



Appeal Decision

Site visit made on 9 February 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2021

Appeal Ref: APP/X1355/C/20/3258357

Land at Pity Me Nursery, Stank Lane, Pity Me, Durham DH1 5GZ

- 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 Mark Green, Pity Me Nursery, against an enforcement notice issued by Durham County Council.
- The enforcement notice was issued on 24 July 2020.
- The breach of planning control as alleged in the notice is Without planning permission the operational development consisting of large extension and creation of large pond.
- The requirements of the notice are a. Remedy the breach of planning control by restoring the land to its condition before the breach took place; b. Permanently remove the unauthorised extension to the building and reinstate the building and land back to its previous state as shown on Drawing No. 1231 03 entitled 'Proposed Layouts' which was approved through Planning Permission 4/12/00348/FPA.
- The period for compliance with the requirements is twelve 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.

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 in the terms set out below in the Formal Decision.

Preliminary Matter

1. The Council has confirmed in its statement that since the enforcement notice was issued, the new County Durham Plan (CDP) was adopted in October 2020. This plan supersedes the City of the Durham Local Plan 2004 (CDLP) which, as the Council confirms within its statement, has now lapsed.
2. Consequently the CDLP policies referred to in the notice as being relevant to the development are no longer extant and I have not had regard to them in reaching my decision. Accordingly I have had regard to Policies in the CDP, brought to my attention by the Council, on which the appellant has had the opportunity to comment. I am therefore satisfied that the adoption of the new CDP has not resulted in injustice to the appellant.

The appeal on ground (a)

Main Issues

3. The appeal on ground (a) is that planning permission should be granted. The main issues are:

- whether the development 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 development on the openness of the Green Belt;
- The effect of the extension on highway safety.
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt policy context

4. Paragraph 133 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
5. Paragraph 145 of the Framework establishes that new buildings within the Green Belt are 'inappropriate' unless, amongst other things, it involves the extension or alteration of a building, provided that it does not result in disproportionate additions over and above the size of the original building.
6. Paragraph 146 states that certain other forms of development are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. The other forms of development referred to include engineering operations.
7. Policy 20 of the CDP states that development proposals within the Green Belt will be determined in accordance with national planning policy.

The Extension

'Inappropriate' development

8. It is therefore necessary to determine whether the extension, the subject of the notice, and any other extensions that have previously been added should, in combination, be regarded as disproportionate to the size of the original building that has been extended.
9. For the purposes of this calculation the original building, to which the coffee shop is adjoined, is the rectangular building identified as the storage area, store, office and toilet facilities. It is apparent from the information before me that the original building was previously extended, with the introduction of a coffee shop, following a successful planning application in November 2012. The extension, the subject of this notice, provides an enlarged seating area to serve the coffee shop.
10. Whilst there are also a number of sizable polytunnels present on the site, they are separate structures that do not form part of the aforementioned original individual building. They, along with the parts of the site given over to external

cultivation, do not therefore have a bearing on the question of 'inappropriate development' in the context of guidance in the Framework.

11. From the plans provided, it is evident that the cumulative additional floorspace, resulting from both the original and latter coffee shop extensions, significantly exceeds that of the original building. Despite having relatively shallow roof pitches and appearing somewhat shorter than the original building, collectively they are prominent extensions, sitting further forward on the site. I do not therefore concur with the view that, in combination, they are subservient or recessive features. I am firmly of the view that in these circumstances the extensions, cumulatively, cannot be regarded as proportionate in size to the original building. For the aforementioned reasons I conclude that the extension constitutes inappropriate development in the Green Belt.

Openness

12. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area.
13. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect¹. Aside from taking up space, it was apparent from my visit that the extension, by its nature, results in a degree of visual intrusion because it adds quite significantly to the proportion and therefore sense of building development present on the site. This is more apparent from close range within the site, but nevertheless is still a material impact when compared to the previous hardstanding area that it has replaced.
14. By contrast, from distance at the site boundary, adjacent to the A167 road, the building is situated at lower ground level and appears well assimilated into its surroundings due to the rising landform beyond. It is also well screened from Stank Lane to the rear of the site by the presence of mature planting.
15. This however does not overcome the harm that I have identified. Overall I consider that the development results in incremental urban sprawl and as such causes moderate harm to the openness of the Green Belt.

Highway Safety

16. The Council says that the appellant has so far failed to make modifications to the access arrangements to the site, from the A167 road, through the implementation of a vehicle deceleration lane. These modifications were apparently required as a condition of a previous planning permission for the original extension.
17. The appellant states that the present extension is a response to growing customer demand and has resulted in the creation of some 15 additional jobs. The Council, supported by the Highway Authority, is concerned that the present extension will lead to more traffic visiting the site, in terms of additional staff and customers, and accordingly that this would result in further harm to highway safety.

