
Appeal Decision

Hearing Held on 19 December 2019

Site visit made on 19 December 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Appeal Ref: APP/P5870/W/19/3232992

Pillory Down Stables, 3 Fairlawn Road, Banstead SM7 3AU

- 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 Mrs S Spooner against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2018/02031, dated 28 October 2018, was refused by notice dated 10 January 2019.
 - The development proposed is change of use of building from equestrian to residential C3, internal layout to be changed with room divides.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of building to residential C3, internal layout to be changed with room divides at Pillory Down Stables, 3 Fairlawn Road, Banstead SM7 3AU in accordance with the terms of the application, Ref DM2018/02031, dated 28 October 2018, subject to the conditions in the attached schedule.

Procedural Matters

2. The titles of the names provided on the planning application and appeal forms differ, but following the appellant's confirmation, I have considered the appeal based on the appellant's title from the appeal form.
3. The description of development in the heading has been taken from the planning application form. In considering the proposal, the Council used a slightly different variation to this. However, the main parties agreed at the Hearing that, the description of development should focus on the development proposed and not the existing use of the site which was a matter in dispute. I agree. I have considered the appeal based on the description of development agreed between the main parties which is: "change of use of building to residential C3, internal layout to be changed with room divides."
4. A signed and dated Statement of Common Ground was submitted at the Hearing. I have had regard to this in reaching my decision.

Main Issues

5. The main issues are: (i) whether the proposal would be inappropriate development in the Metropolitan Open Land (MOL) having regard to the development plan and the National Planning Policy Framework (the Framework); and (ii) if the development is inappropriate, 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 required to justify the proposal.

Reasons

6. The appeal site is to the east of Fairlawn Road, next to the junction with Croydon Lane within the MOL. The MOL is a protective designation with the same weight as the Green Belt. A single-storey L-shaped building is on the land, with associated hardstanding and vehicular access. The land to the east of the building is grassed. Land outside of the site edged red, to the south is grassed. A combination of high brick walls or timber fences form the outer boundaries to the site. Landscaping and an existing timber fence separate land to the east of the building and land outside of the site edged red. The building has a red brick base and is finished in black painted timber. Mature trees and shrubs surround the site, with Croydon Lane lined by a mature hedgerow. Oaks Golf Course is to the north-west. The surrounding area is characterised by woodland, residential dwellings, a gypsy and traveller site, a prison and agricultural/horticultural development.

Planning history

7. Following two previous planning applications that were refused and withdrawn respectively¹, planning permission was granted by the Council on 28 March 2011 ('the stable planning permission') for *the use of land for equestrian purposes, construction of a building comprising stable block, tack room, hay and feed store, provision of a detached manure store, car parking space and hard and soft landscaping*². Condition 6, imposed on that permission, confined the stable building and equestrian use of the land to a private use of the site for the keeping of horses with no commercial or public activity whatsoever.
8. Subsequently, an Enforcement Notice (EN) was issued by the Council on 10 July 2014. This alleged: *"Without planning permission the change of use of the land from agricultural use to a mixed use comprising: the parking and storage of vehicles, use of the site as a showroom for a vehicles sales business, storage of building plant and machinery, storage of building materials, the erection of a building used as a commercial office and storage and the formation of hard surfacing."* The EN was appealed³. The appeal was dismissed and the EN upheld in September 2015, except requirement (vi) in Part 5 was deleted.
9. Within the decision, the Inspector stated that *"The building I saw was not a stable and hay and feed store; it appeared to be in use as an office and for storage and it was domestic in appearance and character."* The Inspector also said: *"I conclude, as a matter of fact and degree on the balance of probability, that it is more than likely that the building was constructed for a commercial office and storage use rather than as a stable and hay and feed store."*
10. In short, the stable planning permission had not been implemented at this point. The requirements of the EN had a compliance period of 12 months. The main parties agree that requirements i – v of the EN were complied with on 8 September 2016 following a site visit by a Council Officer.

Whether inappropriate development

11. Policy 24 of the Sutton Local Plan 2016-2031 (Local Plan) states the Council

¹ Council Refs: C2009/62085 and C2010/63374

² Council Ref: C2011/63884

³ Council Ref: EC13/0283 and Appeal Decision Ref: APP/P5870/C/14/2224205

will not grant planning permission for inappropriate development in the Green Belt or MOL unless other material considerations clearly outweigh the harm to the Green Belt or MOL and constitute very special circumstances. The re-use of buildings and structures in the Green Belt and MOL will be inappropriate unless it is for the following purposes: (i) agriculture, horticulture or animal-related businesses; or (ii) appropriate facilities for outdoor sport and recreation and cemeteries. The proposal would not accord with (i) or (ii), and thus, the proposal would not accord with Local Plan Policy 24 in terms of the re-use of buildings and structures.

12. Policy 7.15 of the London Plan (LP) says that the strongest protection should be given to London's Green Belt, in accordance with national guidance. It goes on to say that inappropriate development should be refused, except in very special circumstances.
13. Framework paragraph 143 says that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The Framework states that new buildings in the Green Belt are inappropriate unless they are one of the exceptions listed in paragraph 145. Framework paragraph 146 confirms that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
14. The exceptions listed in Framework paragraph 146 are broader than those listed in Local Plan Policy 24 d) which was drafted and found 'sound' against the 2012 version of the Framework. In terms of the case before me and the exceptions set out in the current version of the Framework, there is no change to exception d). However, exception e), which is concerned with material changes in the use of land was not an exception in the 2012 version of the Framework. I note the Council's points about not needing to replicate national policy in the development plan and it being difficult to routinely respond to changes made to national policy, but national policy has moved on. In this regard, Local Plan Policy 24 is more restrictive than LP Policy 7.15 which is consistent with the Framework. I therefore attach greater weight to LP Policy 7.15 and the provisions of the Framework, which is a material consideration.
15. The appellant's case is based on two scenarios which are both linked to the site's planning history and the EN. The first relates to the appellant's view that the EN 'under-enforced'; the second relates to the stable planning permission. In short, it is the appellant's position that either scenario requires the proposal to be considered against the exceptions set out in Framework paragraph 146.
16. In terms of the stable block and equestrian use, the Council accept that requirement iv) of the EN was met on 8 September 2016 in that the building on site was altered to accord with the approved plans listed in condition 8 of the stable planning permission. Consequently, the Council accepted at the Hearing that this amounted to the carrying out of operations and in terms of Section 56(1)(c) this date is when the development of land was initiated. There is no evidence before me which would indicate that I should disagree with this view.
17. As a result, exceptions d) and e) of Framework paragraph 146 are relevant, subject to the caveats about openness and the purposes. Exception d) allows for the re-use of buildings provided that the buildings are of permanent and substantial construction. There is no dispute between the main parties that the building is of a permanent and substantial construction. I have no reason to

- disagree. Hence, the proposal would accord with exception d).
18. The proposal would result in a material change in the use of land. The proposed site edged red would use part of that associated with the stable planning permission. There was no dispute between the main parties that the proposal would accord with exception e). Based on the evidence before me and my own observations made during my site visit, I agree with this view.
 19. Before I consider the openness and the purposes of including the land within the Green Belt, the submitted plans lead me to consider that the alterations proposed to the building, which would not alter its size, would not result in a disproportionate addition over and above the size of the original building. Hence, the proposal would accord with Framework paragraph 145 c).
 20. Local Plan Policy 24 and Framework paragraph 134 set out the five purposes of including land within the Green Belt. The Council, at the Hearing confirmed their view that the proposal would conflict with the purposes of: to check the unrestricted sprawl of large built-up areas; and to assist in safeguarding the countryside from encroachment. While, the use of the land and the building would change as a result of the proposal, the appeal scheme would be contained within the site's existing boundaries which would not alter. In fact, the proposal would only use part of the site edged red associated with the stable planning permission. Established vegetation around and next to the appeal site would help to safeguard the countryside from encroachment and prevent unrestricted sprawl. Therefore, the proposal would not conflict with the purposes set out in Framework paragraph 134 and Local Plan Policy 24.
 21. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The main parties provided evidence at the Hearing about the proposal's effect on openness and compared this to the stable planning permission.
 22. The proposed residential use would result in vehicles being parked on the site and journeys to and from the site. Such movements would be likely to arise daily. Added to this, domestic paraphernalia would be likely to occupy the land around the building. On their own, these matters have the potential to affect openness, both spatially and visually though the existing boundaries on and next to the site would considerably reduce the effect.
 23. The stable planning permission included an access, gates, an extent of hardstanding, and a bothy. There would be no changes to these. A manure store which formed part of the stable planning permission has not been built, but it could be. The stable planning permission is for private use only and not for commercial/public activity. However, vehicles would be likely to come and go from the site twice daily in connection with the three stables. Hay and feed deliveries could also take place, and it would not be unrealistic for horse boxes to be on the site, whether they be transient or stationed for a period of time.
 24. In comparing the proposal against the stable planning permission, domestic vehicle movements are likely to be similar or less frequent. Domestic paraphernalia is not likely to result in any greater harm than the manure store and/or horse boxes. On this basis, I consider that the proposal would have a neutral effect on openness, and thus, the appeal scheme would preserve it. The proposal would in this regard accord with Local Plan Policy 24.

25. The proposal would not accord with the two purposes listed in Local Plan Policy 24 in terms of the re-use of buildings, but I consider that the proposal would, when considered in the context of the stable planning permission, preserve openness and not conflict with the purposes of the Green Belt. Coupled with my view that the proposal accords with Framework paragraphs 145 c) and 146 d) and e), this leads me to a conclusion that the proposal would, in the context of LP Policy 7.16 and the Framework, not be inappropriate development. This conclusion outweighs the conflict I identified with Local Plan Policy 24.
26. As a result of my conclusion, the evidence before me relating to 'under enforcement' and the appellant's view that a deemed planning permission was granted on the site for use as a showroom for a vehicles sales business and use of the building as a commercial office, is not crucial to the outcome of the case.

Other considerations

27. Despite the conflict with Local Plan Policy 24, due to my conclusion on the first main issue, it is not necessary for me to reach a firm conclusion on the housing land supply position or explore whether or not the other considerations presented in this case clearly outweigh any harm so as to amount to the very special circumstances required to justify the proposal.

Conditions

28. I have had regard to the planning conditions suggested by the Council and the main parties' comments on them at the Hearing. I have imposed a plans condition in the interests of certainty. A condition about water consumption is necessary in the interests of conserving water resources. I have imposed a condition so that the car parking provision is retained on site once the dwelling is occupied in the interests of highway safety, given the use of Croydon Lane and the condition/width of Fairlawn Road.
29. While London Plan Policy 5.1 only requires carbon dioxide emission reductions in relation to major developments, Local Plan Policy 31 requires all minor residential developments to achieve at least a 35% reduction in regulated CO₂ emissions on site. I have therefore, as agreed by the main parties at the Hearing, imposed an amalgamated version of the suggested conditions so that the development achieves these reductions.
30. Conditions are not necessary in respect of drainage and flood risk/surface water run-off management measures given that the proposal would not change the building or area of hardstanding currently on site. Conditions in respect of hard and soft landscaping and boundary treatments are not necessary as landscaping on and around the site is mature; the hardstanding is existing; and as there are existing boundary treatments around the site. I note that there is no boundary fence or wall currently next to the proposed car parking spaces. However, this part of the site is well screened and set back from the road, and future occupants could erect a boundary here once the dwelling is occupied using permitted development rights. A condition to secure the implementation of an Ecological Mitigation Strategy would not be relevant to the development to be permitted as this relates to the stable planning permission.

Conclusion

31. For the reasons set out above, I conclude that the appeal should be allowed.

Andrew McGlone

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 100 revision B; 700 revision A; 701 revision A; 702 revision A; and 703 revision A.
- 3) Prior to the first occupation of the development, an Energy Statement incorporating 'as-designed' Standard Assessment Procedure (SAP) outputs shall be submitted to and approved in writing by the Local Planning Authority demonstrating how the dwelling will apply the Mayor's energy hierarchy (use less energy, supply energy efficiently and use renewable energy) to achieve at least a 35% reduction in CO₂ emissions below the target emission rate based on Part L1A of the 2013 Building Regulations and at least a 10% reduction in total emissions (regulated and unregulated) through on-site renewable energy generation. The development should exceed the minimum Part L1A emissions standards through energy efficiency measures alone. The development shall be carried out in accordance with the approved scheme with the 'as-built' SAP outputs submitted to and approved in writing by the Local Planning Authority before the dwelling hereby permitted is first occupied. These should show that the development has been carried out in accordance with the approved details. If the development is unable to meet the required reduction in CO₂ emissions through the approved scheme, then any shortfall shall be made up through the application of further sustainability measures unless otherwise approved by the Local Planning Authority in writing. All the approved measures should be carried out in accordance with the approved details and retained thereafter.
- 4) Prior to first occupation of the development, a completed Water Efficiency Calculator for New Dwellings must be submitted to and approved in writing by the Local Planning Authority to show that internal potable water consumption for the dwelling will be limited to 110 litres per person per day based on the Government's national calculation method for water efficiency for the purposes of Part G of the Building Regulations. The Water Efficiency Calculator should be accompanied by details of the location and type of all appliances or fittings that use water, the capacity or flow rate of any equipment and any rainwater or greywater collection systems incorporated as part of the development.
- 5) The car parking as shown in drawing no. 700 Rev. A shall be retained on site after the dwelling hereby permitted is first occupied for its designated purpose.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Matthew Green
Sonia Spooner

Green Planning Studio Ltd
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Iain Williams
Dean James
Emmanuel Agyei
Robert Favell

London Borough of Sutton
London Borough of Sutton
London Borough of Sutton
London Borough of Sutton

INTERESTED PERSONS:

Zoe Warren
John Feltham
Terry Feltham

DOCUMENTS

- 1 Signed and dated Statement of Common Ground
- 2 Approved plans C2011/63884/FUL
- 3 Suggested list of planning conditions, dated 18 December 2019