



Appeal Decision

Site visit made on 27 July 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 10th October 2022

Appeal Ref: APP/B3030/C/22/3293699

The Park, Lowdham Road, Gunthorpe, Nottingham NG14 7ES

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Sandeep Kaur Singh-Gill against an enforcement notice issued by Newark & Sherwood District Council.
- The notice was issued on 3 February 2022.
- The breach of planning control as alleged in the notice is without planning permission, operation development consisting of the construction of a building ('the building') as shown with an 'X' on the aerial photograph in image 1 and within the photographs labelled images 2 & 3 (subject of planning application reference 21/01479/FUL)
- The requirements of the notice are
 - A. Demolish the building, including any concrete base and foundations created as part of the development, as shown within an 'X' on the aerial photograph in image 1 and within the photographs labelled images 2 & 3 (subject of planning application reference 21/01479/ FUL)
 - B. Remove from the land all resultant waste and materials from Action A
- The periods for compliance with the requirements are:
 - A. 6 months from after this notice takes effect.
 - B. 7 months days after this notice takes effect.
- 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.

Summary of Decision: Subject to variations, the enforcement notice is upheld and the appeal is dismissed.

Decision

1. It is directed that the enforcement notice is varied by
 - i) deleting the words "(subject of planning application reference 21/01479/FUL)" from the end of the allegation and the end of requirement A.
 - ii) adding " al " to the word "operation" in the allegation so that it reads "operational development"
 - iii) deleting the word " days " from requirement B so that the requirement to comply is " 7 months after this notice takes effect."
2. Subject to this 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 as amended.

Preliminary and Background Matters

3. The reasons for the issue of the notice include the risk of the development flooding. However, the Council has indicated in its statement that in the event of the appeal being allowed, this matter could be addressed by way of suitably worded conditions. This matter is therefore no longer a main issue.

The Notice

4. It is the duty of the Inspector to put the notice in order. The references to a planning application that was refused on the 25 January 2022 at the end of the allegation and requirement are superfluous as this is not an appeal against that planning refusal. I will remove the wording "(subject of planning application reference 21/01479/FUL)" from the allegation and the requirement and amend the notice accordingly. There are also minor typographical errors in the notice as the wording "operation development" should be "operational development" and the word "days" has been added to requirement B after "months". I will correct these matters. No injustice is caused to either party by these alterations and deletions.

The appeal under ground (a) and the deemed planning application

Main Issues

5. The Main Issues 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 plan policies;
 - the effect of the development on the openness of the Green Belt;
 - the effect of the development on the character and appearance of the area; and
 - whether 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 necessary to justify the development.

Reasons

6. The appeal site is located behind dwellings that front onto Lowdham Road and is accessed along a private track from that road. The appeal site consists of fields, the appeal building, an existing agricultural building. There are also residential buildings which are to the rear of the long gardens of the dwellings on Lowdham Road. The closest dwelling to the appeal site is Parklands which is beyond the appeal site to the east. The rural character of the area is evident with open countryside surrounding the appeal site apart from the ribbon development on Lowdham Road.

Inappropriateness

7. The Framework states that new buildings in the Green Belt are inappropriate development unless they fall within one or more stated exceptions. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Spatial Policy 4B of the Council's Amended Core Strategy states that development in the Green Belt should be determined in accordance with the Framework.

8. The relevant exception relied upon by the appellant is Paragraph 149 a) of the Framework which relates to buildings for agriculture and forestry as the appeal site is an agricultural holding. However, in order to fall within that exception, the development must be reasonably necessary for the purpose of agriculture. The Council does not consider that the appeal building falls within that exception largely due to the presence of an agricultural building that was approved on the 5 June 2019¹ to 'house lambs and sheep and to store fodder and implements.'
9. The floor space of that building is around 148 square metres being 12 metres by 12 metres. The appeal building provides a further 166 square metres giving a total floor space of 314 square metres across the two buildings. The appellant's agricultural assessment calculates required floor space to be 251.5 square metres which will increase to 308.5m square metres when a planned livestock expansion has occurred and the appellant considers that an allowance also needs to be made for flood risk.
10. The Council's figures are significantly different as it considers that only 70 square metres of floorspace is a reasonable amount for the existing agricultural enterprise. The Council's figure would mean that the original building with 148 square metres has more than double the actual space currently needed. However, the appellant's Table C in the agricultural assessment includes in the calculations a number of matters which are purely speculative. They include a workshop area, storage space for polytunnels and seeds, feed and other livestock items and the number of animals does not reflect the current livestock.
11. At the time of the planning application in February 2021, the appellant has agreed to purchase 10 ewes, 2 goats and 20 hens and had paid a deposit. However, the hens were not transported to site due to an outbreak of bird flu, the Covid 19 pandemic caused delays in arranging workmen to complete secure fencing and the appellant had to self-isolate. These issues show the potential issues that can prevent planned expansion that may be outside the control of the appellant. An application for any agricultural building therefore has to be based upon existing operations rather than future aspirations.
12. The notice was issued on the 3 February 2022 and a receipt shows that the appellant bought 20 Castle milk Moorit ewes and 2 male Alpacas on the 17 February 2022. The parties disagree as to the amount of space needed for livestock and whether long term shelter is required. I do consider that as farm animals the sheep are likely to remain outside unless they need assistance in lambing or in adverse weather conditions or a flood.
13. Neither of the agricultural buildings has ventilation for the housing of livestock which supports the view that long term housing for the animals is not reasonably necessary. Whilst the appellant has provided a photograph of some animals in the original building, it is not clear why that building cannot also be used for other purposes particularly when the basis for the application included storage. It is not clear why the original building of 148 square metres can only be used for the modest amount of livestock. If the sheep are only housed in the original building when specific events occur, such as lambing and adverse weather then the 148 square metres of space in the original building is

