



Appeal Decision

Site visit made on 22 September 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2022

Appeal Ref: APP/N1025/W/22/3291721

Hill Billy Farm, Hopwell Road, Draycott DE72 3PE

- 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 Henry Ray against the decision of Erewash Borough Council.
 - The application Ref ERE/0920/0017, dated 24 May 2021, was refused by notice dated 23 November 2021.
 - The development proposed is change use of land from highway land to pasture and retention of entrance walls and gates (including lantern lights), pumphouse building, driveway and retaining wall.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land from highway land to pasture and retention of entrance walls and gates (including lantern lights), pumphouse building, driveway and retaining wall, at Hill Billy Farm DE72 3PE in accordance with the terms of the application, Ref ERE/0920/0017, dated 24 May 2021, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; JG/HR/16/32/20 (Existing and Proposed Site Block Plans); MT/DR/016/032/03 (Proposed Plans and Elevations).
- 2) Unless within four months of the date of this decision the close boarded timber fence to the front of the site is removed in its entirety, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon removal of the close boarded timber fence specified in this condition, the site shall thereafter be maintained as otherwise hereby approved.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matter

2. I have taken the description of development from the appeal form, as this clearer and more concise than that given on the application form. However, I have omitted the words 'retrospective application' as this does not represent an act of development.

Background and Main Issues

3. The proposal involves a number of works already undertaken on site, namely the erection of curved brick walls with pillars and timber gates at the site entrance; the erection of a detached pump house building close to the entrance gate; the laying of a hard surfaced driveway; the erection of a retaining wall along the length of the rear boundary of the site; and the incorporation of a strip of land forming part of the highway to the front of the site into pasture land forming part of the property.
4. I saw on site that each of these elements of the proposal have been implemented, and permission was sought on a retrospective basis. I note that a 2 metre high timber fence erected along the front of the site is to be removed, behind which is a post and rail fence of some 1 metre in height and a laurel hedge which would instead form the boundary of the property.
5. The Council refused permission only in respect of the pump house. However, the site lies within an area of Green Belt. As such, it is necessary to consider each element of the proposal against the relevant tests for development in the Green Belt set out in the National Planning Policy Framework (the Framework) and any relevant development plan policies.
6. Therefore, the main issues are:
 - Whether the proposal is inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies;
 - The effect of the proposal on the openness of the Green Belt;
 - If the development is inappropriate, 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 proposal.

Reasons

Whether inappropriate development

7. Paragraph 149 of the Framework states that the construction of new buildings within the Green Belt is inappropriate development, but lists certain forms of development which are not regarded as inappropriate, as does Paragraph 150.
8. Policy 3 of the Erewash Core Strategy (March 2014) (the CS) states that the Council will have regard to the statutory purposes of the Green Belt in considering proposals for development within it; to ensuring the continued separation of neighbouring towns; and to safeguarding valued countryside. The Council also refers to Saved Policy GB4 of the Erewash Borough Saved Policies Document (July 2008) (the EBSPD), which permits extensions to dwellings in the Green Belt in certain circumstances.
9. These policies are not wholly consistent with the approach of the Framework to the Green Belt, in particular as they do not refer to inappropriate development or permitted exceptions to it. Therefore, in accordance with Paragraph 219, I afford limited weight to these policies and have assessed the proposal primarily against the Framework. In any event, as the elements of the proposal are not extensions, Policy GB4 is not directly relevant.

10. The pump house is a modest, detached structure constructed in red brick with pitched roof. It has a footprint similar to that of a domestic shed. The Council raises concern at the height of the structure and its resulting visibility from the road and effect on openness.
11. The proposal would represent a new building on the land and while I recognise that it is clearly intended to serve an ancillary function to the main dwelling, it is located some distance from it. As a result, I do not regard it as an extension to the dwelling that would be an exception to inappropriate development under part d) of Paragraph 149, but rather an outbuilding that would not fall within any other exception under Paragraphs 149 or 150. Therefore, it would constitute inappropriate development in the Green Belt.
12. In terms of the other elements of the proposal, the Council did not consider whether they met with any of the exceptions to inappropriate development under the Framework. Nor do the parties set out how these works should be defined for the purposes of assessing them against Green Belt policy. The term 'building' is not defined in the Framework, but Section 336 of the 1990 Act defines 'building' as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. As such, the fencing, rear retaining wall and front entrance gates could reasonably be regarded as buildings as defined under the Act. 'Engineering operations' includes the formation or laying out of means of access to highways.
13. The fencing, rear retaining wall and front entrance gates would not fit within any of the exceptions at Paragraphs 149 or 150 and so would be inappropriate development.
14. The hard surfacing in front of the gates and the driveway within the site falls within the definition of an engineering operation, which is not inappropriate development provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The driveway does not have any vertical massing and therefore maintains the openness of the site in both spatial and visual terms. Consequently, I conclude that this element of the proposal is not inappropriate development.
15. The final element is the change of use of a strip of land to the front of the site. This is understood to have formed part of the highway before being enclosed into the site by the works to erect the fencing and front entrance. Changes of use are not inappropriate development under Paragraph 150, subject to the effect on openness. Setting aside the works to erect fencing around it, the change in the use of the land itself would not have an effect on openness. Therefore, this element of the proposal would not be inappropriate development in the Green Belt.
16. However, the pump house, fencing, retaining wall and entrance walls and gates would amount to inappropriate development which is, by definition, harmful to the Green Belt.

Openness

17. The essential characteristics of Green Belts are their openness and their permanence. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect.

18. The pump house represents development where there previously was none and is visible above the boundary treatment. As such, it has an adverse effect on openness in both spatial and visual terms. However, it is of modest proportions, and even with a pitched roof it forms an ancillary structure within the site. Consequently, the loss of openness would be limited.
19. The retaining rear wall is some 1m in height and runs along the full length of the boundary. The post and rail fence is a similar height and runs along the front of the site, though at the time of my visit it was concealed from view from the road by the timber fence. The brick walls to the front entrance stand some 1.7 metres high, as do the timber gates, with pillars at 2.1 metres that have decorative lanterns on top. Each of these elements represents a new structure where there was none before, and therefore each represents a loss of openness.
20. The front fencing, being more lightweight in form and set behind the laurel hedge, has a very modest effect. The rear retaining wall similarly is set below the existing hedge to the rear of the site and has a limited effect on openness as a result. The entrance walls and gates are clearly more prominent in position but are still relatively modest structures with a limited effect on openness.
21. Overall, the pump house, fencing, retaining wall and entrance walls/gates do not preserve the openness of the Green Belt; however, given the low height and modest scale of these elements, the site would remain for the most part open and undeveloped and so the harm in this case would be limited.

Other Considerations

22. The appellant advances that the pump house is required to provide a water supply to the dwelling on the site, which otherwise cannot be provided via mains connection. It is added that the size of the pump house meets the requirements of the Environment Agency and contains the pump and filtration equipment needed to treat the water before consumption. The Council argues that the size of the structure has not been justified.
23. I saw the pump house contained the relevant equipment and storage tank for water, but at the time was also being used for what appeared to be some domestic storage. Nonetheless, the pump house did not appear to me to be excessive in size, but rather of a scale which enables the equipment to be properly housed and with sufficient space to access it for maintenance. Moreover, it has been designed to match the appearance of the dwelling and the entrance gates and, despite being visible from the road, forms a modest and coherent feature of what is now a site with an evident domestic character.
24. There is no doubt that the supply of water to the dwelling is essential, and I have nothing in evidence from the Council to contradict the appellant's claim that supply cannot be achieved via mains connection. Given this, there is a demonstrable need for the pump house, which attracts significant weight in its favour.
25. In other respects, the Council concluded that both the front post and rail fence and the rear retaining wall, due to their height, could be otherwise erected under permitted development. While I do not have evidence to confirm this, such as a lawful development certificate, equally there is nothing that would

cast doubt on this as a realistic fallback position, given the limitations of the GPDO¹ in respect of walls and fences relate primarily to height. Consequently, this is a consideration weighing strongly in favour of the proposal as it relates to the rear wall and front fencing.

26. The Council further indicates that, with respect to the entrance walls and gates, these would amount to permitted development were it not for the height of the pillars slightly exceeding two metres and the lanterns on top. There appears no dispute from the appellant in this respect. However, that is based on an assumption that these elements are not considered to be adjacent to the highway, and therefore could be erected to two metres in height under permitted development. Whether a structure is adjacent to the highway is a matter of interpretation based on the specific circumstances of the proposal, and I do not have firm evidence that demonstrates structures of up to two metres in height could be erected under permitted development as a fall-back position.
27. Nonetheless, I recognise that, with residential use of the land having been established in 2019, and given its rural location, it is reasonable to consider that some form of entrance walls/gates would otherwise have to be provided to identify the site access and provide security for occupants. The walls and gate in this case are not excessive in height and the use of red brick for the walls and timber for the gates reflects similar examples immediately to the south. As such, these elements preserve the character and appearance of the area. Having regard to their overall size relative to the site frontage, I am satisfied that the entrance gates are not demonstrably more harmful in terms of appearance or the effect on openness than walls and gates that could be erected under permitted development, even if this were at one metre rather than two metres.
28. The pump house would be seen as part of the site, more so should the solid timber fencing be removed in favour of the lighter post and rail fence and laurel hedge. However, the dwelling and the wider domestic appearance of the site would also become more visible in this scenario, and the pump house would not appear discordant as a result. Indeed, the overall appearance of the site, inclusive of the elements proposed, would be coherent through the use of matching materials and would maintain the rural domestic character which already exists.
29. Although not specifically raised by the parties, I noted that the gates are set back into the site to allow vehicles to leave the carriageway whilst waiting for the gate to open. The appellant also indicates that the hard surfacing allows parking and a turning area enabling entry and exit in a forward gear. In view of the fast-moving traffic I saw outside the site, the entrance and hard surfacing arrangements would be a minor benefit of the proposal in terms of ensuring highway safety.

Whether very special circumstances exist

30. The proposal would cause harm to the Green Belt by way of inappropriateness and a reduction in openness, to which I afford substantial weight in accordance with the Framework.

¹ Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

31. 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.
32. Taken together, I find that the identified benefit of the pump house in providing water to the dwelling, benefits of the walls, gates and fencing in terms of highway safety and site security, together with the potential permitted development options which exist as fall-back positions, clearly outweigh the totality of the harm identified to the Green Belt. Consequently, I conclude that the very special circumstances necessary to justify the proposal exist.

Conditions

33. As the development has already commenced it is not necessary to impose the standard time limit condition. It is unclear whether works have been completed in their entirety in all respects; therefore I shall impose a condition specifying the approved plans in the interests of certainty.
34. It is also necessary to impose a condition requiring the removal of the close boarded timber fence to make the development acceptable in planning terms. The condition is worded with a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the removal of the fence before the development takes place. The condition will also ensure that the development can be enforced against if the requirements are not met.

Conclusion

35. For the foregoing reasons, I conclude that the appeal should be allowed.

K Savage

INSPECTOR