



Appeal Decision

Site visit made on 20 August 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Appeal Ref: APP/R1010/W/19/3220726

**The Laurels, Ruthyn Avenue, Barlborough, Chesterfield, Derbyshire
S43 4EX**

- 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 Dominic Manfredi against the decision of Bolsover District Council.
 - The application Ref 18/00508/FUL, dated 2 October 2018, was refused by notice dated 21 November 2018.
 - The development proposed is: Retention of and alterations and revisions to proposed stable block on the same footprint as the (recently) previously demolished stables.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant requested additional time to submit comments on the Council's statement for personal reasons. The Council did not agree to the proposed extension of time and asked that were I to accept such comments it be allowed the opportunity to comment on any substantive additional representations. Whilst I have accepted the appellant's final comments, I consider that the Council's position is not prejudiced and therefore I have not sought its further views on the matters raised.

Main Issue

3. I am aware of the background to the submission of the proposal, including the refusal of planning permission for the retention of the existing building and an appeal decision¹, and the subsequent action by the Council requiring the removal of the building and an appeal against an enforcement notice by the appellant². This appeal relates to an altered building and I deal with it on the basis that it is a new proposal.
4. The appeal site is within the Green Belt. The main issues are firstly, whether the proposal would be inappropriate development; secondly, the effect on the openness of the green belt; and thirdly if the proposal would be inappropriate development, whether any harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

¹ Appeal Ref. APP/R1010/D/17/3168460 dated 30 May 2017

² Appeal Ref. APP/R1010/C/17/3170679 dated 30 November 2017

5. I also consider whether the proposal would cause any other harm, namely the effect of the development on the character and appearance of the area.

Reasons

Inappropriate Development and openness

6. The National Planning Policy Framework establishes that the Government attaches great importance to Green Belts, the essential characteristics of which are their openness and their permanence. The Green Belt serves five purposes including assistance in safeguarding the countryside from encroachment.
7. The parties disagree over whether the building which has been erected is inappropriate development. For the purposes of the Framework, with certain exceptions, the construction of new buildings within Green Belts is inappropriate. Inappropriate development is, by definition, harmful to the Green Belt and should only be approved in very special circumstances. A number of exceptions to this general principle are set out within the Framework³, including:
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, 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;
 - d) the replacement of a building, provided that the new building is in the same use and not materially larger than the building it replaces;
 - g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have greater impact on the openness of the Green Belt than the existing development.
8. Of the above exceptions, the appellant refers to b) and g). Whilst the appellant refers to exception c) which relates to the extension or alteration of an existing building provided that it does not result in disproportionate additions over and above the size of the original building he does not argue this further and in my view c) is not relevant to the circumstances of the appeal.
9. In relation to the proposed use of the building for outdoor sport or recreation, the building, as altered, would be capable of performing functions associated with an equestrian use, in terms of layout, the size of openings and its relationship to the wider site. The appellant accepts that at the present time the building or the land are not used for equestrian purposes, however arrangements would be put in place for the keeping of horses by his family to commence should the proposal proceed. He also states that his mother, who built the current building, kept horses prior to her death and has submitted a signed statement in support of the point.
10. The parties disagree over whether the building that previously existed on the site was used as stables. I have limited information before me on the matter. The appellant argues that the original stable had been on the site for many years. However, the photographic evidence submitted by the appellant is

³ National Planning Policy Framework (NPPF) February 2019 paragraph 145

- undated, shows a building in a very run-down condition and it is not possible to gauge whether any use as stables was active at the time.
11. It is clear from the aerial photography supplied by the Council⁴ that the pre-existing building had been on site for many years. Although the statement from the appellant is clear that his mother kept, and bred, horses in the past, it is lacking in any detail in terms of how many horses were kept and between what dates. It falls short of demonstrating the lawfulness of the use of land for the keeping of horses, whether the scale of the stable use was one which potentially could have constituted a separate use, or whether it was only incidental to the enjoyment of the dwelling. The appellant accepts that change of use planning permission does not exist and contends that it is not necessary to have such permission for exception b) to apply.
 12. I am sympathetic to the appellant's personal circumstances. However it cannot be the intention of the Framework that a new building for sport or outdoor recreation purposes without an active use at the time; an identified need, other than a statement that it is intended at some future time to acquire an unspecified number of horses for use by the family; or change of use planning permission, should be excluded from inappropriate development.
 13. I therefore find that exception b) is not engaged as there is neither an existing outdoor sport or recreation activity for which the stables, tack room and associated storage are required, or any detailed plans or binding commitment to commence the keeping of horses, or justification for the size of stables proposed, or a change of use planning permission if that is required.
 14. It is also the case that the proposal must preserve the openness of the Green Belt and must not conflict with the purposes of including land within it, which include assisting the safeguarding of the countryside from encroachment, for the requirements of exception b) to be met.
 15. The Inspector dealing with the first planning appeal was satisfied that the existing building was a replacement for the previous building on the site but that since the original building no longer existed, it was not possible to engage exception d)⁵ retrospectively. The appellant, through the Counsel's Opinion he has obtained, disagrees with the approach as a point of law. The Opinion refers to a High Court case in support of this point⁶ which post dates the previous Inspector's decision.
 16. I have considered whether the building cannot be regarded as a replacement for an earlier building as the uses are different, in that the original building included use as kennelling in addition to stabling, and was smaller than the proposed building. The appellant accepts that although the building, if approved would be used as stables but not kennels, the benefit of the mixed use would be retained and that it would not be essential that he carries out both aspects of the consent.
 17. However, the plans forming the subject of the appeal do not propose stables and kennels, although that is what is shown on the 'as built' plan. In fact, the plans for the altered building, forming the subject of the appeal, show that the building would only be used as stables. I must determine the appeal on the

⁴ Taken from Google Earth, dated 2010

⁵ Referred to as 'bullet point 4' in the decision, based on the 2012 version of the NPPF

⁶ Euro Garages Ltd v SSCLG [2018] EWHC 175 (Admin)

basis of the plans before me, and therefore in the strictest sense the proposed building cannot be a replacement of the original as it does not comprise the same uses.

18. I have not been provided with the date of the demolition of the original building, or exact date of the erection of the current structure, although the Council became aware of the matter in 2015. Were there to have been a lengthy period of time between these events, it could be argued that the new building was not in the strictest sense a replacement of the old. The Council does not argue that there was a significant break between demolition of the old building and construction of the new.
19. In any event, exception d) is only engaged if the building is not materially larger than the building it replaces.
20. The plans submitted by the appellant and the aerial photography supplied by the Council enable a comparison to be made of the size of the original building and the building currently on site. The Council has estimated the size of the original building and compared that with the dimensions of the current building. The Council states that the new building is 4m longer and 1m greater in width and has increased the floorspace by 140%. Based on my observations on site and the aerial photography the figure suggested for the % increase appears to be a significant overestimate.
21. Great care must be taken in using aerial photography as the basis for measuring the pre-existing buildings, however appellant acknowledges that the new building is 3.5m longer than the previous building.
22. My understanding of the evidence is informed by what I saw on my site visit. I was able to compare the positioning of the end walls of the existing building with the alignment of other existing buildings on the site and compare this with the aerial photograph dating from 2010. By making these comparisons it is clear that the existing building is significantly larger than the original building in terms of its length and overall area. Most obviously, the building is significantly longer at the end adjacent to the other outbuildings. The proposal does not materially reduce the length or width of the existing building, although it does reduce the height and make some elevational changes.
23. I therefore find that the building, as proposed, would be materially larger than the original building it replaces and exception d) is not engaged.
24. The site is part of the existing curtilage of The Laurels. There is no suggestion that the building occupies land last used for agriculture, therefore I am satisfied that it constitutes Previously Developed Land as defined in the Framework. The Council argues that the building falls outside of the existing group of buildings but concedes that it is built mostly on previously developed land. I am therefore satisfied that exception g) is relevant to the consideration of inappropriateness.
25. To conclude that the proposal does not comprise inappropriate development under exception g) I would need to find that it does not have a greater impact on the openness of the Green Belt. When considering the openness of the Green Belt, both the visual and spatial impacts should be considered, having regard to the locational context. I have already found that there is a spatial impact on openness due to the material increase in the size of the proposed

building compared with the original building. I also find that this spatial impact would be manifested in the visual appearance of the site and a perceptible loss of openness.

26. The property is well screened from the motorway by a dense belt of trees, and from Ruthyn Avenue by houses. I viewed the site from the public right of way leading from Ruthyn Avenue towards the motorway. From there a significant part of the existing building is visible. It noticeably intrudes into the field beyond the line of the existing outbuildings. Whilst under the proposal the scale and massing of the building would be reduced by the removal of the pitched roof, the footprint of the building would remain the same and there would be an appreciable loss of openness.
27. The retention of the development, in its amended form, would lead to permanent erosion of openness in spatial and visual terms. Even accepting the principle of replacement of a pre-existing building, there would be greater impact on the openness of the Green Belt and the proposal would therefore constitute inappropriate development, which the Framework establishes should not be approved except in very special circumstances.

Any other harm – character and appearance

28. The building as altered would have a very shallow mono-pitch roof and rendered walls and could be described as utilitarian in appearance. The Inspectors who dealt with the previous appeals took the view that the development was not harmful to the character and appearance of the countryside. In the case of the first decision, the Inspector considered that the existing building has a neutral effect on the character and appearance of the area. This was based on an opinion that it was not prominent from public viewpoints.
29. I have considered whether the alterations to the building, including the replacement of the dual pitched roof with one of a shallow mono pitch, would appear out of keeping with the setting. Although it is clear from photographs that the original building had a dual pitched roof for the most part, the use of a mono pitch would not be untypical for such a building.
30. As a separate consideration from that of openness, the proposal must be considered against Saved Policy GEN 2 and ENV 3 of the Bolsover District Local Plan (2000) (the BDLP) which require, amongst other things, that developments which create materially harmful impacts on the environment will not be supported unless the effects are outweighed by the benefits, and where a countryside location is necessary.
31. I have already noted that the site is visible from the public right of way near to Ruthyn Avenue. Viewed from there the proposal would have a slight adverse effect on the character and appearance of the area, even though the height of the structure would be reduced. The local plan policies set the test as being materially harmful. Whilst I consider there to be some impact on character and appearance, in isolation I do not conclude that these effects would be materially harmful. I therefore conclude that the requirements of policies GEN 2 and ENV 3 of the BDLP would be met.

Other Considerations

32. The appellant has based his case on a contention that the proposal is not inappropriate development, and therefore considers there to be no need to establish very special circumstances. Therefore, no other considerations have been put forward in favour of the proposal.

The Green Belt Balance

33. I have found that the proposal would be inappropriate development in the Green Belt and that it would materially erode the openness of the appeal site.
34. The Framework sets out that substantial weight should be given to any harm to the Green Belt, and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness or any other harm resulting from the proposal, is clearly outweighed by other considerations. No very special circumstances are advanced in this case.
35. In addition, I have found conflict with the Framework and the aims of Saved Policy GEN 9 of the BDLP which taken together, and amongst other matters seek to protect the openness and permanence of Green Belts.
36. I have found no conflict with Policies GEN 2 and ENV 3 of the BDLP, a neutral factor in the balance.
37. No material considerations justify a decision other than in accordance with the development plan, with which the proposal would conflict. Accordingly, for the reasons set out above, and taking into account all other matters raised, the appeal is dismissed.

Conclusion

38. The appeal is therefore dismissed.

Tim Wheeler

INSPECTOR