¹ 19/00460/FUL

available for most of the year. Whilst there are 2 male Alpacas on site, the amount of indoor space required by 2 animals is likely to be modest.

14. Whilst photographs and the site visit show only a snapshot in time, at the time of my site visit, the appeal building was relatively full and was being used for storage of various items including hay. However, the original building was largely unused with just a modest amount of hay. The photographs supplied by the appellant also shows limited use of the original building which appears to have capacity for other uses other than shelter for animals.
15. With regard to flood risk, there is no evidence to show that flooding has been an issue since the original building was constructed. However, if extra space is required due to the risk of flooding, it is not clear why racking or storage facilities to create more space cannot be created in the original building which is around 5 metres at ridge height.
16. The appellant now owns 7.5 acres of land having purchased an additional 3.5 acres in December 2020. Whilst this land is not included in the enforcement notice plan, I have included it in my consideration of whether the land falls within the agricultural exception. The additional land is a roughly rectangular piece of land which is to the east of Parklands. Nevertheless, it is not the case that having a holding of 7.5 acres by itself justifies a second building, as the size and nature of the building will depend upon the nature of the agricultural enterprises undertaken on the land.
17. The proposed increase in the number of animals would in turn impact upon the amount of hay produced and also the amount of land available to produce goods for sale to farm shops. The figure provided by the appellant for hay and bedding storage at 108 square metres appears excessive. It is also not clear from the appellant's evidence whether the proposed expansion of animals is dependent upon the proposed future purchase of more land. The Council is of the view that the flock could not expand to 40 to 50 ewes within the available land. It is also the case that the total amount of land available for agriculture is reduced by the presence of the dwelling, the annexe and hardstanding.
18. The conclusion of the appellant's assessment refers to the appeal building being of an appropriate scale for the sheep rearing and farming business *as planned* (my emphasis). The Council's assessment is based solely upon the existing enterprise. Even if I considered the Council's figure of 70 square metres to be conservative, the existing floor space of 148 square metres does appear to me to provide ample space for existing enterprises. I do not consider that the appeal building is reasonably necessary for the purposes of agriculture.
19. Since the development does not fall within the exception relied upon by the appellant, it is inappropriate development which is, by definition, harmful to the Green Belt and should not be permitted except in very special circumstances.

Openness

20. The openness of the Green Belt is still clearly evident, with largely open fields surrounding the development with the exception of the ribbon development along Lowdham Road. Openness requires consideration of both spatial and visual aspects of the development. Due to its location, views of the building outside of the appeal site are limited although there are views of the side

elevation closest to the boundary from the grounds of the dwelling called Parklands.

21. Nevertheless, the development is still capable of affecting openness. The development exists in what was previously an open field, spatially there is therefore now development where no development previously existed. It is a permanent building which is not particularly small scale and there is a loss of openness in an otherwise open appeal site in the countryside. There is also a degree of encroachment of development into open countryside albeit the degree of encroachment is small.
22. The Framework attaches great importance to Green Belt land and advises at paragraph 137 that that an essential characteristic of Green Belts is their openness. The extent of the loss of openness is limited but nonetheless, there would be a loss of openness which reinforces my view that the appeal building is inappropriate development within the Green Belt.

Character and Appearance

23. The access track to the site from the main road branches off to private gates for the appeal site with the dwelling at the Park on the left hand side. The hardstanding to the front of the dwelling then leads to the original building which is in the northwest corner of the appeal site. Beyond the main dwelling there is a building that has been converted from agricultural use to residential use. The presence of the hardstanding creates a visual divide between the residential element and the agricultural elements which are the fields to the east of the appeal site apart from the original building. The single storey appeal building is within a field and does have a domestic appearance and is made up of breeze blocks walls with a red tile dual pitched roof. There are door openings in each end with a wider access gap on the side elevation facing into the appeal site. The building includes an open area with two pillars to the eastern end.
24. The appearance of the appeal building is in contrast to the approved agricultural building which is of steel frame construction with the roof and side elevations clad in box profile all coloured green. The original building is also in a more discreet location in the corner of the appeal site with built development behind it. The appellant indicates that the building has been designed to match the residential annex which is the closest building to the appeal building. However, the appeal building is within a prominent location in a field and is visually distinct from the residential buildings. Its appearance is out of keeping with the rural nature of this part of the appeal site. The side elevation of the appeal building is visible from the land which is between the dwelling at Parklands and the appeal site.
25. The appellant considers that any concerns with regard to appearance can be addressed by way of a condition relating to external materials and has suggested cladding. However, I share the Council's view that changing the materials by itself would not address the issues with the style, nature and dimensions of the building in its rural setting. Whilst there may be other buildings that project further into the Green Belt than the appeal building that in itself is not justification for allowing the development. Adopting such an approach would lead to the piecemeal erosion of any Green Belt designation.

26. There are supporters and objectors to the development and I have taken into account their comments, where relevant, when determining this appeal. However, those comments do not alter my finding of harm.
27. The development does therefore harm the character and appearance of the area. It is therefore contrary to Core Policy 9 of the Newark and Sherwood Amended Core Strategy (the Core Strategy) refers to development which subject to local context makes effective use of land. It is also contrary to Policy 13 of the Core Strategy which promotes sensitive design and siting of new agricultural buildings and promotes measures for reinforcing the traditional character of farm buildings using vernacular styles. It also does not comply with Policy DM5 of the Allocations and Development DPD (2013) refers to development reflecting local landscape and character.

Other Considerations

28. The appellant has not specifically advanced “very special circumstances” as such but the following matters are being relied upon by the appellant in support of the appeal.
29. The appellant has referred to the environmental benefits of growing and selling local produce and reducing the impacts in the traditional food chain process. However, whilst the appellant intends to supply local farm shops and businesses in the future, this is not a matter to which I can only attach very limited weight as at the present time, the extent to which those sales will form part of the business or require a second agricultural building is not known.
30. Similarly, the appellant considers that the appeal building would allow for the creation and expansion of the business and potentially support a rural economy. However, as this is also an aspiration rather than a current d justification for the appeal building, I also attach this matter very limited weight
31. The need to have chemicals, petrol, diesel and machinery in a separate building to livestock is referred to. However, given the nature of the existing farming operation, it is not clear how these matters either individually or collectively justifies the size and nature of the appeal building. Third parties refer to bringing chemicals on site as and when needed for smaller enterprises and I have no details of the amount of chemicals that need to be stored for the current farming operation. As sheep do not require permanent housing, it is not clear why machinery could not be stored in the original building for the bulk of the year. Any proven need for a separate area for chemicals would not in any event by itself justify the size of the appeal building. I attach limited weight to this matter.
32. The risk of flooding means that the Environment Agency has asked that electrical outlets should be 1 metre above ground level and the appellant has stated that all equipment will be raised on racking where possible. Whilst the useable floor space in the appeal building may be reduced as a result, this is a matter of limited weight as there is still a requirement to justify the need for a second agricultural building in addition to the space available in the original building.

Other Matters

33. The Council and the Environment Agency are of the view that the flood risk reason for issuing the notice can be addressed by condition. However that is not the view of Hexa Consulting (Hexa) who are instructed by the owners of Parklands. Hexa does not consider that the information provided overcomes the Council's reason for refusal in full. Hexa's concern relates to displacement of water and it questions whether measures in relation to the appeal building itself are sufficient to "not increase flood risk to third parties in the immediate surrounding area." However, as I am dismissing the appeal for other reasons, this is not a matter that I need to address further in this decision. Whether or not other buildings or hardstanding on the appeal site have appropriate consents including from the Environment Agency are matters which fall outside the remit of this appeal.

Planning Balance

34. The development is inappropriate development in the Green Belt which does have an adverse effect upon openness to the Green Belt. Inappropriate development should not be approved except in very special circumstances which will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. I attach substantial weight to the harm to the Green Belt. I also attach significant weight to my findings that the development has harmful effect upon the character and appearance of the area.
35. On the other side of the scales, I have attached either very limited weight or limited weight to the matters raised by the appellant which relate to the risk of flooding reducing available space, the need for storage of chemicals and equipment, future support of local businesses and supporting a rural economy.
36. In my planning judgement, the advanced considerations in support of the development, whether taken individually or cumulatively, do not, on balance, clearly outweigh the identified harms and so very special circumstances do not exist in this case. Accordingly, very special circumstances do not exist, and the development is at odds with the Green Belt policy set out in Policy 4B of the Core Strategy and the Framework. It is also contrary to Policies 9 and 13 of the Core Strategy and Policy DM5 of the Allocations and Development DPD (2013). I therefore conclude that the appeal on ground (a) should fail.

Conclusion

37. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice subject to the variations and refuse to grant planning permission on the deemed application made under Section 177(5) of the 1990 Act

E Griffin

INSPECTOR