



Appeal Decision

Site visit made on 19 June 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 28th July 2023

Appeal Ref: APP/B3030/C/22/3305770

Land adjacent to Jesmondene Cottage, Calverton Road, Blidworth Bottoms, Blidworth, Nottinghamshire NG21 0NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Caroline Smith against an enforcement notice issued by Newark & Sherwood District Council.
 - The enforcement notice was issued on 21 July 2022.
 - The breach of planning control as alleged in the notice is:
 - a. Without planning permission, operational development on 'the Land' comprising of the construction of field shelters (marked 'A', 'B', 'C', 'D', 'E', 'F', 'G' on the attached Location Plan and identified within photographs 1 and 2).
 - b. Without planning permission, 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.
 - 2) Remove from the land the field shelters (marked 'A', 'B', 'C', 'D', 'E', 'F', 'G' on the attached Location Plan and identified within photographs 1 and 2).
 - The period for compliance with the requirements is: 1) 84 days and for 2) 140 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. It is directed that the enforcement notice be:
 - corrected by inserting the wording "a mixed use of agriculture and" after the word "to" in paragraph 3b; and
 - varied by deleting the wording "-including removing from the land with all and any associated paraphernalia such as jumps etc; and resultant waste and materials" in paragraph 5.1).
2. Subject to the correction and variation the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

3. The breach of planning control alleges: (a) operational development in relation to the construction of field shelters; and (b) a material change of use of the land from agriculture to the keeping of horses (equestrian). The Land forms a single planning unit, the lawful use of which is agriculture. From the evidence before me, and observations on my site visit, that agricultural use has not been wholly displaced by the use of the site for the keeping of horses (equestrian) but continues alongside it. The breach of planning control is therefore a material change of use of the Land to a mixed use as agriculture and to the keeping of horses (equestrian). I shall therefore correct the alleged breach to specify that mixed use. The Council and the Appellant have had an opportunity to comment on the correction and I am satisfied that the correction would not result in injustice to either party. The purpose of the notice, including its requirements, are not affected by the correction.

Appeal on grounds (b) and (c)

4. The appellant's appeal on grounds (b) and (c) is solely in relation to the alleged operational development. The issue in a ground (b) appeal is whether as a matter of fact operational development comprising of the construction of field shelters has taken place on the Land. If those matters did occur, the ground (c) is that those matters do not constitute a breach of planning control. The burden of proof falls on the appellant to make out their case.
5. There is no dispute between the parties that the field shelters have been erected on the Land. It seems that the crux of the appellant's ground (b) appeal is the Council's use of the word "constructed" in the allegation. It is his case that the field shelters were not constructed on the Land as they were brought onto the Land in their completed form and are not operational development which would require planning permission. This is a ground (c) point, that those matters do not constitute a breach of planning control.
6. Section 55(1) of the Town and Country Planning Act 1990, as amended (the Act) states that "*development*" for the purposes of the Act, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
7. Section 55(1A) advises that for the purposes of the Act "building operation" includes, amongst other things, *(d) other operations normally undertaken by a person carrying on business as a builder*. In this regard, it is also necessary to consider whether the field shelters are buildings. Section 336 of the Act says:

"building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.
8. It is the appellant's case that the mobile shelters were purchased from a specialist supplier in the belief that planning permission was not required to bring them onto the Land as a consequence of them being fully mobile/portable. They were brought onto the Land in their completed form and are on skids with no fixed floor.
9. There are seven structures on the site. I utilise the word 'structure' as it is a neutral term for both a building and a mobile field shelter. Although they may have been built/constructed off site, given their design and construction it

seems to me that they would have been built/assembled by a builder or trades person. However, the definition of a building has been considered further in the courts and it has been established that there are three factors which need to be considered in deciding whether something was a building – size, permanence and physical attachment.

10. The structures have a wooden construction, with pitched roofs extending to a height of approximately 3m. They have a depth of approximately 3.6m and range in length from 6m to just over 7m. In their planning context, the individual structures have an impact that is significantly noticeable in terms of 'size' and their physical presence when considering their location in open countryside. In terms of 'permanence', from the evidence available, including a copy of the grazing licence granted on a 12month term¹, the structures would have a substantial degree of permanence. The grazing licence specifically requires the tenant *"to keep the building and fixed equipment on the Holding in no worse repair order and condition than that in which they are at the date of the Agreement"*. The structures that have been erected are described in the grazing licences as buildings, and are clearly intended to be permanent and facilitate the keeping of horses on the Land as part of the Appellant's business operations.
11. In terms of 'fixation', I do not dispute that the structures were brought onto the Land in one piece and could, and indeed have on occasion been towed and moved to a different position on the Land by a 4 x4 vehicle to prevent "pawting". However, I noted on my site visit that the structures are not open sided, they have stable doors/windows which can be closed to prevent the horses moving freely in and out of them which would not normally be the case with a field shelter. Furthermore, whilst the structure does not have a fixed floor, I observed that internal matting had been placed within the structure to provide a degree of flooring and a place for bedding, feed and tack to be stored. It seems to me that these structures would have to be emptied and matting removed before they could be moved. Consequently, they have a degree of fixation which is greater than that provided by their own weight, and which differs from the other appeal decisions cited by the Appellant. In the Alton and Patching cases² the Inspectors found the structures to be clearly field shelters, citing that they had no floors such that the livestock would still be on the land.
12. Considering all the above, I consider the structures to be permanent and of a size with a degree of fixation that, as a matter of fact and degree, should be regarded as buildings within the definition provided in section 336 of the Act and constitute operational development which required planning permission. No planning permission has been granted for this development by the local planning authority. This development is not permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended, and a breach of control has occurred. The appeal on ground (b) and ground (c) fails.