¹ *Turner v SSCLG & East Dorset Council* [2016]

18. From my visit it was apparent that vehicular access to the site is directly from the dual carriageway. There is a roundabout junction a short distance to the south, from which traffic continues to accelerate as it passes the site. I am not aware that the existing arrangement has specifically led to any traffic accidents, including during the time that the latest extension has been in place. However, I concur with the view that the extension, in accommodating more clients and generating increased staff numbers, would be likely to result in additional car-borne visits to the site. I am concerned that the sudden slowing down of vehicles approaching the site entrance would be somewhat counter-intuitive and contrary to the expectations of accelerating passing motorists.
19. There is nothing to persuade me that the existing arrangements do not therefore present a materially greater risk of vehicle collisions and harm to highway safety. Accordingly, in the absence of modifications to the access arrangements, there is conflict with Policy 21 of the CDP and with the Framework insofar as they seek to protect highway safety. However I acknowledge that if I were to find that the development was otherwise acceptable, it would be possible to impose a condition requiring the extension be made physically inaccessible for use, until such time as the modified access arrangements had been implemented, thus allowing for mitigation.

The Pond

20. The pond occupies a relatively extensive area in the southern part of the site. However by its nature it appears as a natural feature that does not add any built volume. I am therefore satisfied that the pond preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. I therefore find that it does not constitute inappropriate development in this case.

Other considerations

21. I have had regard to the appellant's other representations in support of the appeal. It is stated that the development is a form of diversification of the business. However there is no evidence before me that income from the coffee shop is necessary to sustain the primary business use of the site as a nursery, and I therefore attach very limited weight to this consideration.
22. I have no reason to doubt that the increase in business and customer demand has resulted in the creation of additional jobs. Whilst obviously this is a positive factor I concur with the views of the Inspector who previously decided a separate appeal at the site, where it was reasoned that the site is not in a deeply rural location distant from other employment opportunities². This consideration therefore only attracts limited weight in favour of the extension.
23. Whilst the extension might be regarded as providing some rationalisation of the external seating area and greater customer convenience, again I give this only very limited weight considering that there is no suggestion from the breach alleged in the notice that the coffee shop in its current form amounts to a primary use of the site.
24. The appellant states that the extension has been constructed on an area of previous hardstanding, used for storage and outdoor seating, which could be seen to some degree as having been previously developed. However there is

² Appeal ref APP/X1355/A/10/2134931

no dispute that the primary use of the site is that of a nursery. This type of use would fall within the definition of agriculture as set out in the Act. The Framework expressly excludes land occupied by agricultural buildings from the definition of previously developed land. I am not therefore persuaded that the fact the footprint of the building may have been constructed on a previous hardstanding and utilises a pre-existing wall would attract any support in terms of national Green Belt policy. Whilst I accept that there would be a degree of environmental benefit from re-using existing materials on the site, this benefit is small in relative terms and attracts very limited weight in support of the development.

25. The appellant states that the site is in a 'sustainable location' suggesting that journeys to the site from the built-up area of Durham would be relatively short. However the development of the site in this case involves catering facilities, in relation to which there is no suggestion that there are not already more centrally located and accessible facilities within that built-up area. I therefore attach very limited weight to this consideration.

Green Belt balance

26. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt.
27. With regard to the extension I have found harm to the Green Belt by way of inappropriateness and to its openness. I have also found harm in terms of highway safety, although this could be satisfactorily mitigated through a condition requiring that the extension may not be used until the deceleration lane is provided and operational.
28. Nevertheless I have balanced the harm to the Green Belt against the other considerations referred to above. However for the reasons given, having also had regard to all other points raised by the appellant, they do not clearly outweigh the harm identified.
29. The very special circumstances necessary to justify the development have not therefore been demonstrated. Consequently the extension conflicts with the Green Belt protection aims of the Framework and with Policy 20 of the CDP. The ground (a) appeal therefore fails in respect of this element of the development.
30. The appellant states that the extension would represent the sustainable economic growth of the business in a sustainable location. However paragraph 11 of the Framework indicates that sustainable development would be inconsistent with granting planning permission where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. In this regard I have concluded above that there would be conflict with Green Belt policy and therefore with the protection of an asset of particular importance. This is a clear reason for refusing development and I do not therefore agree that the extension amounts to sustainable development, even if journeys to the site from the built-up area of Durham would be relatively short.
31. With regard to the pond, I have found that this does not result in harm to the openness of the Green Belt and does not therefore constitute inappropriate

development. Consequently it conforms with the Framework and the aforementioned development plan policy. The ground (a) appeal therefore succeeds in respect of this element of the development.

Conclusion

32. 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 planning permission which I will grant by virtue of s180 of the Act.
33. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have effect with regard to the 'large pond', because this benefits from planning permission and is therefore lawful for planning purposes.

Formal Decision

34. The appeal is allowed insofar as it relates to the pond 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 operational development consisting of the creation of large pond, in accordance with Drawing 18 04 03, so far as relevant to that part of the development hereby permitted, on Land at Pity Me Nursery, Stank Lane, Pity Me, Durham DH1 5GZ.
35. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the large extension, and planning permission is refused in respect of operational development consisting of Large extension on Land at Pity Me Nursery, Stank Lane, Pity Me, Durham DH1 5GZ, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR