



Appeal Decision

Site visit made on 28 February 2023

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 May 2023

Appeal Ref: APP/P3040/W/22/3311191

Oliver's Yard, New Road, Barton in Fabis NG11 0AE

- 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 John Arthur Kent against the decision of Rushcliffe Borough Council.
 - The application Ref 22/00379/FUL, dated 23 February 2022, was refused by notice dated 16 May 2022.
 - The development is described as "the replacement of wall and roof materials with new cladding and blockwork; and the change of use of the building from agricultural to light industrial (use class E(g)(iii))."
-

Decision

1. The appeal is allowed and planning permission is granted for use of building for mixed agriculture and grounds maintenance, including replacement of wall and roof materials with new cladding and blockwork at Oliver's Yard, New Road, Barton in Fabis NG11 0AE in accordance with the terms of the application, Ref 22/00379/FUL, dated 23 February 2022, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs has been made by Mr John Arthur Kent against Rushcliffe Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of the development in the banner heading above is taken from the appellant's Planning Statement (dated February 2022), as the application form stated "Please see Planning Statement". The appeal form states, "change of use from agriculture to light industrial (use class E(g)(iii) including replacement of wall and roof materials with new cladding and blockwork (retrospective)." At the time of my site visit, the building was substantially completed with only internal works needed. I have therefore dealt with the appeal on that basis, but I have omitted the reference to the development being retrospective as this does not constitute an act of development.
4. There is dispute between the main parties as to whether the previous use of the building was solely for agricultural purposes or for mixed use and not agriculture in isolation. Whilst I acknowledge that the building's original use would have been for agricultural purposes, I have not been presented with a formal planning permission or certificate of lawfulness to prove that the

building has a lawful sui generis mixed use. In any event, the proposal before me is for a change of use from agriculture to light industrial use.

5. The appellant has asked me to change the description of development to that currently on site as that more accurately reflects the use than as applied for in the original planning application. I have taken these comments into consideration. In my judgement, a change in the description of development would represent a material change in the type of development compared to that applied for, which is light industrial use. Nonetheless, as this request was raised by the appellant in their Statement of Case, other parties have had the opportunity to comment on it. Therefore, no parties would be prejudiced by my acceptance of it.
6. I therefore propose to consider the use as mixed agricultural and grounds maintenance activities, as this is the current use of the building which I saw at my site visit. I note that the Council has not raised any issues regarding the current use and have referred to this use in the past. Therefore, I have determined the appeal on that basis.

Main Issues

7. The main issues are:

- whether or not the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- the effect of the proposal on the openness of the Green Belt; and
- 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 the development.

Reasons

8. The appeal site is a rectangular shaped site located in the Green Belt and on the edge of Barton in Fabis. The site comprises a large building with access off New Road.

Whether or Not Inappropriate Development

9. The fundamental aim of Green Belt policy in the National Planning Policy Framework (Framework) is to prevent urban sprawl by keeping land permanently open.
10. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
11. Paragraph 149 of the Framework states that the construction of new buildings should be regarded as inappropriate development. A closed list of exceptions is set out, one of which, under sub-paragraph c), concerns the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.

12. The reason for refusal indicates that the development would be tantamount to a rebuild rather than the alteration of the original building. This is disputed by the appellant.
13. It is common ground between the main parties that the appeal building does not result in a disproportionate addition over and above the size of the original building. Whilst I accept that there is a 3.58% increase in building size compared to the original building due to a deeper profile to the walls and roof covering, the overall increase in scale and volume is not significant or disproportionate. Thus, the development, in my judgement, is not a disproportionate addition over and above the size of the original building. I therefore turn to whether the development represents an extension or alteration of the original building.
14. The original building comprises six concrete portal frames that are physically attached to the ground and forms the sub-structure of the building. The appeal building has retained and re-used these concrete portals of the original building. It is these concrete portals that define the framework skeleton and inherent scale and shape of the original building.
15. Although the original external cladding and roof covering the main structure has been removed, the appellant states that this was mainly due to the materials being in a dilapidated state and asbestos being present in the original materials. Given the presence of asbestos within the original building, its removal was required on health and safety grounds. Consequently, the removal of the wall and roof coverings was reasonable for repair and maintenance and to ensure the development provided a safe property for human habitation.
16. I acknowledge that the development also includes the installation of insulating materials and internal walls to subdivide the building. However, these are largely internal and non-structural.
17. Overall, in my judgement, the development's main works comprised the partial replacement of the building's blockwork walls and the installation of external cladding and roofing and two roller shutter doors, all of which were supported by the existing sub-structure. Based on the information before me, these do not result in any new structural additions. Therefore, these replacement works are not so extensive as to amount to a substantial rebuild of the original building. Fundamentally, the building alterations are based on the original concrete portal skeleton which remains in-situ. In addition, sections of the original blockwork walls have been retained in the building's end gables. Accordingly, I conclude that the development of the appeal building is an alteration of the original building.
18. I acknowledge that the external cladding finish used on the appeal building is not a like-for-like replacement and is not a traditional rural building material. Nevertheless, given the green colouring of the cladding, the materials complement the traditional form of the building and blend in with its rural surroundings.
19. For the reasons given, the development constitutes an alteration of the original building that does not result in a disproportionate addition over and above the size of the original building. It is therefore in accordance with the exception set out in paragraph 149 c) of the Framework.

