



Appeal Decisions

Hearing held on 10 May 2022

Site visit made on 10 May 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2022

Appeal A Ref: APP/X4725/C/21/3271997

Land at Crossley Street, New Sharlston, Wakefield, West Yorkshire WF4 1BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ophey Smith against an enforcement notice issued by Wakefield Metropolitan District Council.
- The notice was issued on 26 February 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of agricultural land to land for keeping and selling horses and ancillary erection of a stable building and fencing in excess of 1 metre height adjacent to a highway (Crossley Street).
- The requirements of the notice are to:
 - a) Reduce the height of the steel fencing to no more than 1 metre height above the ground on the boundary of the site fronting the public highway on Crossley Street, and
 - b) Demolish the unauthorised stable building and remove all demolition materials from the land.
- The period for compliance with the requirements is 3 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. 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.

Appeal B Ref: APP/X4725/W/21/3271998

Land adjacent to Crossley Street, New Sharlston, Wakefield, West Yorkshire, WF4 1BG

- 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 Ophey Smith against the decision of Wakefield Metropolitan District Council.
- The application Ref 20/01949/FUL, dated 15 September 2020, was refused by notice dated 23 December 2020.
- The development is use of land for keeping horses including constructing stables and associated works (retrospective).

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of the phrase 'unauthorised change of use of agricultural land to land for keeping and selling horses'.

2. It is further directed that the enforcement notice is varied by the deletion of the word 'steel' from requirement (a) and its substitution with 'timber and concrete'.
3. Subject to these corrections/variations, Appeal A is dismissed, and the enforcement notice is upheld

Appeal B

4. Appeal B is dismissed insofar as it relates to the construction of stables and associated works.
5. Appeal B is allowed insofar as it relates to the use of the land for keeping horses and planning permission is granted for the use of the land for keeping horses at Land at Crossley Street, New Sharlston, Wakefield, West Yorkshire WF4 1BQ in accordance with the terms of the application Ref 20/01949/FUL dated 15 September 2020, and subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the Site Location Plan Drawing No. NDS/20/SL/1.

Preliminary Matters

6. The appellant's case was prepared by Northallerton Draughting Services (Mr John Pollitt). However, Mr Pollitt was unable to attend the Hearing. The appellant advised me that he was unable to read and write. Consequently, I went through the agenda with him orally and when necessary, I explained the process or invited the Council to do so. These measures were appropriate to ensure that the appellant was not prejudiced as a result of the lack of availability of his agent.
7. At the Hearing I advised the parties that I would refer to the appeal against the enforcement notice as Appeal A and the appeal against the refusal of planning permission as Appeal B. I shall adopt the same approach in my decisions.
8. The Council queried whether the ground (a) appeal in respect of Appeal A could be regarded as including the fencing in excess of 1 metre height adjacent to the highway (Crossley Street). This was on the basis that the planning application on which the fee exemption for the ground (a) appeal relied did not include the fencing. I expressed the view that as the parties had both addressed the issue of the fencing in their appeal submissions, no injustice would arise were I to consider the fencing as part of the ground (a) appeal scheme. The parties were in agreement with that approach.
9. The appellant referred to 'land adjacent to Crossley Road' in his planning application. However, the Council confirmed that the site address is more accurately described as Land at Crossley Street. The appellant agreed that this was correct. The description of development in the planning application includes reference to the development being 'retrospective'. This is not an act of development and both parties agreed that it could be removed from the description.

The Notice

The Allegation

10. The notice refers to the breach of planning control as both the change of use and the erection of a stables and fencing and refers to immunity periods of ten years for the use and four years for the operational development. The requirements of the notice do not require the use to cease.
11. The Council said that, in the light of a previous appeal decision on the same site (the 2018 Appeal)¹, it was common ground between the parties that the use of the land for keeping and selling horses was an acceptable use of the site. The Council explained its position to the appellant and confirmed that notwithstanding the outcome of the appeals he could continue to use the land in the way it was currently being used.
12. The Council confirmed that it had no objection to the removal of references to the use of the land from the notice so that the notice relates only to the operational development in the form of the stables and fencing. There would be no injustice to the appellant were I to make such a change and determine Appeal A on this basis. Therefore, I shall amend the notice by the removal of the reference to the change of use of the land in part 3.

The Requirements

13. Requirement (a) of the notice describes the boundary treatment on the Crossley Street frontage as being 'steel' fencing. However, the fencing which is currently on this part of the site is constructed of timber with concrete posts and gravel boards. There is a dispute between the parties regarding the type of fencing, which was previously on the site, when the notice was served. However, both parties have no objection to the alteration of the requirement to reflect the current site circumstances. As no injustice would arise were I to vary requirement (a) to relate a timber and concrete fence, I shall make that change.

Appeal A – Ground (a) and the Deemed Planning Application (DPA)

14. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
15. Ground (a) is assessed against, and the terms of the DPA are derived from, the allegation. I have corrected the allegation in this case, therefore, the development under consideration is the erection of the stables and the fence and it does not include the change of use of the land.

Main Issues

16. The main issues are:
 - Whether or not the stables and the fencing are inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.

¹ Appeal Ref: APP/X4725/W/18/3213249

- The effect of the stables and the fencing on the openness of the Green Belt.
- The effect of the stables and the fencing on the character and appearance of the surrounding area
- If the stable and fencing are inappropriate, whether or not any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal in accordance with the Framework.

Reasons

Whether inappropriate development

17. I established at the Hearing that there is no dispute between the parties that the site lies within the Green Belt. The National Planning Policy Framework (the Framework) establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate subject to a number of exceptions.
18. Policy CS1 of the Wakefield Metropolitan District Council Local Development Framework (2009) (the LDF) sets out amongst other things that in the Green Belt development shall conform to national, regional and LDF policies relating to the Green Belt. It follows that Policy CS1 is in accordance with the Framework.
19. The erection of stables for commercial purposes does not fall within the exception of a building for agriculture or any of the other exceptions set out in the Framework. Furthermore, the appellant has not provided any evidence to demonstrate that the stables nor the fencing is not inappropriate development in the Green Belt.
20. For the reasons set out above the development which is the subject of the notice (as amended) constitutes inappropriate development in the Green Belt and is contrary to Policy CS1 of the LDF.

Effect on openness

21. The Framework establishes that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. In terms of the purposes of the Green Belt the Council confirmed at the Hearing that its objection to the development was in respect of safeguarding the countryside from encroachment. I agree that this is the relevant Green Belt purpose for this appeal.
22. The development results in the introduction of built form where there was previously none. Consequently, the footprint of the stables has a harmful effect on the spatial aspect of openness. The stables are readily visible from Crossley Street and from footpaths which cross the common on the opposite side of the road. Given that the site was previously an open area this is a visual intrusion resulting in significant harm.
23. With regard to the fence, it has a limited effect on the spatial aspect of openness by virtue of its extent. As a result of its position at a lower level than the road it is screened to a limited extent from the common on the opposite

side of Crossley Street. However, it is visible from within the site and the surrounding agricultural land.

24. There is a lack of clarity about what form the boundary treatment took before the fence was erected. However, given the general design of low fences in the area it is reasonable to assume that even if a fence was in existence by comparison the current timber and concrete fence which has been erected has a greater visual impact. Furthermore, the fence is of a high and close boarded design, such that it creates a harsh and solid form which has a harmful visual impact.
25. Taken together the stables and fencing, have a harmful effect on openness and fail to safeguard the countryside from encroachment.

Character and appearance

26. The site lies between New Sharlston and Warmfield and the edges of those settlements are easily seen from the site. However, the site forms part of a substantial gap between those built up areas, which comprises arable farmland and common land. At the time of my site visit there were horses pegged out and grazing on the common land.
27. The site is closest to New Sharlston but segregated from it by the route of a former railway line. The appellant said that he owned land between the appeal site and the site of a health club and gym building on the edge of the settlement. This land is heavily treed. New Sharlston is characterised by ribbon development close to the roads and the former railway line defines the extent of development to a large extent on Crossley Street.
28. I noted during the site visit that a building has been erected on a field on the opposite side of Crossley Street to the appeal site. This building serves as a shelter for Shetland ponies which occupy the field. This was the only structure of note beyond the limit of New Sharlston as it is defined by the route of the former railway line. There were no buildings on the common land nor within the sizeable fields given over to crops.
29. The site of a new development on nearby land was also pointed out to me at the site visit, however the parties agreed that this was going to be an agricultural building. Consequently, the development would have been assessed differently in planning policy terms and is not comparable with the stables.
30. The stables are complete save for works to one gable and additional cladding. It is constructed of concrete blocks above which a timber frame and cladding has been mounted supporting a metal mono pitch roof.
31. The size and scale of the stables gives it an appearance more akin to an agricultural building than stables for horses, particularly in terms of its height. The appellant explained that he had raised the height of one of the openings to accommodate a horse which required to be stabled permanently in the winter months. However, there was a significant area of timber cladding above the opening such that the building is much taller than is necessary to accommodate this particular animal. Thus, the appellant has failed to substantiate his reason for the stables being of the height that they are.

32. The stables have four compartments, and at the time of my site visit one was full of building materials and equipment and two housed pony traps which the appellant said he used with his horses. There was one horse and two foals in the enclosure adjacent to the stables and the animals were able to access three of the four enclosures as a consequence of the storage use of one of them. Given that the stables are incomplete it is reasonable to assume that the storage of building materials and equipment is on a temporary basis.
33. The appellant said at the Hearing that the stables are needed to accommodate foals of which there are normally 10 per year and also to use when other horses need shelter for instance while receiving medical treatment. On this basis the number of compartments in the stables and its consequent floorspace could be regarded as necessary to ensure the health of the animals.
34. Notwithstanding whether the stables for the Shetland ponies on the adjacent field have been constructed lawfully and taking account of the smaller size of that species of horse, the stables which are the subject of the appeal are significantly larger than those nearby. As such the stables are out of character with the open countryside character of the gap between settlements and inconsistent in appearance with the only other significant building beyond the outskirts of New Sharlston.
35. Turning to boundary treatment, the common land is open with limited amounts of linear native hedges separating the open land from footpaths and fields laid to crops. Save for the Crossley Street frontage, the outer boundaries of the site are marked by low post and rail timber fencing. To segregate the field adjacent to the stables, from the wider site the appellant has erected steel fencing and there is a concrete block wall beside part of the access. These boundary features are not addressed by the notice.
36. The post and rail fence is consistent with boundary treatment segregating the land on the opposite side of Crossley Street and there is some steel fencing adjacent to the health club/gym site, albeit within planting. However, the concrete block walling is an anomaly, although not part of the matters to be considered in this appeal.
37. The timber and concrete fence which is the subject of the notice has no precedent nearby the site. Its height, design and appearance are more akin to a boundary fence in an urban context such as a residential estate or commercial area. As such the fencing is alien to the character of the area and its contribution to the appearance of site is harmful.
38. The appellant argues that the fence is required to be in excess of 1 metre high to contain the foals which would otherwise be able to jump out of the field and onto the road. However, as the Council pointed out there are other ways to control animals such as electric fences which would be of a lesser visual impact, and it has not been shown that such alternatives would not be feasible.
39. During the site visit one of the horses which had been on the common escaped and ran along the road and the appellant highlighted the danger of this. However, this was a mature animal and it had not been restrained by any form of fencing. Consequently, this incident was not comparable with the foals escaping from an enclosed field.

40. In terms of the visibility of the stables and the fence in the wider area. The access to the site and the surrounding fields is not a public footpath although walkers are permitted to use it. Thus, there is limited opportunity for the fence to be viewed in the context of site from this direction, but the stables are of such a scale that they are visible from the gap in the street formed by the access. From the opposite side of Crossley Street, the fencing is lower than the level of the road and there is some limited deciduous planting that results in it having a limited impact in the wider views, especially in the summer months. However, it is a prominent feature when driving or walking along the road.
41. The undulating character of the land on the common results in the stables being screened from wider views in some directions most notably from the footpath which links New Charlston and Warmfield where along some parts the stables are screened by the lie of the land. However, like the fence, the stables are prominent in closer views.
42. Drawing all of these points together, while the visual impact of the fencing and stables is not always prominent in wider views, the development, by virtue of the design and height of the stables and the fencing, is out of character with the immediate site context.
43. The appellant has suggested that the adverse effects of the development could be mitigated by additional planting, and he indicated at the site visit that he has already introduced conifers and holly. However, there is no landscaping scheme before me or details of how such planting would provide adequate screening of the stables and the fence. As such on the basis of the evidence it has not been shown that a planning condition to secure landscaping would overcome the harm which I have identified.
44. I conclude that the stables and the fencing are harmful to the character and appearance of the surrounding area. The development is contrary to Policy D9 of the LDF which among other things requires that the design of new development respects the character of the locality in terms of design, scale, massing, and height.

Other considerations

45. The appellant says that without the stables the foals are in danger of becoming injured as they cannot be tethered to the ground like the mature horses. He also says that the stables provide a practical alternative to using stables at livery yards when horses are ill and need attention from a vet. The appellant also added that as he is getting older, he needs shelter to attend to the animals. The Council did not seek to contradict the appellants explanation of his needs.
46. The appellant says that the most important consideration is to provide better facilities for gypsy horses close to his accommodation. He considers that this benefit outweighs any harm to the Green Belt. The welfare of the horses and the contribution which this makes to the ability of the appellant to continue his traditions and livelihood are matters which weigh in favour of the development. However, the weight is limited by the fact that there are no obstacles to the continued use of the land for keeping and selling horses. Furthermore, very limited evidence has been provided to substantiate the argument that the stables and fencing as built are the only options for improving the health and wellbeing of the horses.

47. With regard to the needs of the appellant in terms of shelter, there is no evidence to substantiate any immediate requirement to address health issues or old age.
48. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development, such as the appeal scheme is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The benefits which have been identified would not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and in terms of the harm to the character and appearance of the surrounding area. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case.

Other Matters

49. I acknowledge the concern raised by the parish councils and local residents, including that the introduction of stables could set a precedent for further development of the site. Given that I find the proposal to be unacceptable for other reasons, and any such concerns would have no bearing on my overall planning balance, it is not necessary for me to address these matters any further as part of this decision.

Overall planning balance

50. The proposed development is contrary to the development plan, and other material considerations are not of such weight as to indicate that permission should be granted in this instance.

Conclusion - Appeal A – Ground (a) and the Deemed Planning Application (DPA)

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

Appeal B

Background and Main issues

52. The description of development set out in the planning application which is the subject of Appeal B differs from the breach of planning control set out in the notice (as amended), in two ways. The change of use for keeping horses is part of the Appeal B scheme but the fencing along Crossley Street is not. The main issues are therefore slightly different than for Appeal A and are as follows:
- Whether or not the use of the land for keeping horses and the stables are inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
 - The effect of the use of the land for keeping horses and the stables on the openness of the Green Belt.
 - The effect of the use of the land for keeping horses and the stables on the character and appearance of the surrounding area

- If the use of the land for keeping horses and the stables are inappropriate, whether or not any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal in accordance with the Framework.

Reasons

Whether inappropriate development

53. Policy CS1 of the LDF sets out amongst other things that in the Green Belt development shall conform to national, regional and LDF policies relating to the Green Belt. Policy CS1 is in accordance with the Framework.
54. The Framework establishes that the construction of new buildings and material changes of use of land in the Green Belt should be regarded as inappropriate development subject to a number of exceptions. The erection of stables for commercial use does not fall within any of the exceptions. However, the change of use of land could be regarded as falling within Paragraph 150 of the Framework, which would allow for the consideration of whether or not the use of land for keeping horses would preserve openness or conflict with the purposes of the Green Belt.
55. In common with my findings in Appeal A, the stables are inappropriate development in the Green Belt and contrary to Policy CS1 of the LDF but the change of use of the land requires further consideration in terms of its effect on openness.

Effect on openness

56. The effect of the stables on openness are the same as that which I found in relation to Appeal A and I shall adopt the reasoning set out above in relation to Appeal A. It follows that by virtue of the fact that the stables introduce a built form to an open site, they have a harmful effect on openness and fail to safeguard the countryside from encroachment.
57. With regard to the change of use of the land for keeping horses, both the Council and the Inspector who dealt with the previous appeal considered that the change of use of the site would preserve openness. Unlike the previous appeal there are no engineering works to install an access or hardstanding which would result in encroachment into the countryside. On the basis of my site visit and the evidence before me I concur with these views and find that the change of use is not harmful to the openness of the Green Belt.

Character and appearance

58. The character of the site and the contribution which it makes to the appearance of the wider area is as I have described above. The grazing of horses, which forms the basis of the use for keeping horses, albeit in a fenced off area, is consistent with the character and appearance of the common and directly comparable with the Shetland ponies in the field on the opposite side of Crossley Street. Whilst customers will visit the site, given the number of foals involved, these visits will be infrequent and will not affect the character of the area.

59. With regard to the stables this is the same building as I have considered in Appeal A, and I shall adopt the same reasoning set out above in relation to Appeal A. Thus, for the reasons set out above the stables are harmful to the character and appearance of the surrounding area, particularly in respect of their design and height.
60. I conclude that whilst the use of the land for keeping horses would accord with Policy D9 of the LDF, the stables are contrary to Policy D9 of the LDF which among other things requires that the design of new development respects the character of the locality in terms of design, scale, massing, and height.

Other considerations

61. The other considerations which were before me in terms of my determination of Appeal A apply equally to my consideration of Appeal B. Consequently, I shall adopt the same outcome in relation to the Green Belt balance and conclude that, in respect of the stables, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case.

Overall planning balance

62. The proposed stables are contrary to the development plan, and other material considerations are not of such weight as to indicate that permission should be granted in this instance. However, in this case, the use of land for keeping horses is not inappropriate in the Green Belt and is in accordance with the development plan.

Conclusion – Appeal B

63. I have given consideration as to whether it would be appropriate to issue a 'split decision' using the powers under Section 79(1)(b) of the Act to dismiss the appeal as it relates to the construction of stables and associated works and allow the change of use of the land.
64. It is common ground in respect of Appeal A that the use of the land for keeping and selling horses is an acceptable use of the site and I have amended the notice to address that. It seems to me that to allow Appeal B in part and grant planning permission for the use of the land for keeping horses would be consistent with my decision on Appeal A and a logical outcome.
65. In respect of the need for planning conditions to be attached to the planning permission for the use, the only condition which the Council has suggested which is relevant is a condition to identify the approved plan which in this case will be the site location plan only. This condition is necessary to create certainty for all parties. However, I have removed the reference to reserved matters as there are no reserved matters in this case and it is unnecessary.
66. For the reasons set out above I conclude that Appeal B should be dismissed insofar as it relates to the construction of stables and associated works but allowed insofar as it relates to the use of land for keeping horses, subject to a condition specifying the approved site location plan.

Sarah Dyer

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Ophey Smith Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ian Garratt Wakefield Metropolitan District Council (Wakefield MDC)

Mr John Holmes Wakefield MDC

Mr Matthew Maries Wakefield MDC

Mr Adam Hirst Wakefield MDC

INTERESTED PARTIES

Mr C and Mrs B McPhail Local residents

DOCUMENTS

No additional documents were submitted to the Hearing.