¹ Appendix IBA4, Appellant's Grounds of Appeal.

² APP/Y9507/C/13/2197125 & APP/Y9507/C/13/2198969

Appeal on ground (a), deemed planning application

Main Issues

13. The main issues in this case are:

- Whether the development is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and relevant development plan policies;
- The effect on the character and appearance of the area; and
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

14. Paragraph 149 of the Framework states that the construction of new buildings should be regarded as inappropriate development in the Green Belt subject to a number of exceptions. The exceptions include buildings for agriculture and forestry, and the provision of appropriate facilities (in connection with the existing uses of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments, provided the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
15. Paragraph 150 of the Framework also provides for other forms of development and states that material changes in the use of land (such as changes of use for outdoor sport or recreation, or cemeteries and burial grounds) are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
16. Spatial Policy 4B of the Adopted Amended Core Strategy of Newark and Sherwood's Local Development Framework, 2019 (Core Strategy) advises that other than specified housing development, other development in the Green Belt will be judged according to national Green Belt policy.
17. The development the subject of the deemed planning application is derived from the allegation. The corrected breach of planning control alleges an unauthorised material change of use to a mixed use as agriculture and to the keeping of horses (equestrian). However, it is no part of the Appellant's case that the buildings that have been erected on the Land are required for the purposes of agriculture. However, as set out above, the Framework also advises that buildings which provide appropriate facilities for outdoor recreation and the material change in the use of land for outdoor sport or recreation is not inappropriate development, provided the openness of the Green Belt is preserved and the use/facilities do not conflict with the purposes of including land within it. The use of the land for the keeping of horses and appropriate facilities (i.e. stable buildings) are clearly for outdoor recreation. However, my conclusions on the next issue, the effect of the development on Green Belt openness and purposes, will determine whether the development is inappropriate.

Green Belt Openness

18. Paragraph 137 of the Framework indicates that openness is an essential characteristic of the Green Belt. The appeal site is open pastureland located on the sloping valley side at Blidworth Bottoms. Whilst in the valley bottom there is a Public House and some scattered housing, the unauthorised development the subject of the notice is on the rising valley side which forms part of a swathe of open countryside. The development includes seven buildings which facilitate the use of the land for the keeping of horses. The buildings have a solid wooden form, and each building is approximately 3.6m deep, 6-7m wide and with a maximum height of 3.09m. The buildings are positioned predominantly along the northern edge of the Land, which the appellant advises is more sheltered and convenient for access to water, hay and manure piles. Cumulatively, the development results in significant built form in a location where there was previously none. The impact on the spatial aspect of openness is therefore substantial.
19. Furthermore, the buildings are not visually related to any existing development or farmstead. Their isolated location on the sloping valley side thus heightens their impact on the open character of this part of the Green Belt.
20. I appreciate that the material change in the use of land for outdoor sport and recreation may not be inappropriate in the Green Belt, if that use preserves its openness and does not conflict with the purposes of including land within the Green Belt. However, in this case the Land has been subdivided into paddocks, each with one or two buildings which facilitate the recreational use of keeping of horses. It is therefore an intensive use which, for the reasons set out above, has resulted in a loss of openness to the Green Belt. I have not been provided with any substantive evidence that would suggest that the use of the land for the keeping of horses could take place without the buildings, and those buildings cumulatively have a harmful effect on Green Belt openness.
21. I conclude that the unauthorised development has led to a significant loss of openness and impacts on the Green Belt purpose of safeguarding the countryside from encroachment. Accordingly, the development is inappropriate development in the Green Belt.

