

7. The Framework states that inappropriate development is harmful to the Green Belt. All proposals for development in the Green Belt should be treated as inappropriate, and thus should be approved only if very special circumstances exist, or unless they come within one of the categories in the closed list of exceptions in either paragraph 145 or 146 of the Framework.

8. The Inspector in the 2016 appeal found that as the proposal did not meet any of the exceptions set out in the Framework, that the building was inappropriate development. Therefore, it is necessary to consider any change in circumstances that may warrant a change in that assessment.

9. The appellant has stated that as the building would replace two existing stable buildings, would be in the same use, and is not materially larger that the two it replaces, then the proposal is not inappropriate development, as set out in Paragraph 145(d) of the Framework. However, I cannot be certain that the existing stable buildings would be removed, and I am not in receipt of any form of legal agreement to ensure removal. In addition, the appeal building is in a different location to those proposed to be removed, in a far more prominent position. I find that these issues mean that it cannot be considered under Paragraph 145(d).

10. Therefore, I am in agreement with the Inspector in the 2016 appeal. The proposal does not comply with any of the listed exceptions and amounts to inappropriate development within the Green Belt. It is therefore contrary to Policy ENV2 of the Amber Valley Borough Local Plan (2006) (the LP) which reflects national Green Belt policy, as set out in the Framework.

Openness

11. Paragraph 133 of the Framework states that the essential characteristic of Green Belts are their openness and their permanence.

12. I have taken into consideration that the overall height of the building would be reduced, and the external materials altered in order to reduce the overall impact of the building.

13. However, I find no reason to depart from the findings of the Inspector in the 2016 appeal, and the 2018 enforcement appeal.

14. Openness has both a visual and spatial dimension. In visual terms, even with the building proposed to be reduced in overall height, and the appearance modified, the building will be clearly visible from the lay-by and Cromford Road and would therefore have some visual impact on the openness of the Green Belt. Moreover, as the surrounding land is relatively open, the building reduces the spatial aspect of the site.

15. I have found that the proposal is inappropriate development, and the negative impact on openness, and encroachment into the countryside add to that harm.

The Framework states that substantial weight should be given to any harm to the Green Belt.

Other Considerations

16. The appellant has stated that the physical works proposed will assist in mitigating the appearance of the building, and the removal of the existing stables would lead to an overall improvement in the site, and presents a practical and workable solution to the issues raised by the unauthorised building at the site.

17. I have assessed the revised structure accordingly and have found that substantial harm to the Green Belt has been caused. The unauthorised building has been subject to an enforcement notice for removal, and the appeal against that notice has been dismissed. Therefore, in summary, these considerations do not clearly outweigh the identified harm to the Green Belt that I have identified. Consequently, the very special circumstances necessary to justify this development do not exist.

Protected Species

18. Bats are a protected species under the Wildlife and Countryside Act 1981, and a European Protected Species under the Conservation of Habitats and Species Regulations 2017.

19. A Preliminary Roost Assessment was submitted with the application, which concluded that a dusk emergence or dawn re-entry survey should be carried out. This has not been provided. As a result, the effect of the development cannot be ascertained.

20. Having regard to paragraph 99 of Circular 6/2005, which states that conditions requiring surveys should only be used in exceptional circumstances, I note that no exceptional circumstances appear to exist. As such it would not be possible to address the lack of survey evidence by means of imposing a condition. Paragraph 175(a) of the Framework further indicates that in the absence of avoidance or adequate mitigation of harm to biodiversity, planning permission should be refused.

21. For the reasons outlined above I conclude that it has not been demonstrated that the appeal scheme would avoid or adequately mitigate unacceptable harm to bats. The development would therefore conflict with Policy EN13 of the LP which states that development will not be permitted that would have an effect upon species protected under the schedules of the Wildlife and Countryside Act 1991.

Conclusion

22. Therefore, for the reasons above, I conclude that the appeal should be dismissed.

Paul Cooper

INSPECTOR