



Appeal Decision

Site visit made on 20 August 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/P3040/W/19/3230137

OS Field 4437, Pinfold Lane, Plumtree, Nottingham NG12 5EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Dr Mostafa Moghisi against the decision of Rushcliffe Borough Council.
 - The application Ref 19/00221/VAR, dated 24 January 2019, was refused by notice dated 25 March 2019.
 - The application sought planning permission for the retention of existing stable building without complying with a condition attached to planning permission Ref 18/01002/FUL, dated 3 January 2019.
 - The condition in dispute is No 4 which states that: *If the use of the building as stables hereby approved ceases, the building shall be removed from the land and shall, so far as practicable, be restored to its condition before the development took place within three months of the cessation of the use, unless the Borough Council have otherwise previously agreed in writing.*
 - The reason given for the condition is: *For the avoidance of doubt and to comply with policy GP2 (Design and Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan.*
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Decision

1. The appeal is allowed and planning permission is granted for the retention of existing stable building at OS Field 4437, Pinfold Lane, Plumtree, Nottingham NG12 5EZ in accordance with application Ref 19/00221/VAR, without compliance with Condition 4 previously imposed on planning permission Ref 18/01002/FUL, dated 3 January 2019, but subject to the following conditions:
 - 1) The stables hereby permitted shall only be used for the stabling of up to 4 horses on a domestic basis and not as a riding school, livery stables or any other business or commercial use.
 - 2) Within three months of the date of this decision, details of the arrangements for the storage and disposal of manure shall be submitted to and approved in writing by the Borough Council. The approved scheme shall be carried out whilst the stables are in use.

Procedural Matter

2. The Rushcliffe Local Plan Part 2 (RLPP2) was adopted on 8 October 2019. As a result, Policy GP2 of the Rushcliffe Borough Non-Statutory Replacement Local Plan (Adopted December 2006) (RBNSRLP), which is cited in the Council's decision notice has been superseded. I am required to determine this appeal on

the basis of the development plan that is in force at the time of my decision. The Council advise that they now rely on Policies 1(Development Requirements), 21 (Green Belt and The Countryside) and 22 (Development within the Countryside) and the appellant has had the opportunity to comment upon their relevance. The appeal has therefore been determined in relation to the policies contained within the RLPP2.

Background

3. In 2007, planning permission¹ was granted on the appeal site, which is in the Green Belt, for a stable building. It included a condition that should the recreational use of the stables cease, the building should be removed. This permission was subsequently implemented.
4. However, the Council indicate that, as constructed, the siting of the building and its internal layout differed from that originally granted. Consequently, in January 2019, the appellant secured planning permission² for the retention of the stable building as built. It included Condition 4, the subject of this appeal. This condition repeated the requirement established in the earlier permission for the building to be removed if its use as stables ceased. It also introduced a 3-month timeframe for its removal from the cessation of its use.

Main Issue

5. The main issue is whether Condition 4 is reasonable and necessary in order to protect the openness of the Green Belt and the character and appearance of the area.

Reasons

6. This appeal follows the Council's decision to refuse an application submitted under Section 73 of the Town and Country Planning Act to remove 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 unamended³.
7. The appeal site is a large elongated field accessed via a track from Pinfold Lane, to the north-west of a small cluster of dwellings. The stable building lies towards the eastern end of the field. It is 'L' shaped and the floor plan indicates accommodation for four stables, as well as storage and other ancillary facilities. At the time of my visit, the stable building was vacant and there were no horses within it or in the vicinity. Along its northern boundary, the field adjoins the busy A606 Melton Road, which is bordered mainly by mature hedgerow. The fields surrounding the site give it a rural character.
8. The National Planning Policy Framework (the Framework) is clear that the essential characteristics of Green Belt are their openness and their permanence. Paragraph 145 of the Framework states that other than for limited exceptions, the construction of new buildings in the Green Belt is inappropriate. However, these exceptions include at 145(b), the provision of appropriate facilities (in connection with the existing use of land or a change of

¹ Council Ref: 07/00096/FUL

² Council Ref: 18/01002/FUL

³ PPG Paragraph: 015 Reference ID: 17a-015-20140306 (Revision date 06 03 2014)

- use) for, amongst other uses, outdoor sport and outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
9. The stable building is a standalone structure that is constructed in white timber cladding with a felt roof. Even if this were to give it a temporary appearance and it could be seen through the mature planting from Melton Road, it is the basis upon which planning permission was granted in both 2007 and 2019. In doing so, the Council have accepted that in its current form, the proposal is acceptable as a building for recreational purposes having regard to guidance within the Framework and Policy 21 of the RLPP2. By implication, these permissions concede that it would not be inappropriate development within the Green Belt and that it also preserves the openness of the Green Belt and would not conflict with the purposes of including land within it.
 10. The reason given for Condition 4 on the Council's decision notice does not cite the proposal's location within the Green Belt. It refers only to compliance with the now superseded Policy GP2 of the RBNSRLP, which sets out general design and amenity criteria. Nonetheless, the officer's report appears to suggest that the condition is intended to address a circumstance whereby if the building were converted to a different use, or the use were to cease but it remained in place and became vacant and unsightly, it would have a significant impact on the appearance of the Green Belt.
 11. In respect of any change of use, I am mindful that Condition 1 of the 2019 permission already restricts the building to the stabling of horses on a domestic basis. If it were converted to a different use without planning permission, it would be a matter for the Council to enforce. The Council refer specifically to its conversion for residential purposes, but I have nothing before me to indicate that this could occur without a change of use, for which planning permission would be required. Consequently, it would be subject to a new assessment for its compliance against local and national planning policy, including those relating to the site's location within the Green Belt and the countryside, rather than a matter to be addressed by means of a planning condition. Consequently, Condition 4 would not be necessary in this context.
 12. Turning to the implications of the use ceasing, the Council contend that the stable building would subsequently become vacant and an eyesore. However, the building could be vacant, and it would not necessarily mean that the use had ceased. I have nothing before me to explain how long it would have to be vacant for in order for the use to cease nor how the cessation of the use would be objectively evaluated.
 13. I also have no substantive evidence to explain how or why it would become an 'eyesore' within the three-month period specified by the condition, nor, given that it is an existing structure, how this would subsequently affect the openness of the Green Belt or purposes of including land within it. Furthermore, whilst Policies 1 and 22 of the RLPP2 establish, amongst other matters, general requirements for new development, including the need for the character and appearance of the landscape to be conserved and enhanced, they do not provide specific criteria for the appearance of existing buildings. As a result, I am therefore not persuaded that Condition 4 would be reasonable.

14. Taking all these matters into account, I conclude that Condition 4 is neither reasonable nor necessary in order to protect the openness of the Green Belt and the character and appearance of the area.

Conditions

15. I will therefore delete the disputed Condition 4.
16. I have retained those non-disputed conditions from the previous planning permission that appear still to be relevant, relating to the stabling of 4 horses on a domestic basis only and the agreement of a scheme for the storage and disposal of manure. In respect of the former, however, as worded, it would effectively require 4 horses to be stabled within the building at all times, which would not be reasonable having regard to the tests at paragraph 55 of the Framework. I have therefore included the words 'up to', to allow for the eventuality that it could be less than 4 at any time.
17. The previous planning permission also included a condition that the premises only be used for the purposes applied for and no other purpose. However, Condition 1 already refers to the use of the building for the stabling of horses. Moreover, any change from the purpose applied for would have to be appropriately assessed through the planning process. Were any change to be unauthorised, it would then be a planning enforcement matter. Having regard to the tests set out at paragraph 55, I consider that this condition is neither precise nor reasonable and I have omitted it on this basis.

Conclusion

18. For the above reasons, I therefore allow the appeal, deleting the disputed condition and subject to the conditions set out in the formal decision.

Kate Mansell

INSPECTOR