



Appeal Decisions

Site visit made on 23 May 2023

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an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeals A and B Refs: APP/B3030/C/22/3301759 and 3301760 'Land' on the south-east side of Cross Lane, Blidworth, NG21 0LX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act) by Mr David and Mrs Linda Tasker against an enforcement notice issued by Newark and Sherwood District Council.
 - The enforcement notice was issued on 23 May 2022.
 - The breach of planning control as alleged in the notice is 'development' consisting of the material change of use of land from agriculture to the use for equestrian purposes and operational development consisting of the erection of a stables building (as shown within photographs 1 and 2 and identified with an 'X' on the site plan and aerial photograph) and the installation of shipping containers (as shown within photographs 1, 2 and 3 and identified with a 'Y and Z' on the site plan and aerial photograph).
 - The requirements of the notice are A. Cease the use of the land for equestrian use and remove from the land any associated paraphernalia; B. Demolish the stables building (as shown within photographs 1 and 2 and identified with an 'X' on the site plan and aerial photograph) and remove from the land all resultant waste and materials; and C. Remove from the land the shipping containers (photographs 1, 2 and 3 and identified with a 'Y and Z' on the site plan and aerial photograph).
 - The period for compliance with requirements A and B is 180 days and the period for compliance with requirement C is 210 days.
 - The appeals are proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act and Appeal A is also proceeding on the grounds set out in section 174(2)(a) of the 1990 Act.
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Appeal C Ref: APP/B3030/W/22/3301787 Land off New Lane, Blidworth, NG21 0LX

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
 - The appeal is made by Mr David and Mrs Linda Tasker against the decision of Newark and Sherwood District Council.
 - The application Ref 22/00575/FULM, dated 21 March 2022, was refused by notice dated 24 May 2022.
 - The development proposed is change of use of paddock to equestrian use, erection of stable block, provision of hard standing and the formation of access and parking area.
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Decisions

Appeal A Ref: APP/B3030/C/22/3301759

1. The appeal under ground (a) is allowed insofar as it relates to the material change of use and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the material change of use of land from agriculture to use for equestrian purposes at land on the south-east side of Cross Lane, Blidworth.

2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to operational development and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act for the erection of a stables building and the installation of shipping containers at land on the south-east side of Cross Lane, Blidworth.

Appeal B Ref: APP/B3030/C/22/3301760

3. The appeal is dismissed and the enforcement notice is upheld.

Appeal C Ref: APP/B3030/W/22/3301787

4. The appeal is dismissed.

Reasons

The ground (c) appeals in Appeals A and B

5. The ground (c) appeals relate to one element of the alleged breach of planning control, 'the installation of shipping containers', and also refer to one element of the requirements of the notice, 'remove from the land any associated paraphernalia'. The latter matter is not for consideration under the ground (c) appeals, it is not itself a part of the breach of planning control, and will be considered under the ground (f) appeals.

6. The Appellants argue that the installation of shipping containers is not development, as defined in section 55 of the 1990 Act, because they "...have been placed on the land", are not "...affixed or otherwise anchored to the ground", "...are capable of being moved around and removed from the site", and "...do not exhibit characteristics of permanence that are otherwise commonly associated with buildings, such as the stables". Case law indicates that the defining characteristics of a building, such as a stable building which is regarded to be development, are its size, its attachment to the ground, and its permanence.

7. A shipping container is as large as a stable building and the Appellants have not suggested that the containers that have been brought onto the land are intended to be anything other than permanent features. The shipping containers are rigid and heavy and they are not designed to be dragged across land even if it was surfaced, which the appeal land is not. In this regard they are, in practical terms, attached to the ground. The shipping containers, furthermore, are no less or more removable than the stable building. The installation of the shipping containers is development for which planning permission is required. The ground (c) appeals thus fail.

The ground (a) appeal in Appeal A

8. The breach of planning control has two distinct elements; operational development and a material change of use. Each element must be considered separately, because national planning policy set out in the National Planning Policy Framework (NPPF) for operational development in the Green Belt, within which the appeal site is situated, differs from that for a material change of use.

9. The Council granted planning permission (Appl. No. 21/01541/FULM) for 'change of use from agricultural use to equestrian use' for land off Blidworth Lane, Blidworth on 5 November 2021. They also granted planning permission (Appl. No. 22/00093/FULM) for 'change of use of agricultural land to a mixed agricultural and equestrian use' for land in a similar location on 8 March 2022. Both sites are close

to the appeal site and within the Nottingham and Derby Green Belt. In both cases the Council concluded that the change of use of the land, not involving any operational development, would "...preserve the openness of the Green Belt" and would not conflict with any of the five purposes of including land in the Green Belt as set out in paragraph 138 of the NPPF.

10. Paragraph 150 of the NPPF states that certain other forms of development, which include material changes in the use of land, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The Council, in recently granting the aforementioned planning permissions, clearly do not regard the change of use of agricultural land to equestrian use to be inappropriate development in the Green Belt or harmful in any other way. It is important that planning decisions are consistent if circumstances are the same and irrespective of whether they are made at application or appeal stage. The circumstances of the alleged change of use in this appeal case are the same as those which resulted in the grant of the two recent planning permissions. Planning permission has thus been granted for the change of use alleged in the enforcement notice.

11. Paragraph 147 of the NPPF states that "Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances". Paragraph 148 states that "Very special circumstances' will not exist unless the potential harm by reason of inappropriateness, and any other harm..., is clearly outweighed by other considerations".

12. The main issues are; first, whether the operational development alleged in the enforcement notice is inappropriate development in the Green Belt; second, whether the operational development causes any harm other by reason of inappropriateness; and third, whether there are any material considerations that outweigh the harm by reason of inappropriateness and other harm such that very special circumstances exist.

The first issue – inappropriate development

13. Paragraph 149 of the NPPF states that the construction of a new building is inappropriate in the Green Belt except where the building is for one of seven stated exceptions. One of the exceptions is the provision of appropriate facilities for outdoor recreation, amongst other activities, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The use of the appeal site for equestrian use is for the purposes of outdoor recreation; the Appellants keep their horses on the land for their own enjoyment and recreation.

14. Openness, as a concept, has two elements; spatial and visual. There is no doubt that the stable building and the shipping containers have undermined the spatial openness of the Green Belt. The stable building, constructed in timber, can be glimpsed above the boundary vegetation from the highway and is otherwise seen against the backdrop of that vegetation. It is unobtrusive, not unattractive in its countryside setting and does not materially affect the visual openness of the area. Conversely, the two shipping containers, given their construction and shape and notwithstanding their green colour, are obtrusive and unattractive. They are visually unappealing and intrusive and are harmful to visual openness.

15. One of the five purposes of including land in the Green Belt, as set out in paragraph 138 of the NPPF, is 'to assist in safeguarding the countryside from

encroachment'. The stable building is not untypical of buildings found in countryside settings and does not conflict with this purpose. Conversely, again, shipping containers are usually found in industrial areas and are wholly untypical of buildings found in the countryside. The two shipping containers on the land do not assist in safeguarding the countryside from encroachment and therefore conflict with a purpose of including land in the Green Belt.

16. The facilities for outdoor recreation that have been installed on the land, the stable building and the two shipping containers, do not preserve the spatial openness of the Green Belt and the two shipping containers also do not preserve the visual openness of the area and conflict with one of the five purposes of including land in the Green Belt. The operational development element of the breach of planning control is therefore inappropriate development.

The second issue – other harm

17. The appeal site is at the west end of a large area of former open agricultural land that has been subdivided by fencing to create separate parcels of land that are now in use for the keeping of horses. The site is roughly triangular and is at the lowest point of the wider area of land. It has frontages to Cross Lane, a surfaced country road, and to New Lane, an unmade and rough lane. Along the frontages is dense vegetation whilst the site is otherwise grassland. The stable building and the containers are close to the highway frontages.

18. The stable building and the two shipping containers are only glimpsed through the boundary vegetation in views from Cross Lane and New Lane and, given that land levels rise up to the east, they are only seen from nearby in views from this direction. The stable building is, as previously concluded, not harmful to the visual character of the area. The two shipping containers, conversely, either in glimpses from the nearby highways or when seen from other vantage points, are alien features that are visually harmful to, and do not conserve, the character of the landscape. The two shipping containers have a significant adverse effect on the character of the landscape in conflict with Core Policy 13 of the Amended Newark and Sherwood Core Strategy 2019 (CS).

The third issue – very special circumstances

19. The Appellants have not advanced any material considerations that could be weighed against the harm that has been caused by reason of inappropriateness and to the character of the landscape. The harm caused by reason of inappropriateness and to the character of the landscape is not outweighed by other considerations and very special circumstances do not exist in this case.

Conclusion

20. The operational development that is a subject of the enforcement notice is inappropriate development, undermines the openness of the area, conflicts with a purpose of including land in the Green Belt, and harms the character of the landscape. The harm by reason of inappropriateness and other harm is not outweighed by other considerations and very special circumstances do not exist in this case. The ground (a) appeal thus fails and planning permission is withheld for the operational development element of the breach of planning control.

The ground (f) appeals in Appeals A and B

21. Planning permission has been granted for the material change of use of the land from agriculture to use for equestrian purposes and, given section 180(1) of the 1990 Act, the enforcement notice ceases to have effect in so far as it relates to the material change of use element of the breach of planning control. The ground (f) appeal therefore relates only to requirements B and C. The notice seeks to remedy a breach of planning control and the remedy must be the removal from the land of the operational development that is the breach of planning control. The removal of the stables building and the two shipping containers is not therefore excessive and the ground (f) appeals thus fail.

The ground (g) appeals in Appeals A and B

22. With regard to section 180(1) of the 1990 Act the ground (g) appeals relate to the periods for compliance with requirements B and C. Compliance with the requirements of an enforcement notice should be achieved as soon as is reasonably possible. 180 days and 210 days respectively are more than reasonable periods to achieve removal of the stables building and the two shipping containers. The ground (g) appeals thus fail.

Appeal C

23. The Council has not raised any objection to the provision of a hardstanding and a parking area or to the formation of a new access to the highway, and planning permission has been granted for the change of use of the appeal site to equestrian use under the ground (a) appeal in Appeal A. The appeal therefore depends on the acceptability of the proposed stable block, which differs from the building that is currently on site.

24. The main issues are; first, whether the proposed stable block would be inappropriate development in the Green Belt; second, whether the building would cause any harm other by reason of inappropriateness; and third, whether there are any material considerations that outweigh the harm by reason of inappropriateness and other harm such that very special circumstances exist.

The first issue – inappropriate development

25. Paragraph 149 of the NPPF states that the construction of a new building is inappropriate in the Green Belt except where the building is for one of seven stated exceptions. One of the exceptions is the provision of appropriate facilities for outdoor recreation, amongst other activities, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The use of the appeal site for equestrian use is for the purposes of outdoor recreation; the Appellants keep their horses on the land for their own enjoyment and recreation.

26. Openness, as a concept, has two elements; spatial and visual. The L-shaped building would have a footprint of about 100 square metres, would be about 4.3 metres high, and would have a volume of about 378 cubic metres. A building of such a size would have a significant material effect on the spatial openness of the Green Belt. The building would have timber clad walls under a grey corrugated metal roof. It would be glimpsed above boundary vegetation from Cross Lane and New Lane and would be seen against the backdrop of this vegetation from the site and the wider area to the north-east. Though it would not be untypical of buildings

seen in rural areas it would be remote from other built development and, given its size, it would have an adverse effect on the visual openness of the area.

27. One of the five purposes of including land in the Green Belt, as set out in paragraph 138 of the NPPF, is 'to assist in safeguarding the countryside from encroachment'. The stable building would not be untypical of buildings found in countryside settings and would not conflict with this purpose. However, the proposed stable building would have a significant effect on the spatial openness of the Green Belt and would also adversely affect the visual openness of the area. The proposed stable building is therefore inappropriate development.

The second issue – other harm

28. It has been concluded, in the ground (a) appeal in Appeal A, that the existing stable building on the appeal site does not harm the character of the landscape. Though the proposed stable building would be significantly larger it would be, given its location close to boundary vegetation, relatively unobtrusive and would not harm the character of the landscape. There is, in this regard, no conflict with CS Core Policy 13.

The third issue – very special circumstances

29. The only matter that could be considered to be a material consideration to be weighed against the harm that would be caused by reason of inappropriateness is, given that one of the Appellants is a qualified psychotherapist, "...the possibility of the site...being used as part of therapeutic activities, supporting the health and well-being of people with emotional and mental health needs". This matter is expressed only as a 'possibility' and only requires the equestrian use of the land, which has been granted planning permission under the ground (a) appeal in Appeal A, not the construction of a large stable building. The harm caused by reason of inappropriateness is not outweighed by other considerations and very special circumstances do not exist in this case.

Conclusion

30. Paragraph 137 of the NPPF states that "The government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence".

31. The proposed development, because it includes the construction of a large stable building that would undermine the spatial and visual openness of the Green Belt, would be inappropriate development. The harm by reason of inappropriateness is not outweighed by other considerations and very special circumstances do not exist in this case. The appeal thus fails.

John Braithwaite

Inspector