



Appeal Decision

Site visit made on 21 March 2022

by Elizabeth Pleasant BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Appeal Ref: APP/P3420/C/21/3276802

Land at Hazeley Paddocks , Keele Road, Keele, Newcastle under Lyme ST5 5AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Sophie Thorley against an enforcement notice issued by Newcastle-under-Lyme Borough Council.
 - The notice was issued on 19 May 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a timber pergola in the location shown edged red on the attached plan marked "Plan 2" and the construction of a concrete plinth/hardstanding in the location shown cross-hatched on the attached plan marked "Plan 2".
 - The requirements of the notice are to remove the pergola and concrete plinth/hardstanding and all material used in their construction from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Applications for costs

1. An application for costs was made by Mrs Sophie Thorley against Newcastle-under-Lyme Borough Council. That application is the subject of a separate Decision.

Decision

2. It is directed that the enforcement notice be varied by deleting all the wording in paragraph 5 and replacing it with:
 - "1. Remove all the fencing, including gates and netting from the pergola.
 - 2. Remove the concrete plinth/hardstanding and all material used in its construction from the Land."
3. Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Appeal on ground (c)

4. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control.

Pergola/Chicken Run

5. The appellant believes the structure should not be considered to be a building and constitute operational development. However, if I were to disagree, it is further argued that the structure is permitted development by virtue of a grant of planning permission under Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). Furthermore, the appellant believes that the structure has been approved as part of an approved landscaping plan for the barn conversion.
6. Section 55 (1) of the Town and Country Planning Act 1990 (the Act) includes in the definition of the word "*development*", the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 336(1) of the Act states that a "building" includes "any structure or erection". Furthermore, it is established case law that to constitute "a building" for the purposes of the Act there are three specific tests to consider, namely permanence, size and physical attachment. However, no single factor is decisive in the assessment, which is a matter of fact and degree in each case.
7. The appellant does not dispute that the structure is fixed to the ground and intended to be a permanent fixture. However, it is her view that given its position, lightweight nature, simple and open construction, it does not have sufficient size to mean that it is operational development.
8. The structure has a floor area of approximately 30sqm and a height of 2.45m. Picket fencing has been erected between the timber uprights to partially enclose the structure, and open areas above this fencing and the roof have netting attached to them. The structure by reason of its size alone could not to my mind be considered small scale. Although elements of it are not fully enclosed or solid, overall, the structure has a significant physical presence.
9. In terms of the three tests, I consider that because of its size, physical presence and degree of permanence, a building operation has occurred within the meaning of development under s55 (1) of the Act. I have had regard to another appeal decision brought to my attention by the appellant¹. However, in that case the shepherd's hut had been sited and brought onto the land in its final form, rather than being erected on it. Furthermore, it was not physically attached to the land. I do not therefore consider that the siting of the shepherd's hut is directly comparable to the pergola/chicken run which is the subject of this appeal, and which I have considered on its own facts. I therefore give this consideration little weight.
10. To benefit from a grant of planning permission under Article 3, Schedule 2, Part 1, Class E of the GPDO the development must be within the curtilage of a dwellinghouse. Planning permission was granted on 31 March 2017 for the conversion of a barn to create the single family dwelling now known as Hazeley Paddocks (Ref:17/00073/FUL). Considering the description of the approved development, the approved site plan, and other factors set out in established case law which should be taken into account when considering what land might constitute the curtilage of a building, as a matter of fact and degree, I am not persuaded that the site of the pergola/chicken run does lie within the curtilage of the residential property known as Hazeley Paddocks. However, even if I am

¹ APP/F1610/C/20/3258581

wrong on this account, and the structure does lie within Hazeley Paddock's residential curtilage, a condition imposed on the grant of planning permission for the conversion of the barn withdrew permitted development rights for the construction of outbuildings under Class E (Condition No.9, 17/00073/FUL).

11. Finally, the appellant considers the structure to be part of the approved landscaping scheme for the barn conversion and has appended Drawing No 43/FP dated August 2020 which illustrates a scheme entitled softening of hard landscape. Whilst I appreciate that this drawing appears to show eight climbing plants on poles in the location of the timber uprights that form part of the pergola, there are no such plants on the structure that has been erected. Furthermore, the development constructed, first as a carport and more latterly used as a chicken run, is a much more substantial development than just eight timber posts and four crossbeams. I am not therefore satisfied that the pergola/chicken run constructed benefits from permission as part of those approved soft landscape details.
12. My conclusion is that there has been development in the form of the pergola/chicken run for which no planning permission was granted by the local planning authority, and there is no grant of planning permission under the Town and Country Planning (General Permitted Development) (England) Order, 2015. A breach of planning control has occurred and the appeal on ground (c) for this development fails.

Concrete Plinth/Hardstanding

13. It is also the appellant's case that the concrete plinth is a raised platform that benefits from a grant of planning permission under Article 3, Schedule 2, Part 1, Class E of the GPDO. However, for the reasons set out in the paragraphs above, even if I were to conclude that the plinth is situated within the residential curtilage of Hazeley Paddocks, this property does not benefit from those permitted development rights as they were expressly removed by condition.
14. My conclusion is thus that there has been development in the form of the concrete plinth/hardstanding for which no planning permission was granted by the local planning authority, and there is no grant of planning permission under the Town and Country Planning (General Permitted Development) (England) Order, 2015. A breach of planning control has occurred and the appeal on ground (c) for this development fails.

Appeal on ground (a), deemed planning permission

Main Issues

15. The main issues in this case are:
 - Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plans;
 - The effect on the openness and purposes of the Green Belt; and
 - Is the harm by reason of inappropriateness, and any other harm, clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate development

16. The pergola/chicken run and concrete plinth are situated in the Green Belt. Paragraph 149 of the Framework states that the construction of new buildings should be regarded as inappropriate development unless it falls into one of the listed exceptions.
17. I have found that the pergola is a building. It was first constructed as a car port, then more recently altered to house chickens. At the time of my visit there were no chickens on the site, although within the structure there was a redundant chicken coop. From the evidence before me I do not consider that this building falls within any of the listed exceptions within paragraph 149 of the Framework and therefore conclude that it is inappropriate development in the Green Belt.
18. Paragraph 150 of the Framework states 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. These include engineering operations. The concrete plinth is an engineering operation, however, to not be inappropriate development, the concrete plinth must preserve the openness of the Green Belt and not conflict with the purposes of including land within it.
19. My conclusions on the next main issue, the effect on Green Belt openness and purposes will determine whether the concrete plinth is inappropriate development.

Openness and purposes

20. The concrete plinth occupies an area of approximately 85sqm and has a depth of no more than 0.3m. The effect of the plinth alone on openness is extremely limited. However, its effect on openness is not confined to the permanent physical works. The appellant has made it clear that the purpose of the hardstanding is to provide an area for feed storage, hay bedding and for the storage of a shed in which it is intended to house goats. I noted on my site visit that the concrete plinth is used to store a variety of objects, including bits of furniture, a shed on skids, storage boxes, hay, old gates, timber and hose piping, amongst other things. Those objects stored by reason of their cumulative bulk, result in a loss of openness of the Green Belt, the impact of which is moderate. Furthermore, the plinth in this location conflicts with one of the purposes of the Green Belt, to assist in safeguarding the countryside from encroachment. The concrete plinth is therefore inappropriate development in the Green Belt.
21. The pergola/chicken run is constructed from timber posts, and its upper half is relatively open. However, the fencing constructed to enclose the lower half of the building, and the netting above, gives the whole structure a much more solid and robust appearance. The building has an extensive footprint and volume and, in my view, has a moderate impact on the openness of the Green Belt.
22. In conclusion the unauthorised developments are inappropriate development and cause harm to the openness of the Green Belt. In addition, there is conflict with Policy S3 of the Newcastle -Under-Lyme Local Plan, 2011 which is

generally consistent with the Framework and specifies only certain forms of development that may be permitted in the Green Belt.

Other Considerations

23. The concrete plinth adjoins the rear elevation of the existing stables and it lies adjacent to the small muck store and open countryside. Whilst I recognise that there may be a need to store feed and hay bedding on a hard surface close to the stables, from my observations on my site visit, there is a significant amount of existing hardstanding in the open yard to the north and west of the existing stables. Furthermore, the existing stable block incorporates a feed and tack room as well as a laundry and store. I am not therefore persuaded that there is a demonstrable need to encroach further on the open countryside. In addition, the suggested painting/staining of the concrete plinth or screen planting for the pergola would not mitigate the harm to openness, and I give these considerations limited weight.
24. Despite the pergola being used more recently as a chicken enclosure, it was not designed or originally constructed for that purpose. Furthermore, there are currently no chickens on the site, and I have not been provided with any substantive evidence to suggest that the structure is intended or indeed remains suitable for that use in the future. I therefore give that consideration limited weight.

Green Belt Balance

25. I have found that the developments constitute inappropriate development in the Green Belt and by definition are harmful to the Green Belt; harm which the Framework indicates should be given substantial weight. Added to which is the harm to openness by reason of the pergola. On the other side of the balance, the development provides an area to store feed, hay and house goats which is linked to the recreational use of the adjoining premises. However, I am not convinced that the storage facility it provides could not be re-located to a more appropriate location which would result in less demonstrable harm to the purposes of the Green Belt. I have also taken into consideration the use to which the pergola has been put in the past, as a chicken run.
26. On the analysis above, the harm by reason of inappropriateness, and additional harm identified, are clearly not outweighed by other considerations. Very special circumstances do not exist to justify the development. The development does not comply with national planning policy in the Framework to protect the Green Belt.

Conclusion

27. For the reasons given above and taking into account all other matters raised, the development is not compliant with the development plan and no considerations merit a decision other than in accordance with the development plan and the Framework. I conclude that the appeal on ground (a) does not succeed.

Appeal on ground (f)

28. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.

29. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. The purpose of the notice in this case is to remedy the breaches of planning control.

Pergola/Chicken Run

30. The appellant considers that the requirements of the notice are excessive. In particular, she considers that the pergola/chicken run could be modified to minimise its impact, or planting introduced to help to screen it. Furthermore, she considers that it is excessive to require materials utilised in the construction of this structure to have to be removed from the site when they could be utilised on the land in a sustainable way.
31. My decision on the deemed planning application (ground(a)) considered whether screen planting would mitigate the harm identified. I concluded that it would not. However, I am mindful that the landscaping details approved as a condition of the original barn conversion included climbing plants on a timber frame in the same location that the pergola has been constructed. Whilst I have concluded that what has been constructed on site is not what was approved in those landscaping details, I am satisfied that the unauthorised structure could be easily modified to form the pergola approved as part of those details by the removal of the picket fencing/gates and netting which is attached to it. It is therefore excessive to require the whole structure to be demolished and I have amended the requirements to require the removal of the attached fencing/gates and netting only. In addition, I accept that there may be opportunities on the appeal site to recycle the fencing/gates and their complete removal from the land is unnecessary.
32. For the reasons set out above, the appeal on ground (f) succeeds in so far as it relates to the pergola/chicken run.

Concrete plinth

33. The appellant suggests that the concrete plinth could be painted or stained a dark colour to minimise its visual impact. However, for the reasons set out in the first main issue, such treatment would not mitigate the harm identified in relation to inappropriateness.
34. I have taken into consideration the appellant's suggestion that she might be willing to forego the hardstanding area and concrete surface water drainage channel which had been approved as part of the stables and menage development, in exchange for being able to retain the unauthorised concrete plinth. However, from my observations on my site visit the area between the stables and menage is already hard surfaced and I would have thought that the surface water drainage channel remains a necessity. There are no lesser steps which would achieve the statutory purpose behind the notice, and the appeal on ground (f) fails in so far as it relates to the concrete plinth.

Appeal on ground (g)

35. The issue is whether the compliance period is reasonable. The appellant considers that this timeframe is too short as they will need to make alternative

arrangements for the housing of chickens and maintaining good husbandry in relation to the smallholding.

36. At the time of my site visit there were no chickens on the land. Should the appellant wish to make a further planning application in relation to additional hardstanding area, I consider that 6 months is a reasonable time period within which to do so and to comply with the steps in the notice, as varied. The appeal on ground (g) fails.

Conclusions

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Elizabeth Pleasant

INSPECTOR