Character and appearance

22. Core Policies 9 and 13 of the Core Strategy seek to ensure that new development is appropriate in form and scale to its context and complements the existing building and landscape environment. The Newark and Sherwood Landscape Character Assessment, 2010 (SPD) identifies the appeal site as part of the Sherwood Landscape Character Area. In addition, it falls within Blidworth Wooded Estate lands (S PZ 46) which is identified as an area where there is a need to conserve the existing field pattern by locating small scale development within the existing field boundaries and refers to promoting sensitive design and siting of agricultural buildings. The SPD advises that the land use in this area consists of unimproved and improved permanent pasture which is used for the grazing of horses.
23. Observations on my site visit confirmed that within this part of Blidworth the keeping of horses, including small stable blocks, is part of the landscape's character. In that respect, the size, form and design of the individual buildings that have been erected on the Land are not intrinsically out of character in this

part of the countryside. However, the buildings have been sited in a visually conspicuous location on rising land which forms part of a swathe of open countryside, and in a location where there is no landscape screening or natural hedgerows. They are visually prominent when travelling along Calverton Road, and cars parked alongside them add to that visual clutter. Their siting is unrelated to any other form of built development, and cumulatively the buildings and overall scale of the development has a 'littering effect' which degrades the predominantly open character of the landscape and has a harmful effect on its natural and visual qualities.

24. I have had regard to Policy DM8 of the Council's Allocations & Development Management DPD (DPD) which supports new commercial equestrian uses. However, in this case the new development is in a conspicuous location, does not involve the re-use of buildings and nor does it lie within or adjacent to a settlement. The scale of the development and cumulative impact of seven buildings 'littering' the landscape has a harmful effect on the character and appearance of the countryside.
25. I conclude that the development has a harmful effect on the character and appearance of the area. I find conflict with Core Policies 9 and 13 of the Core Strategy, the aims of which are set out above. I also find conflict with the SPD which promotes the sensitive design and siting of new agricultural buildings and temporary stable blocks. There is conflict with Policies DM5 and DM8 of the DPD which seek to ensure that the design of new development reflects the rich local distinctiveness of the District's landscape and the character of the built form should be reflected in its scale, amongst other criteria.

Other Considerations

26. I have regard to the decision of another Inspector which has been brought to my attention by the Appellant³. In that case the Inspector found that a single small stable block was not inappropriate development in the Green Belt. He found that the stable provided appropriate facilities for the keeping of horses and was satisfied that it preserved the openness of the countryside, and its siting and scale was such that there was no encroachment into the countryside and as such the purposes of the Green Belt were preserved. However, in this appeal case the development is for the keeping of horses with seven individual buildings. I have found that by reason of the siting and scale of the development as a whole, there is significant harm to the openness of the Green Belt. I have also found that the development has a harmful effect on the character and appearance of the countryside. For those reasons, the development is inappropriate development in the Green Belt and the other Inspector's decision carries little weight in the consideration of this appeal.
27. I recognise that there is support for the development from local residents and that equestrian development can support the local economy. The support it provides to the local economy has moderate weight in the planning balance. It is also clear that there have been a significant number of applications for new equestrian buildings in the local area over the past couple of decades. Some of those have been supported by the Council and other's not. Although a third party has provided me with a comprehensive list of those applications and decisions, I do not know the precise planning circumstances of each of them, and a number relate to applications made some 20-30 years ago. In addition,

³ APP/P3040/C/C/21/3272554

some of the cases relate to a single stable block or extensions to existing buildings. From the evidence before me, none of the developments are directly comparable to the development the subject of this appeal, which I have considered on its merits. I have taken into consideration current national and local policies, site specific constraints and other material considerations. I therefore give those other decisions little weight.

Planning Balance and Conclusion

28. I have found that the unauthorised development is inappropriate development and by definition harmful to the Green Belt; harm which the Framework indicates should be given substantial weight. Added to which is the harm to the character and appearance of the area. On the other side of the balance is the support which the development provides to the local economy, to which I have given moderate weight. The harm by reason of inappropriateness, and additional harm identified, are clearly not outweighed by other considerations. Very special circumstances do not exist to justify the development. The development does not comply with national planning policy in the Framework to protect the Green Belt and there is conflict with Spatial Policy 4B of the Core Strategy and the development plan as a whole. The appeal on ground (a) fails.

Appeal on ground (f)

29. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
30. Section 173 of the Act indicates that there are two purposes which the requirement of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. The purpose of the notice in this case is to remedy the breach of planning control.
31. For the reasons set out in ground (a), I have found that both the alleged operational development and the material change of use to be inappropriate development in the Green Belt and that planning permission should not be granted. Only the cessation of that use and the removal of the buildings from the Land would remedy the breach of planning control.
32. However, I have not been provided with any substantive evidence that there have at any time been any 'jumps' on the Land, and therefore the requirement to remove 'jumps' is excessive. I consider it sufficient to require the use of the land for the keeping of horses to cease and I shall vary the notice accordingly. The appeal on ground (f) succeeds to that limited extent.

Conclusion

33. For the reasons given above, I conclude that the appeal does not succeed. I shall uphold the notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR.