



Appeal Decision

Site visit made on 3 May 2022 by Darren Ellis MPlan

Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2022

Appeal Ref: APP/J3015/D/21/3289731

Hill Top Farm, Blake Road, Stapleford, Nottingham NG9 7HP

- 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 Adrian Morgan against the decision of Broxtowe Borough Council.
 - The application Ref 21/00443/FUL, dated 21 May 2021, was refused by notice dated 2 September 2021.
 - The development proposed is entrance gates, perimeter fencing, pathway & driveway retaining wall.
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Decision

1. The appeal is allowed and planning permission is granted for entrance gates, perimeter fencing, pathway & driveway retaining wall at Hill Top Farm, Blake Road, Stapleford, Nottingham NG9 7HP in accordance with the terms of application ref: 21/00443/FUL, dated 21 May 2021 and subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Block Plan On Site drawing no. 21022.01; Plan On Site Entrance drawing no. 21022.02; Entrance Gate Details drawing no. 21022.03; Driveway Retaining Wall drawing no. 21022.04; and Perimeter Fence Details drawing no. 21022.05.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. At the time of my site visit the entrance gates, perimeter fencing and driveway retaining wall had already been completed. The perimeter pathway was still under construction, with a section in the south-east corner of the site still to be built. There was also a portion of the path that had not yet been surfaced with the specified materials.
 4. During my visit I also noticed that there are a number of discrepancies between the submitted drawings and what has been constructed, including differences in heights of the wall and piers, decorative brickwork that is not shown on the drawings, concrete kerbs used instead of the tanalised timber
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edging boards referred to on the site plan, and conifers being included in the boundary treatment.

5. I must consider the appeal on the basis of the drawings before me, which were also considered by the Council and subject to public consultation. Any differences between these and what has been constructed are not before me to consider in this appeal, and are a matter for the appellant and the Council. Therefore, for the avoidance of doubt I have considered the appeal on the basis of the submitted drawings.

Background and Main Issues

6. The appeal site is set behind dwellings on the north-eastern and eastern side of Blake Road, with access to the site provided by a driveway from the road. Although the Council's reports state the whole site is in the Green Belt, the submitted maps that show the Green Belt boundary follows the rear boundaries of these dwellings on Blake Road. Consequently, the entrance gate, perimeter fencing and pathway fall within the Green Belt but the driveway retaining wall does not.
7. The Council raises no objections to the pathway or the driveway retaining wall and the concerns of interested parties relate to other parts of the development. Based on the evidence before me I have no reason to conclude otherwise.
8. Therefore, the main issues in this case are:
 - whether the entrance gates and perimeter fencing are inappropriate development for the purposes of development plan policy and the National Planning Policy Framework (the Framework);
 - the effect of the entrance gates and perimeter fencing on the openness of the Green Belt; and
 - if the entrance gates and perimeter fencing are inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons for the Recommendation

Whether inappropriate development

9. The Framework establishes that new buildings and certain other forms of development in the Green Belt are inappropriate except in certain circumstances, which are listed in paragraphs 149 and 150.
10. Policy 3 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan (September 2014) (ACS) is consistent with the Framework in that it seeks to protect the Green Belt. Policy 8 of the Broxtowe Borough Council Part 2 Local Plan (adopted October 2019) (LP) states that applications for development in the Green Belt will be determined in accordance with the Framework.
11. The term 'building' includes any structure or erection, therefore walls and fences can reasonably be considered as 'buildings' for the purposes of the Framework. The gates and fencing do not fall within any of the exceptions in paragraphs 149 or 150 of the Framework and are therefore inappropriate development which is, by definition, harmful to the Green Belt.

Openness

12. Openness is an essential characteristic of the Green Belt. The Planning Practice Guidance states that openness is capable of having both spatial and visual aspects, so that both the visual impact of the proposal and its size may be relevant.¹
13. The perimeter fence is 2.2m in height but is of a lightweight metal mesh design and is dark green in colour. This design ensures that the fence is not overly obtrusive, that views through the fence are not significantly impeded, and that the colour of the fence blends in with the planting inside the line of the fence. Furthermore, the fence on two sides of the appeal site is adjacent to the existing boundary treatments and outbuildings of the dwellings along Blake Road and Gainsborough Close.
14. The entrance gates are quite substantial and lie on the edge of the Green Belt. They are however set well back from the road and, when viewed from the street, they are seen in conjunction with the two residential properties on either side of the driveway. As a result, the gates are not visually intrusive. When closed, they prevent views into the appeal site from the street, however views into the Green Belt from Blake Road are already severely restricted by the existing dwellings.
15. The presence of the fence and gates has therefore resulted in a reduction in the openness of the Green Belt in visual terms. However, given the backdrop of the surrounding residential buildings, the lightweight design of the fencing and the set back of the gates from the road, the resulting harm is limited. Although they enclose a large area, the gates and fence in themselves have a very limited impact on openness in spatial terms. Nonetheless, one of the fundamental aims of Green Belt policy is to keep land permanently open and, having regard to the Framework, I afford this harm substantial weight.

Other Considerations

16. I understand that the appeal site previously had no physical boundaries on two sides and was open to the countryside. The fencing and gates therefore provide security for the site. The presence of the fencing around the appeal site and adjacent to the rear boundaries of the adjacent dwellings also provides additional security for these dwellings. I therefore attach moderate weight to this benefit.
17. The Council states that prior to the installation of the current entrance gates, there was a single-leaf gate sited where the driveway meets Blake Road and that visitors to the appeal site had to wait in the road until the gate was opened. With the entrance gates now situated a considerable distance back from the street, visitors to the site can now wait in the driveway instead of on the public highway. While there is no evidence before me that the previous situation led to any highway safety incidents or accidents, I recognise that having waiting traffic, particularly farm traffic, clear of the highway is a benefit and as such I attach moderate weight to the highway safety improvements.
18. Furthermore, a 2m high perimeter fence could be installed as permitted development and the appellant has stated their intention to do this should the appeal be dismissed. There is therefore a realistic proposition that a fence and

¹ Planning Practice Guidance, Paragraph: 001 Reference ID: 64-001-20190722

gates could be installed that are only slightly lower than those currently in place. Those would have a very similar impact on the Green Belt to this development. I therefore afford this fallback option considerable weight.

19. Several representations were received during the original application that objected on the removal of trees and vegetation, the effect on wildlife, noise pollution, fires, loss of light caused by new hedging, and overlooking of windows.
20. The Council states that none of the trees on the appeal site are or were protected. Therefore, the trees and vegetation on the site could be reduced in size or removed at any time without requiring planning permission. Consequently, this could have taken place even if this development had not come forward. Furthermore, even if the appeal were dismissed there would be nothing in planning terms to stop the appellant removing the trees. As such, this is not a factor that weighs against the proposal in this case.
21. No substantive evidence has been provided of the location of any badger setts in relation to this development, nor has it been shown that the development has, or could, affect any setts. Consequently, there is no compelling evidence before me to indicate that any badger setts have been, or would be, adversely affected by the development. Furthermore, separate legislation covers the direct interference of protected species such as nesting birds and badgers. Similarly, noise pollution and nuisance from fires are covered by environmental health legislation and are not matters that would warrant a refusal.
22. Due to the relative levels of the site and neighbouring properties, some mutual overlooking from the appeal site and adjacent properties exists. Furthermore, it is unlikely that the perimeter path would be used for more than short periods given the distance from the house and other buildings on the site. Moreover, the planting already undertaken is likely to provide some screening and improve privacy as it grows. Given the limited depth of the neighbouring gardens, the boundary hedging could however increase the sense of enclosure and result in some shading of some neighbouring gardens if allowed to grow taller. Planting is not development however, and as such could be undertaken at any time outside of planning control.
23. Consequently, while the planting shown on the submitted plans could have some benefits in terms of privacy, it could also potentially result in some adverse impacts to the living conditions of neighbouring occupiers in respect of light and outlook. This therefore carries limited weight against the proposal.

Whether very special circumstances exist

24. The proposal would cause harm to the Green Belt by way of inappropriateness and a reduction in openness, which I afford substantial weight; and potential harm to the living conditions of neighbours, which carries limited weight.
25. The Framework states that development should not be approved unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Taken together, I find that the security and highway safety benefits together with the fallback position identified above clearly outweigh the totality of the harm identified. Consequently, the very special circumstances necessary to justify the proposal exist.

Other Matters

26. Concerns have been raised about storage of buses on the appeal site. This is not however part of the development that I am considering in this appeal.
27. The planning system allows for applications and appeals to be made after work has commenced, or been completed, therefore the fact that part of the appeal development has been constructed does not weigh against it, and I have considered it on its own merits on the basis of the plans before me.

Conditions

28. As the development has already commenced it is not necessary to impose the standard time limit condition. However, as it has not yet been completed, in order to provide certainty and in the interests of proper planning it is necessary to specify the approved plans.

Conclusion and Recommendation

29. Accordingly, the proposal would comply with ACS policy 3, LP policy 8 and with the Framework. There are no material considerations which indicate that a decision should be made other than in accordance with the development plan. Therefore, for the reasons given above and having had regard to all other matters raised, I recommend that the appeal be allowed subject to the above condition.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

28. I have considered all the submitted evidence and the Appeal Planning Officer's report and I agree with the recommendation that the appeal should be allowed subject to the above condition.

L McKay

INSPECTOR