The Planning Inspectorate

Appeal Decision

Site visit made on 7 July 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19TH AUGUST 2020

Appeal Ref: APP/E2734/C/19/3244030
Carr Side Farm, Newall Carr Road to Carr Side, Clifton, LS21 2HD

- This appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- This appeal is made by Mr George William Tate against an enforcement notice issued by Harrogate Borough Council.
- The enforcement notice, numbered 19/00104/NENFNO, was issued on 21 November 2019.
- The breach of planning control as alleged in the notice is:
  (i) Without planning permission the change of use of agricultural land to the east of the dwelling house to form a residential garden with the erection of greenhouse, outbuilding, bridge, the laying of a hard surface and siting of domestic paraphernalia.
  (ii) Without planning permission the change of use of agricultural land to the west and north west of the dwelling house to form a residential garden
  (iii) Without planning permission the change of use of agricultural land to the west and north west of the dwelling house to form a residential garden with the erection of topiary, rockery, installation of 6 concrete pads and cables and siting of domestic paraphernalia
- The requirements of the notice are:
  Land to the east identified on Map No#1
  a) Cease the use of the land for use as a residential garden
  b) Permanently remove any domestic paraphernalia from the land such as planting boxes, tools, rotary dryer, trampoline, chairs, chicken hutch and football goals from the land
  c) Permanently remove the greenhouse from the land
  d) Permanently remove the hardstanding and replace with soil and grass seed
  e) Permanently remove the footbridge and pillars from the land
  Land to the west identified on Map No#2
  f) Cease use of the land for use as a residential garden
  g) Permanently remove the topiary and rockery from the land and replace with top soil and grass seed
  h) Permanently remove the concrete pads and electric cables from the land and replace with top soil and grass seed
  i) Permanently remove any domestic paraphernalia from the land such as football goals
  Land to the north west identified on Map No#3
  j) Cease use of the land for the use as a residential garden
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. The development plan includes the Harrogate District Local Plan 2020 ("the Local Plan") which was adopted in the course of the appeal (March 2020). This has superseded the previously saved local plan policies which the Council considered when the notice was issued (and which are referenced on the notice). The appeal has been determined in accordance with the Local Plan policies (in particular Policies GS4, GS6 and NE4) and the National Planning Policy Framework ("the Framework").

Ground (a) and the deemed planning application

3. The appeal under this ground seeks planning permission for the matters stated in the notice. The notice covers three separate areas on the site, as identified on Maps No# 1, 2 and 3. The matters stated in the notice are the material change of use to a residential garden with the associated operational development of the greenhouse, bridge, hard surface, concrete slabs and other and built structures such as raised beds and fences and siting of domestic paraphernalia.

4. The appellant is not challenging requirements f), g), i), and j) on the notice and I have not considered these requirements are part of the application for planning permission deemed to have been made under section 177(5) of the Act. The appellant is therefore seeking planning permission for:

    - the use of the area shown on Map No#1 as a kitchen garden with associated greenhouse, planting boxes, chicken hutch, hardstanding, bridge and pillars; and

    - the retention of the concrete pads and electric cables on Map No#2 (but not the change of use to residential garden for that area).

    The appellant is not seeking planning permission for Map No#3.

5. The main issues in the ground (a) appeal are:

    - whether the development is inappropriate in the Green Belt having regard to the Framework and relevant development plan policies;

    - the effect on the openness of the Green Belt;

    - the effect of the development on the character and appearance of the area (with special reference to the AONB); and

    - Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

6. The appeal site is located outside Otley in the Nidderdale Area of Outstanding Beauty ("the AONB") and the Green Belt.

7. The consequence of the change from an agricultural use to use as residential garden is to extend the urbanised area (as a result of the built elements, siting of domestic paraphernalia and proposed provision of lighting on the agricultural land). This affects the openness of the Green Belt in both spatial and visual terms. The change is evident from within the site and from a wide area outside of it. Taking account of the locational context of the development and its visual implications when applying the approach set out in the Euro Garages Case[1], I assess that the harm caused to the openness by the development is significant in this case. The change of use clearly conflicts with the purpose of Green Belts set out in paragraph 134 c) of the National Planning Policy Framework: "to assist in safeguarding the countryside from encroachment."

8. I therefore conclude that the material change of use to a residential garden and the construction of the concrete pads with wiring for proposed lighting on area identified on Map No#2 is inappropriate development when assessed against the Framework policy in paragraphs 143 – 147. Material changes of use are inappropriate development where they fail to preserve openness and conflict with the purpose of including land within the Green Belt. The material change of use does not fall within one of the exceptions set out in paragraphs 145 or 146 and it is causing harm to the Green Belt.

9. The Council also considered it expedient to issue the notice due to the harm caused to the character and appearance of the area which is an AONB. The statutory purpose of AONBs is to conserve and enhance the natural beauty of the area[2]. The site is located on the rural hillside outside of Otley and it is predominantly agricultural land consisting of gently rolling green hills with scattered buildings, trees and woodland. The site is clearly visible on the hillside from many points outside of the site and as agricultural land would contribute to the character and natural beauty of the countryside and special qualities of the AONB.

10. The material change of use to a residential garden with associated structures and provision of lighting infrastructure is urbanising and detracts from the rural and largely undeveloped character of the area. This causes harm to the character and appearance of the natural landscape and area in the AONB contrary to Policy GS6 of the Local Plan. Paragraph 172 of the Framework requires that great weight is given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty and whilst I find that the level of harm in this case is moderate I still afford it considerate weight.

11. The Framework requires that any harm to the Green Belt must be given substantial weight.[3] The development is not modest in scale when considered in the local context and the current use of the land (including the kitchen garden) are normal residential uses which could be expected to take place within the existing residential land and I therefore give the appellant's arguments regarding this limited weight. I have not been presented with other considerations which would clearly outweigh the overall harm caused to the Green Belt and the character and appearance of the area and the AONB. The appellant argues that the development on the area identified in Map No#1 sits within a notional concept of a built envelope, but this has no relationship to

[1] Euro Garages Ltd v SSCLG & Anor [2018] EWHC 1753 (Admin)
[2] Section 82 of the Countryside and Rights of Way Act 2000
[3] Paragraph 144 of the Framework.

any actual existing physical feature on the land other than the buildings. This is an encroachment onto previously open agricultural land which enlarges the domestic appearance of the site in the rural setting causing harm to the character and appearance of the AONB, contrary Policies NE4 and GS06 of the Local Plan. The area shown within Map No#2 does not fall within this notional built envelope in any event, as it is located on the other side of the house, and lighting columns are not a usual or appropriate feature within the Green Belt or an AONB. The very special circumstances necessary to justify the development do not exist.

Conclusion

12. The development is inappropriate development in the Green Belt and causes material harm to the Green Belt and the character and appearance of the area and the AOBN. This is contrary to the objectives of Policy NE4 of the Local Plan to protect and enhance the landscape character of the area and policy GS06 of the Local Plan to protect the natural beauty and special qualities of Nidderdale AONB. It also contrary to the protection of the Green Belt objectives found in GS04 of the Local Plan and paragraphs 144 – 147 of the Framework.

Reasons

13. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Zoë Franks

INSPECTOR