



Appeal Decision

Site visit made on 3 December 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal Ref: APP/X4725/C/19/3228505

Land at Slack Lane, Felkirk

- 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 Leslie Heppinstall against an enforcement notice issued by City of Wakefield Metropolitan District Council.
- The enforcement notice was issued on 11 April 2019.
- The breach of planning control as alleged in the notice is Without planning permission, unauthorised operational development on the Land consisting of the erection of two chicken huts and associated erection of three fenced enclosures.
- The requirements of the notice are i) Remove from the Land the two chicken huts; ii) Remove from the Land the three fenced enclosures for free range chickens.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld as set out below in the Formal Decision.

Preliminary Matter

1. It was apparent from my visit and agreed by the parties that the fencing subject to the notice had been removed from the site. However given that the fencing would appear to have been in place at the time the notice was issued, there would be no justification to vary the terms of the notice, even if the requirement to remove it has since been complied with. This would be in accordance with Section 181 of the Act, which states, amongst other things, that compliance with an enforcement notice shall not discharge the notice.

The appeal on ground (c)

2. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55(1) of the Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. A "building" is defined in s336 of the Act as including any structure or erection.
3. The appellant argues that the erection of the chicken huts did not constitute a building operation on the basis that they are not fixed to the ground; required no ground preparation or foundations; are secured in place under their own weight and can readily be moved.

4. It is generally recognised from settled case law that there are three primary factors to consider in assessing what is a building. These are (a) that it is of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence and (c) physical attachment, with no one factor being decisive.
5. It was evident from my visit that the huts are relatively small structures of limited height, constructed with timber panels with an apex roof. They are mounted on a combination of timber beams and concrete blocks, being secured under their own weight, without any evident fixings. However, notwithstanding the above, I am not persuaded from the information before me that the structures could easily be moved as single units, rather that they would first need to be dismantled, lifted using mechanical equipment or possibly dragged along the ground. It seems likely to me, for this reason, that the huts would have been initially constructed on the site. It also appears to me that the structures are intended to have a significant degree of permanence, self-evident from the length of time they would appear to have been in position. On balance, as a matter of fact and degree, I find that their installation amounts to operational development as defined by s55(1).
6. The site is undisputed to be less than 5 hectares in area. Having found that the chicken huts constitute buildings and therefore development, there is nothing to persuade me that they would have constituted permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). I conclude that the huts would have required planning permission.
7. With regard to the fencing, there is no dispute between the parties that its erection would have constituted an act of development. The appellant says that the fencing would have been permitted development, under the GPDO. This is disputed by the Council who claim that the enclosure fencing was some 2.4 metres in height, and that accordingly it would have failed to meet the height limitations set out within Schedule 2 Part 2 Class A of the GPDO. Given that the enclosure fencing has now been removed from the site it is not possible for me to reach a view as to whether it would have been permitted development.
8. Drawing the above considerations together, the appeal on ground (c) therefore fails.

The appeal on ground (a)

Ground (a) preliminary matter

9. The ground (a) appeal is that planning permission should be granted. However given that the enclosure fencing on the site has been removed, there are limited details of its design, scale and appearance before me for consideration. In the absence of such details, I am unable to conclude that the fencing would be acceptable and ought to be granted planning permission. I therefore take no further action in respect of this element of the alleged development, in relation to which the notice will be upheld.

Main Issues

10. The main issues are:

- Whether or not the chicken huts would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- The effect of the chicken huts on the character and appearance of the wider countryside.

Reasons

Green Belt

11. Policy CS1(f) of the Wakefield Council Core Strategy 2009 (CS) states that in the Green Belt development will conform to national policies relating to the Green Belt. The Framework establishes that certain forms of development are not inappropriate within the Green Belt. These include new buildings for agriculture. It is undisputed by the parties that the chicken huts relate to the keeping of livestock for the production of food and are therefore agricultural in nature. Both the main parties accept that, in this context, the huts would not constitute 'inappropriate' development. The Council, however, consider that notwithstanding this the development would still be harmful to the openness of the Green Belt, recognised within the Framework as one of its essential characteristics.
12. However in this regard I am mindful of case law¹ where the Court of Appeal endorsed the view that where development is found to be 'not inappropriate', applying paragraphs 89 or 90 of the original Framework (paragraphs 145 & 146 of revised Framework), it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt. Impact on openness is implicitly taken into account in the exceptions unless there is a specific requirement to consider the actual effect on openness. Therefore, for those exceptions within paragraph 145 where the effect of the development on openness is not expressly stated as a determinative factor in gauging inappropriateness, there is no requirement to assess the impact of the development on the openness of the Green Belt.
13. Therefore in light of this judgement, I find that the chicken huts are not 'inappropriate' development and do not result in harm to the openness of the Green Belt. Accordingly they do not result in conflict with Policy CS1(f) of the CS or with the Framework insofar as they seek to resist inappropriate development within and to protect the openness of the Green Belt.

Character and Appearance

14. The site is an elongated, broadly rectangular area set within a generally open and undulating agricultural landscape, interspersed with tree planting. It is close to various sporadically sited buildings, including residential properties and the Grade I listed Church of St Peter that make up the hamlet of Felkirk. There are a small number of buildings on the site, including a barn and some polytunnels that were the subject of previous planning permissions.

¹ Lee Valley Regional Park Authority v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

15. During my visit I was able to view the chicken huts from various public vantage points including from Slack Lane immediately adjacent to the site and from longer range, notably the public right of way leading off to the south and from Sandybridge Lane and the Rabbit Ings Country Park to the south west.
16. From certain parts of Slack Lane, the structures are visible through gaps in boundary planting. However their limited scale, timber construction and dark colouring and their visibility against background landscape features gives the structures a recessive appearance. From longer distance views, the structures are naturally even less prominent, generally appearing either substantially screened or nestled into the site and not at all visually obtrusive, where more exposed.
17. The Council has drawn my attention to a previous decision in which an appeal was dismissed regarding a proposed agricultural building on an adjacent site². However it seems to me that the Inspector in that case, which was prior to the aforementioned Lee Valley judgement, found harm to the openness of the Green Belt. He also found that the structure would result in an unacceptable intrusion into the rural setting. However, it appears that the building in that case was larger than those subject to the current appeal. I am not therefore satisfied that the circumstances of that case are sufficiently similar for me to conclude that it should automatically follow that planning permission should be refused in this case. In any event, each case must be considered on its individual merits.
18. The Council has also drawn my attention to a previous planning permission that it granted for the erection of a small barn on the site³, and in particular condition No 4, which precludes the development of structures on the site without the Council's permission. However this condition does not override the assessment that has led to the present decision.
19. The Council has set out within its officer report that the site is becoming increasingly commercial in nature, leading to an intensification of usage that is at odds with the open nature of the site. The enforcement notice in this case is concerned entirely with operational development. If the Council wished to rely on the finding of a material change of use by intensification, then this would need to be clearly set out in the notice. The nature of the use of the land is not therefore a matter for my deliberations in this case.
20. Concerns have been raised by third parties regarding nuisances such as odours, burning of waste, vermin and noise associated with the chickens being kept on site. However the notice does not seek to challenge the use of the land and I concur with the Council that these are issues that could potentially be addressed through environmental health legislation, should this prove necessary.
21. I therefore conclude that the chicken huts, either alone or cumulatively with other existing development on the site, do not result in harm to the character and appearance of the wider countryside. Accordingly they do not conflict with Policy D9 of the Wakefield Council Development Policies Document 2009 (DPD) or with the Framework insofar as they seek to secure high quality design that respects and enhances local character.

² Appeal ref APP/X4725/A/10/2139087

³ Ref 17/01486/FUL

Other Matters

22. The Council and local residents have raised concerns with regard to the potential highway safety implications of customer parking on the roadside, adjacent to the site. Whilst there is nothing to persuade me, given the limited scale of development, that visits to the site to purchase eggs produced there, would be frequent or generally involve more than one customer at a time, I concur with the view that the relative narrowness of the highway adjacent to the site justifies steps to avoid any undue parking there. In this regard the main parties have raised no objection to the imposition of a planning condition requiring provision within the site of a visitor parking space. I agree that this would be a proportionate requirement and consider that it would not result in undue traffic related disturbance, given the likely limited speed and frequency of vehicles. Although concern has been expressed about the siting of a refrigerator at the site, this is not a matter for my consideration in this case.
23. I have a duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the effect of the proposal on the setting of certain listed buildings in the locality, including the Grade I listed Church of St Peter and the Grade II listed Felkirk House, Old Schoolroom and various church memorial structures.
24. It seems to me that the special interest of these buildings derives from their age, form and appearance. The appeal site is substantially separated from these various listed buildings and due to intervening buildings, there is little inter-visibility between the sites. In this context, I consider that the chicken huts do not result in harm to the setting of any listed buildings.
25. A concern has been raised that the development is ultimately intended to justify the construction of a house on the site. However, I am limited to considering the development that is set out within the deemed application on its own merits and any development proposal that may or may not arise in the future is outside the scope of my consideration. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission.
26. With regard to concerns about the appellant not complying with previous planning conditions, this is not a relevant consideration in this case. Similarly the concern that a right of way has become blocked in the past resulting in inconvenience is a matter that could be addressed through alternative legislation.

Conditions

27. Conditions are needed to secure the provision of a visitor car parking space on the site, in the interests of highway safety, and to confirm the relevant plans in the interests of certainty.

The appeal on ground (g)

28. The appeal on ground (g), relates only to the part of the development for which planning permission will be granted, subject to conditions. The appeal on this ground does not therefore need to be considered.

Conclusion

29. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decision

30. It is directed that the appeal is allowed insofar as it relates to the land shown edged red on the plan annexed to the notice and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of two chicken huts on Land at Slack Lane, Felkirk, subject to the following conditions:

- 1) No later than three months from the date of this permission a car parking space shall be laid out within the site, in accordance with details to be previously submitted to and agreed with the Local Planning Authority, to enable a visitor to enter and leave the site in forward gear. That space shall thereafter be kept available at all times for this purpose. The submitted details shall include means of access, the dimensions and location of the parking area, construction details and surface treatment, and surface water drainage.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans (insofar as they relate to the two chicken huts): 001 – Site Plans; 003 – Proposed Elevations.

31. The appeal is dismissed in respect of the remaining part of the development and the enforcement notice is upheld and planning permission is refused in respect of the erection of three fenced enclosures on Land at Slack Lane, Felkirk, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR