



Appeal Decisions

Site visit made on 23 May 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal A Ref: APP/B3030/C/22/3304837

Land known as Plot 13, New Lane, Blidworth NG21 0LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms A Mysliwiec against an enforcement notice issued by Newark and Sherwood District Council.
 - The notice was issued on 21 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 drawing 1).
Field shelter / hay store with an approximate 43m² and pitch height of 3m.
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 building (marked 'X' on the attached Location Plan and identified within plan 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)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/B3030/W/22/3304923

Plot 13, New Lane, Blidworth NG21 0LX

- 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 Ms A Mysliwiec against the decision of Newark & Sherwood District Council.
 - The application Ref 21/02659/FULM, dated 15 December 2021, was refused by notice dated 11 July 2022.
 - The development proposed is change of use of land to equestrian use, retention of field shelter and hay store and formation of new access track (retrospective).
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This Decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 23 June 2023.

Decisions

Appeal B Ref: APP/B3030/W/22/3304923

1. The appeal is dismissed insofar as it relates to operational development and planning permission is refused for the retention of field shelter and hay store.

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 track at Plot 13, New Lane, Blidworth in accordance with the terms of the application Ref. 21/02659/FULM, dated 15 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 appeal is dismissed and the enforcement notice is upheld.

Reasons

Appeal B

4. 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.

5. 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.

6. 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.

7. 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.

8. 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".

9. The main issues are; first, whether the operational development, the retention of field shelter and hay store, 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

10. 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 her horses on the land for her own enjoyment and recreation.

11. Openness, as a concept, has two elements; spatial and visual. The proposed development includes the retention of a buildings which has a footprint of about 43 square metres and a height of about 3 metres. There is no doubt that the building, given its size, has undermined the spatial openness of the Green Belt. The building, which is in a remote and open location, is prominent and intrusive and is harmful to visual openness.

12. 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 building is remotely located in the open countryside and, together with other remotely located buildings in the area, has contributed to visible encroachment of development into the countryside. The building does not assist in safeguarding the countryside from encroachment and therefore conflicts with a purpose of including land in the Green Belt.

13. The building on the land does not preserve the spatial or visual openness of the Green Belt and conflicts with one of the five purposes of including land in the Green Belt. The proposed retention of development on the land is therefore inappropriate development.

The second issue – other harm

14. The appeal site is an open paddock with other similar paddocks on all sides. The building, whilst it is constructed in materials sympathetic to its countryside setting but for the same reason as given above, is prominent and harmful to the character of the landscape. There is, in this regard, conflict with Core Policy 13 of the Amended Newark and Sherwood Core Strategy 2019 (CS).

The third issue – very special circumstances

15. The only 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. 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

16. The operational development 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 appeal, with regard to the operational development element, thus fails and planning permission is withheld for retention of field shelter and hay store.

Appeal A

The ground (f) appeal

17. 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 track 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 of planning control. 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 and hay store is not therefore excessive and the ground (f) appeal thus fails.

The ground (g) appeal

18. 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 and hay store. The ground (g) appeal thus fails.

John Braithwaite

Inspector