20. Accordingly, for the reasons given above, the development meets the requirements of paragraph 149 of the Framework and is therefore not inappropriate development. As such, it complies with the protection of the Green Belt objectives within the Framework. There is therefore no need for me to go on and consider the effect on openness or whether very special circumstances exist.
21. I acknowledge that the Council's decision notice did not cite any local development plan policies. However, part 2 of Policy 21 of the Rushcliffe Local Plan Part 2: Land and Planning Policies (October 2019) (Local Plan) states that "applications for development in the Green Belt will be determined in accordance with the National Planning Policy Framework." Therefore, for the reasons above, the proposal would accord with Policy 21 of the Local Plan.

Other Matters

22. I acknowledge that there were a number of representations, including those by Barton in Fabis Parish Council in respect of the development, which in addition to the main issues included concerns relating to harm to residential amenity, noise pollution, flood risk, vehicular access, and containers and fencing. These factors are not in dispute between the main parties and were addressed in the Officer's Report, with the Council concluding that there would be no material harm in these regards. Given my findings above, and the suggested conditions provided by the Council, I have found no justification to dismiss the appeal.
23. There is suggestion that the original building was a temporary building. However, the appellant has confirmed that the building is over 60 years of age and therefore not temporary.
24. Concern has been raised regarding The Forge, a non-designated heritage asset. However, the Council has not raised this as an issue. Based on the evidence before me and the observations I made during my site visit, I find that the development has a neutral effect on the significance of this non-designated heritage asset and therefore preserves its setting.

Conditions

25. The Council suggested a number of conditions; the appellant had the opportunity to comment on these. I have considered these suggested conditions together with the advice in the planning practice guidance and amended where necessary.
26. It is appropriate that there is a condition requiring the development to be carried out in accordance with the approved plans for certainty.
27. In the interests of highway safety, conditions are imposed relating to the vehicular access for the development. I have imposed conditions to ensure the adequate surface drainage of the site and to avoid flooding.
28. Conditions relating to a landscaping scheme and external lighting are necessary to protect wildlife and neighbouring residential amenities (in terms of flood-lighting). Conditions relating to noisy machinery, deliveries and waste collections are required to protect the living conditions of neighbouring occupiers. I have also imposed a condition to restrict the use of the building to protect the living conditions of neighbouring occupiers.

Conclusion

29. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Helen Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan and Site Plan – drawing no: 21.3940.22, date: Feb 2022
 - Existing Unit Section – drawing no: 49164-01, date: Oct 2020
 - Proposed Unit Section – drawing no: 49164-01, date: Oct 2020
 - Proposed Roof Layout – drawing no: 49164-02, date: Oct 2020
 - Proposed Elevation Layout – drawing no: 49164-03, date: Oct 2020
 - Proposed Roof Details – drawing no: 49164-04, date: Oct 2020
 - Proposed Roof Perimeter Details – drawing no: 49164-05, date: Oct 2020
 - Proposed Wall Details – drawing no: 49164-06, date: Oct 2020
 - Proposed Ground and Mezzanine Floor Plans – drawing no: C110 001, date: March 2021
 - Proposed Access and Parking Arrangement – drawing no: OLY-BWB-HML-00-DR-TR-101-S2-P3, date: Oct 2021
- 2) Within 6 months of the date of this decision, the development hereby permitted shall provide a 2.4 x 43 metre visibility splay to either side of the site access in accordance with the approved plan for 'Proposed Access and Parking Arrangement' (drawing no: OLY-BWB-HML-00-DR-TR-101-S2-P3). The area within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.6 metres in height above carriageway level for the lifetime of the development.
- 3) Within 6 months of the date of this decision, the development hereby permitted shall provide access driveway, parking and turning areas surfaced in a hard-bound material for a minimum distance of 5m to the rear of the highway boundary and constructed with provision to prevent the unregulated discharge of surface water from the site to the public highway. The provision to prevent the discharge of surface water to the public highway shall then be retained for the lifetime of the development.
- 4) The development shall be carried out in accordance with the submitted flood risk assessment report, dated November 2021 (ref OLY-BWB-ZZ-XX-RP-Ye-0001_FRA_S2-P02) and the mitigation measures it details. Floor levels to remain as existing as the development is designed to be floodable. Access to upper safe refuge area is to be provided. These mitigation measures shall be fully implemented prior to the occupation of the development and retained for the lifetime of the development.
- 5) Within 12 months of the date of this decision, details of a landscaping scheme, including a statement of biodiversity net gain from the development, shall be submitted to and approved in writing by the local planning authority. The approved details shall thereafter be implemented and retained for the lifetime of the development.
- 6) Prior to the installation of an external lighting scheme, details of the lighting scheme shall be submitted to and approved in writing by the local planning authority. The external lighting shall then be erected in accordance with approved details and retained for the lifetime of the development. Thereafter,

no additional lighting shall be installed without the prior written permission of the local planning authority.

- 7) Deliveries and waste collections received at the premises shall be restricted to Monday to Friday 0700 to 1900 hours, and Saturdays 0800 to 1700 hours, and at no time on Sundays, Bank or Public Holidays.
- 8) The shutter doors in the south elevation shall be kept closed during noisy emitting operations, such as the use of grinders, hammers or other noise generating tools, as detailed in part 5.2 of the noise impact assessment report (NoiseAssess, ref: 13339.01.v1, dated November 2021).
- 9) The development hereby permitted shall be limited to agricultural and grounds maintenance activities and no other purpose.

****End of Conditions****