



Appeal Decision

Site visit made on 17 November 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Appeal Ref: APP/Z4718/W/23/3322018

Land and building off (formerly part of Beaconsfield Farm), Paul Lane, Flockton Moor, Huddersfield WF4 4BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr David Haigh against the decision of Kirklees Metropolitan Council.
 - The application Ref 2023/70/90023/E, dated 3 January 2023, was refused by notice dated 25 April 2023.
 - The application sought planning permission for change of use of agricultural building and land to equestrian use incorporating 6 stables, indoor menage, tackroom and equestrian storage without complying with a conditions attached to planning permission Ref 2022/62/90954/E, dated 24 November 2022.
 - The condition in dispute is No 6 which states that:
Notwithstanding the plans and details hereby approved, if the equestrian use ceases, within six months of the cessation, all buildings and structures within the red line boundary shall be removed and a land restoration plan be submitted to and approved in writing by the Local Planning Authority. The land restoration plan shall include a full schedule and timetable of works. The land restoration scheme shall be carried out in complete accordance with the approved land restoration plan and retained thereafter.
 - The reason given for the condition is :
The proposed development is larger than is feasibly required for a new equestrian enterprise however it does seek to re-use an existing building with a use which is of a similar nature and so as to protect the openness and character of the Green Belt from encroachment in accordance with Policies LP56 and LP60 of the Kirklees Local Plan and Chapter 13 of the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of agricultural building and land to equestrian use incorporating 6 stables, indoor menage, tackroom and equestrian storage at Land and building off (formerly part of Beaconsfield Farm), Paul Lane, Flockton Moor, Huddersfield WF4 4BP in accordance with the application Ref 2023/70/90023/E dated 3 January 2023, without compliance with Condition No 6 previously imposed on planning permission Ref 2022/62/90954/E dated 24 November 2022 and subject to the following conditions in the schedule at the end of this decision.

Applications for costs

2. An application for costs was made by Mr David Haigh against Kirklees Metropolitan Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The parent application (2022/62/90954/E) was granted on 24 November 2022. At the time of my visit, the planning permission granted had not commenced. The timescale for the commencement of development has not expired.
4. The National Planning Policy Framework of September 2023 has been superseded by the National Planning Policy Framework on the 19 December 2023 (the Framework). However, in relation to this appeal the aims of the policies are similar. No party would be prejudiced or caused any injustice by me proceeding with the appeal in light of this change.

Background and Main Issues

5. The appeal site previously formed part of Beaconsfield Farm. It is located within the countryside and Green Belt. The site includes an extended large scale agricultural building, for which permission was granted for stables, a menage and storage areas. These would all be within the existing building and only internal alterations were proposed. The Council imposed Condition No 6 requiring demolition of the existing building and land restoration should the use cease.
6. In this context, the main issue is whether or not disputed Condition No 6 is necessary and reasonable having regard to the effect of the development on the Green Belt, including openness and the other purposes of including land within it. Condition No 6 contains two requirements in the event the equestrian use ceases; the first to demolish all buildings, and the second specifies actions to submit a scheme for remediation of the land and for this to be carried out.

Reasons

7. A fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence, this is a matter to which I must attach substantial weight.
8. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy LP56 of the Kirklees Local Plan 2019 (the KLP) relates to facilities for outdoor sport and recreation in the Green Belt. It requires that the scale of development is commensurate with the functioning of the enterprise. Policy LP60 of the KLP permits the re-use and conversion of buildings within the Green Belt. Both policies are broadly consistent with the Framework where it provides exceptions to development in the Green Belt for outdoor sport and recreation within the criterion contained in paragraphs 154 and 155 and the reuse of buildings of permanent or substantial construction within paragraph 155. I therefore afford them significant weight.
9. Paragraph 55 of the National Planning Policy Framework establishes that conditions should be considered where otherwise unacceptable development could be made acceptable through their imposition. Notwithstanding the above provisions relating to the use of conditions, paragraph 56 of the Framework explains that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (referred to as the six tests). The Planning Practice Guidance (the PPG) contains further advice in this respect,

and that each of them needs to be satisfied. I shall consider these tests in turn below.

10. The application was subsequently refused to protect the openness and character of the Green Belt from encroachment because, according to the Council, the change of use of the building is larger than is feasibly required for a new equestrian enterprise. The Council state it would not have approved the development without Condition No 6 being imposed.
11. However, in granting approval for the conversion of the existing building, there is nothing to suggest that the approved six stables, indoor menage, tackroom and equestrian storage amounted to inappropriate development. The development was not found to be inappropriate development and it was confirmed to be in compliance with development plan policies. It did not require very special circumstances (VSC) to be approved, and the reason for the condition did not amount to VSC. There is no such requirement contained within the Framework, or Policy LP56 of the KLP to demolish buildings.
12. The comments in relation to both this appeal application and the parent application infer that there is scope that the development could cause harm to the Green Belt by permitting a change of use which would make the site become previously developed brownfield land.
13. In the absence of substantive evidence from the Council, I have taken this to mean that alternative development on the site that could fall within the exception contained in paragraph 154 g) of the framework, which relates to previously developed land, would be harmful to the Green Belt. Furthermore I envisage that the effect of the demolition and restoration of land would then subsequently exclude it from previously developed land as set out within the definition contained within the Framework¹.
14. Paragraph 154 of the Framework states that other than for limited exceptions, the construction of new buildings in the Green Belt is inappropriate. Criterion g) of paragraph 154 allows the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use. However, for development to not be inappropriate development under Paragraph 154 g) there is an explicit requirement to consider whether or not the proposal has a greater impact on the openness of the Green Belt than the former site.
15. Finding that a future development is not inappropriate does not automatically mean that it is acceptable in terms of other planning issues². Consequently, if any new proposal came forward in association with any of the Green Belt exceptions, any new scheme would be subject to assessment for its compliance against local and national planning policy, including those relating to the site's location within the Green Belt, the countryside and character and appearance of the area, rather than a matter to be addressed by means of a planning condition.
16. I am satisfied that criteria within the Framework paragraph 154 and 155, would provide sufficient safeguards to ensure consideration of the fundamental aims of the Green Belt. Consequently, I do not consider that Condition No 6 would be necessary in this context to prevent harm arising to the Green Belt.

¹ National Planning Policy Framework Annex 2: Glossary Previously developed land

² Lee Valley Regional Park Authority v Epping Forest District Council [2015] EWHC 1471 (Admin)

17. There is also no definitive evidence as to whether the parent application was motivated by the intention of establishing an alternative use or rather to avoid having to demolish the existing building at some point. Therefore hypothetical uses that might be proposed brings into question whether the justification for Condition No 6 is strictly relevant to the development to be permitted.
18. The fourth and fifth tests of planning conditions relate to enforceability and precision. The condition does not precisely identify what is meant by "if the equestrian use ceases." The building could become disused, but unless an intervening use was established, the building, and surrounding land would retain an equestrian use albeit vacant. However, in view of the size and permanence of the building, and the cost of demolishing it, it seems likely that any owner would reinstate some form of equestrian use, however small-scale, to avoid enforcement action. This imprecision means that the condition fails the test of enforceability.
19. The final test relates to the matter of reasonableness. The PPG states that conditions which place unjustifiable and disproportionate financial burdens on an applicant and unreasonably impact on the deliverability of a development will fail the test of reasonableness. The PPG³ also advises that conditions that unnecessarily affect an applicant's ability to bring a development into use should not be used. However, I have not been provided with a detailed financial appraisal to outline the financial impact of the condition. Therefore on the evidence before me, I cannot be certain that the financial burden of demolishing the building, removal of materials and reinstatement of the land would make the development unviable or undeliverable.
20. Notwithstanding the above, the PPG⁴ also states a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. Although the Council contends this only applies to temporary structures, the building is a permanent structure and there is no evidence that it is not intended to be permanent. Furthermore the Framework at paragraph 157 also seeks the reuse of existing resources including conversions of existing buildings. Therefore to require the demolition of an existing building does not amount to a sustainable form of development. Overall I consider the condition fails the test of being reasonable in all other respects.
21. Bringing all the above points together, I conclude that Condition No 6 is not necessary, relevant, precise, enforceable or reasonable having regard to the effect of the development on the Green Belt, including openness and the other purposes of including land within it. Following the removal of the condition, development would be in substantial compliance with Policies LP56 and LP60 of the KLP. Together these seek to permit development that is not inappropriate. Following removal of the condition, the development would still also accord with the aims of Chapter 13 of the Framework, which relates to protection of Green Belt land.

Conditions

22. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions

³ Paragraph: 006 Reference ID: 21a-006-20140306

⁴ Paragraph: 014 Reference ID: 21a-014-20140306

imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have in the interests of clarity amended the drawing specification condition 2 as the list of approved plans was not set out within the condition.

23. I therefore, intend to grant a new planning permission that does not include the disputed condition, amend the plans condition and consequently re-number the other conditions accordingly.

Conclusion

24. For the reasons given above and having regard to all other matters raised, I conclude that the Condition No 6 does not meet all the six tests contained within the PPG, nor is it required to make unacceptable development acceptable. The proposal would accord with the development plan as whole. Therefore the appeal should be allowed.

K Williams

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from 24 November 2022.
- 2) The development hereby permitted shall be carried out in complete accordance with the plans and specifications listed, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence: Location Plan 2598-001 1 18/03/2022; Plan General 2598-002 – Topographical Survey 1 18/03/2022; Plan General 2598-004 – Elevations 1 18/03/2022; Existing Site / Block Layout 2598-003 – Internal Layout 1 18/03/2022; Proposed Site / Block Layout 2598-005 1 18/03/2022; Proposed Site / Block Layout 2598-006 – Internal Layout 1 18/03/2022; Proposed Site / Block Layout 1990 101 Rev A 1 17/06/2022; Supp Info – General Supporting Statement 1 18/03/2022; Supp Info – General Speed Survey (northbound) 1 17/06/2022; Supp Info -General Building Survey (no ref, dated 17/03/2022) 1 18/03/2022; and Supp Info – Transport Assessment Highway Statement 1 18/03/2022.
- 3) Prior to the first occupation, the car parking and vehicle access, as shown on drawing 2589-005, shall be surfaced with limestone chippings to match the existing. The surfacing shall be retained thereafter.
- 4) Notwithstanding the approved plans, prior to the first occupation, the first 6m of the access from the egress point of Paul Lane shall be hard surfaced and drained in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas) published 13th May 2009 (ISBN 9781409804864) as amended or superseded; and thereafter retained.
- 5) Notwithstanding the approved plans, prior to the first occupation, the car park and access shall be entirely enclosed by a wooden, post and rail fence, except for the vehicles access points. The post and rail fence shall have a maximum height of 1m. The fence shall be retained thereafter.
- 6) In the event that contamination, or the presence of coal not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all groundworks in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Groundworks in the affected area shall not recommence until either (a) a Remediation Strategy by a suitably competent person has been submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. No part of the site shall be brought into use until such time as that part of the site has been remediated in accordance

with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the Local Planning Authority.

End of schedule