



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

Appeal A Ref: APP/B3030/C/22/3305060

Plot 3, New Lane, Blidworth NG21 0LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act) by Mr Andrew Bolton against an enforcement notice issued by Newark and Sherwood District Council.
 - The notice was issued on 11 July 2022.
 - The breach of planning control as alleged in the notice is operational development on 'the Land' comprising of the construction of a field shelter / hay store building (marked 'X' on the attached Location Plan and identified within photograph 1).
Field shelter in Plot 3 with an approximate 28m² and pitch height of 2.8m.
and development comprising of the material change of use of the land from agriculture to the keeping of horses (equestrian).
 - The requirements of the notice are 1) Cease the current use of the land for the keeping of horses (equestrian use) – including removing from the land with all and any associated paraphernalia such as jumps etc; and resultant waste and materials; and 2) Remove from the land the field shelter / hay store (marked 'X' on the attached Location Plan and identified within photograph 1).
 - The period for compliance with requirement 1) is 84 days and the period for compliance with requirement 2) is 140 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act.
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Appeal B Ref: APP/B3030/W/22/3305225

Land at Cross Lane, Blidworth NG21 0LT

- 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 A Bolton against the decision of Newark and Sherwood District Council.
 - The application Ref 21/02663/FULM, dated 13 December 2021, was refused by notice dated 11 July 2022.
 - The development proposed is retain change of use of land to equestrian use and retain field shelters on plots 3 and 15; erect new store on plot 15.
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Decisions

Appeal B Ref: APP/B3030/W/22/3305225

1. The appeal is dismissed insofar as it relates to operational development and planning permission is refused for 'New shelter and retention of open fronted field shelter to Plot 3'.
2. The appeal is allowed insofar as it relates to a material change of use and planning permission is granted for 'Change of use of land to equestrian use and formation of new access tracks to both plots' at Plots 3 and 15, New Lane,

Blidworth in accordance with the terms of the application Ref. 21/02663/FULM, dated 13 December 2021, and the plans submitted with it so far as relevant to that part of the development hereby permitted.

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3. The enforcement notice is corrected by the deletion of '(equestrian)' in section 3. Subject to the correction the enforcement notice is upheld.

Preliminary matters

4. The enforcement notice that is the subject of Appeal A relates to land, Plot 3, that is accessed off New Lane in Blidworth. The land that is the subject of Appeal B is Plot 3 and Plot 15, which is remotely located from Plot 3 but which is also accessed off New Lane.

Appeal A

5. The material change of use alleged in the notice is ambiguous because 'equestrian' means 'riding of horses' as opposed to the 'keeping of horses'. Evidence provided by the Appellant clearly indicates that the horses kept on the land are not ridden, either because of size or age, so, without prejudice to either main party, the allegation has been corrected by the deletion of '(equestrian)'.

Appeal B

6. In a revised planning statement the Appellant's Agent confirmed that the field shelter on plot 15 was removed in March 2022 and that, with regard to this plot, the application "...therefore relates...to the change of use and the access track". On this basis the Council considered the application to be for 'Change of use of land to equestrian use and formation of new access tracks to both plots. New shelter and retention of open fronted field shelter to Plot 3'.

7. The address of the land given on the application form is incorrect; there is no access off Cross Lane and the land is accessed off New Lane. The appeal has been considered on the basis that the address is 'Land off New Lane, Blidworth'.

Reasons

Appeal B

8. The development proposed has two 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 to cause any landscape harm. The application was refused for highway safety reasons but New Lane is heavily rutted, little used by vehicles, traffic speeds are low, and passing places are available, and pedestrians have clear views and will be well aware of moving vehicles. There are no concerns for highway or pedestrian safety. The use of the land for equestrian use does not cause harm either by reason of inappropriateness or for any other reason.

11. 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 element of the proposed development. The new access tracks are ancillary to the material change of use, do not undermine openness, do not conflict with any of the five purposes of including land in the Green Belt, and are included in the planning permission.

12. 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".

13. The main issues are; first, whether the operational development, 'New shelter and retention of open fronted field shelter to Plot 3', 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

14. 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 Appellant keeps his horses on the land for his and his family's own enjoyment and recreation.

15. Openness, as a concept, has two elements; spatial and visual. The proposed development includes the retention of an open fronted field shelter, with a footprint of about 28 square metres and a height of about 2.8 metres, and the erection of a new field shelter with a footprint of about 21 square metres and a height of about 3.1 metres. There is no doubt that the two buildings, given their individual and cumulative size, have undermined and would undermine the spatial openness of the Green Belt. The existing building is alongside boundary vegetation to Cross Lane whilst the proposed field shelter would be remotely located. Constructed in timber the existing field shelter, set against a backdrop of boundary vegetation, is

not unduly intrusive in the landscape or harmful to visual openness. Conversely, the proposed field shelter, given its remote, unscreened, open location, would be prominent and intrusive and would be harmful to visual openness.

16. 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 existing field shelter is not untypical of buildings found in countryside settings and, given in particular its location alongside boundary vegetation and close to Cross Lane, does not conflict with this purpose. Conversely, the proposed field shelter, whilst it would be similar in appearance to the other buildings it would be remotely located in the open countryside and would contribute to visible encroachment of development into the countryside. The field shelter does not assist in safeguarding the countryside from encroachment and therefore conflicts with a purpose of including land in the Green Belt.

17. The facilities for outdoor recreation that have been and would be installed on the land, two field shelters, do not preserve the spatial openness of the Green Belt and the proposed field shelter also would not preserve the visual openness of the area and conflicts with one of the five purposes of including land in the Green Belt. The retention of existing development is, and the addition of proposed development would be, inappropriate development.

The second issue – other harm

18. Plot 3 has a north-west frontage to Cross Lane but a track leads to it from New Lane. Along the frontage to Cross Lane is dense natural vegetation which has been supplemented by the Appellant. Otherwise the plot is grass and is part of undulating open countryside generally in use for the keeping of horses. The existing field shelter is set close to the road boundary whereas the proposed shelter would be located about 2.5 metres from the south-east boundary to the plot close to the entrance off the access track.

19. A public footpath passes through the neighbouring Plot 2 between Cross Lane and New Lane. From the footpath there are clear views of the existing shelter. The building, which is constructed in materials sympathetic to its countryside setting and given the backdrop of boundary vegetation, is unobtrusive. However, the proposed shelter would be remote from other development and would be unscreened. The remote field shelter would be prominent and harmful to the character of the landscape. There is conflict with Core Policy 13 of the Amended Newark and Sherwood Core Strategy 2019 (CS).

The third issue – very special circumstances

20. One matter advanced by the Appellant that could be considered to be a material consideration to be weighed against the harm that is caused by reason of inappropriateness is other buildings associated with similar equestrian uses in the area. Precedent is not a reason to allow harmful development because the harm would become cumulative. It is, in any event, a fundamental planning principle that a development proposal should be judged on its individual merits.

21. The Appellant claims that the existing and proposed shelters are required to provide shelter for his four horses, two Shetland ponies and two larger and older ponies, during periods of inclement weather, such as the period of hot weather experienced in 2022. Furthermore, a letter of support has been submitted by an Equine Podiatrist which explains that the Appellants' horses suffer from laminitis, a

potentially life-threatening condition caused by a sensitivity to grass. There may be some justification for the provision of temporary and possibly portable shelter during periods of hot weather and to restrict access to grass but not for two large shelters that are and would be permanent features 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.

Conclusion

22. 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".

23. The operational development that is a subject of the application is inappropriate development, undermines the openness of the area, conflicts with a purpose of including land in the Green Belt, and would harm 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 appeal thus fails and planning permission is withheld for the operational development element of the proposed development.

Appeal A

The ground (c) appeal

24. The Appellant maintains that the field shelter on the land is portable and therefore doesn't constitute development for the purposes of applying section 55 of the 1995 Act. In this regard he claims that it is "...mounted on wooden skids with appropriate towing attachments is mobile by design...". But three photographs submitted with appeal documentation show the shelter being lifted off the ground by a large, four wheel, telehandler and being placed onto a flat bed trailer attached to a tractor. The use of heavy machinery to move the shelter indicates that it is not as mobile as the Appellant claims. The complicated method of moving the structure involving the use of heavy machinery indicates that the placing of the field shelter on the land is, as a matter of planning judgement, an act of operational development. The ground (c) appeal thus fails.

The ground (f) appeal

25. The breach of planning control has two distinct elements; operational development and a material change of use. Planning permission has been granted, in Appeal B, for the 'Change of use of land to equestrian use and formation of new access tracks to both plots' and, given section 180(1) of the 1990 Act, the enforcement notice ceases to have effect insofar as it relates to the material change of use element of the breach. The ground (f) appeal therefore relates only to requirement 2. 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 field shelter/hay store building is not therefore excessive and the ground (f) appeal thus fails.

The ground (g) appeal

26. With regard to the effect of section 180(1) of the 1990 Act, the ground (g) appeal relates to the period for compliance with requirement 2. Compliance with the requirements of an enforcement notice should be achieved as soon as is

reasonably possible. 140 days is a reasonable period to achieve removal of the field shelter/hay store building. The ground (g) appeal fails.

John Braithwaite

Inspector