
Appeal Decision

Site visit made on 20 December 2022

by John Gunn DipTP, Dip DBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2023

Appeal Ref: APP/W3005/W/22/3295894

The Mews Barn, Felley Mill Lane South, Underwood, Nottinghamshire NG16 5DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Steven Lewis against Ashfield District Council.
 - The application Ref V/2022/0043, is dated 19 January 2022.
 - The development proposed is described on the application form as 'Pen aviary for falcons. Wooden sides with mesh top. Rectangle and flat top. Roof of mesh. Basically, a rectangle shed without a roof just mesh'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal is one of three relating to the same site. The other two cases, referenced APP/W3005/D/22/3293714 and APP/W3005/W/22/3295897, relate to different proposals and are subject to separate decision letters.
3. The appeal is against the failure of the Council to determine the planning application in the prescribed period. The Council advised that, if it were now in a position to make a decision, it would refuse the application due to concerns relating to the impact of the proposal on the openness of the Green Belt and the extension of a residential use beyond the existing residential curtilage.
4. The appellant, in his final comments, expresses concern that, in the absence of a formal decision on the application, he was unaware that the application would have been refused on Green Belt grounds. Whilst acknowledging that the Council's case was not clear until their appeal statement was submitted the appellant was aware that the appeal site is located in the Green Belt. Moreover, he has subsequently had an opportunity to comment on the views expressed by the Council in their appeal statement. Consequently, I do not agree that he has been disadvantaged in presenting his case.

Main Issues

5. The main issues in this case are:
 - Whether the proposed development would be inappropriate development in the Green Belt;
 - The effect of the proposed development on the openness of the Green Belt; and

- If the proposed development is inappropriate, whether the harm to the Green Belt by way of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to very special circumstances to justify it.

Reasons

Whether Inappropriate Development

6. Paragraph 149 of the National Planning Policy Framework (the Framework) establishes that new buildings in the Green Belt are inappropriate, subject to a number of exceptions.
7. The Council considers that the development would extend the curtilage of the dwelling. The appellant disagrees with this interpretation and asserts that the aviary would not be placed within the curtilage of the dwelling and cannot be reasonably considered to be an extension.
8. The proposed aviary would be located some distance from the host property and cannot be considered to be an adjunct to it. Moreover, it would not fall within the curtilage of the property as defined in the appeal decision¹ that granted planning permission for the conversion of the original barn to a dwelling. Consequently, it appears to me that the proposed development would not extend the curtilage of the property.
9. The appellant's case focusses on the proposal being an essential facility for outdoor recreation. In this regard the exception set out in paragraph 149 b) relates to the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments. Such facilities are not considered inappropriate development providing that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
10. Policy EV1 of the Ashfield Local Plan Review (Adopted November 2002) (LP) seeks to restrict development in the Green Belt unless it is for specific defined purposes. These include (ii) essential facilities for outdoor sport... and for other uses of land which preserve the openness of the Green Belt and do not conflict with one of the purposes of including land within it. The justification for the policy gives examples of such facilities as including small stables for outdoor sports and recreation. No definition is given of what would constitute 'small'.
11. There is a slight conflict between policy EV1 and paragraph 149 b) in that the local policy refers to 'essential' facilities whereas the Framework now refers to 'appropriate' facilities for outdoor sport and outdoor recreation. Notwithstanding the slight difference in the wording the development plan policy is broadly consistent with the Framework.
12. The aviary would be used to house a number of falcons that the appellant cares for. Moreover, he indicates that the birds are trained and flown at Felley Mill Lane and require an 'immense' amount of open space, such as that which he owns directly adjoining the appeal site. Given this information I consider that the proposal can be reasonably considered as an outdoor recreational activity.

¹ APP/W3005/W/18/3202400

13. In light of the above, I find that the proposed development potentially falls within the exception set out in Paragraph 149 b). That said, I am required to assess the impact of the proposed development on openness and the purpose of including land in the Green Belt before I can conclude whether or not it would comprise inappropriate development.

Openness

14. The essential characteristics of Green Belts are their openness and their permanence. In this case, the development would result in a structure where previously none existed. Moreover, it would not be insignificant in scale, having a height of over 2.4 metres and a footprint of around 39.6 square metres. This relatively large addition, both in terms of footprint and volume, would represent a further increase in built development in the locality to the detriment of the openness of the Green Belt.
15. I accept that the appeal site is well screened from neighbouring areas by hedgerows and existing stables, and in isolation the reduction in openness would be limited and localised. However, the absence of significant visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt. When considered as a whole, the spatial impact of the development means that it would clearly fail to preserve the openness of the Green Belt. Therefore, the proposed development would represent inappropriate development in the Green Belt as it would not fall within any of the exceptions in the Framework.

Other Considerations

16. The Framework makes it clear at paragraph 144, that substantial weight is given to any harm to the Green Belt. It establishes that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
17. The appellant has drawn my attention to the grant of planning permission for a stable extension in a nearby field. However, I have not been provided with substantive details of the development referred to, or the circumstances under which it was permitted. Therefore, I am unable to assess with any certainty whether it is directly comparable with the case before me. Accordingly, I give this matter only limited weight.
18. I have taken into account the appellants long experience in training falcons and the desire to provide a place where they can live, be exercised and be kept safe from predators, close to where he lives. However, the development will exist long after the personal circumstances have ceased to exist. Consequently, I afford this matter only limited weight.
19. I also note that training falcons can assist in deterring wild birds from around airports and land fill tips, with associated health and social benefits to society. I acknowledge that this would be a benefit to the wider society, however it would not provide any direct benefits to the area in which the proposed development would be located. Consequently, I am only able to give this matter limited weight.
20. I accept that falcons are not domestic pets and have specific requirements in terms of the environment within which they live, are trained, and breed. That

said, I have no evidence before me to indicate that the appeal site provides the only opportunity to provide suitable accommodation and facilities to meet this aspiration.

Conclusion

21. In conclusion, I find that the proposed development would constitute inappropriate development in that it does not preserve the openness of the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt. Limited weight has been given to the material considerations cited in support of the proposed development, and I conclude that they do not outweigh the harm the proposed development would cause to the Green Belt. Consequently, the very special circumstances to justify the proposal do not exist. The proposal therefore conflicts with Green Belt policy contained within Policy EV1 of the LP and the Framework, which jointly seek to preserve the openness of the Green Belt.
22. There are no other relevant material considerations that indicate the application should be determined in accordance with the development plan as a whole. For the reasons given above, I therefore conclude that the appeal should be dismissed.

John Gunn

INSPECTOR