



Appeal Decision

Site visit made on 26 June 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 7th August 2024

Appeal Ref: APP/N1025/C/23/3314887

Golden Brook Farm, Derby Road, Risley, Derby DE72 3SY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Rahul Deb against an enforcement notice issued by Erewash Borough Council.
 - The notice was issued on 30 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, operational development comprising of the construction of cricket practice nets on agricultural land in a Conservation Area within Green Belt.
 - The requirement of the notice is to remove the cricket practice nets and then restore the land to the condition it was in prior to the breach of planning control taking place.
 - The period for compliance with the requirement is 3 months
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (the 1990 Act) (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.
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Decision

1. The appeal is dismissed, 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.

Preliminary Matters

2. Since the appeal was made, a revised National Planning Policy Framework (the Framework) was published in December 2023. The document has not raised any new matters which are determinative to this appeal.

Appeal on ground (a) and the deemed planning application

3. The appeal under ground (a) is that planning permission should be granted in respect of the breach of planning control which may be constituted by the matters stated in the notice.

Main Issues

4. The Council refers to impact upon landscape character in its statement but not in the reasons for issuing the notice. Although the notice refers to the development being on agricultural land, it now accepts that the policy referred relates to agricultural buildings and is not relevant to the appeal. I therefore consider that the main issues are;
 - whether the development constitutes inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;

- the effect of the development on the openness of the Green Belt;
- whether or not the development preserves or enhances the character or appearance of the Risley Conservation Area (the Conservation Area)
- whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate development

5. The appeal site is located within the Green Belt. The Framework identifies that the fundamental aim of Green Belt is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. Paragraph 152 of the Framework states that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances.
6. However, Paragraph 154 of the Framework specifies that certain forms of development are not inappropriate development in the Green Belt. Paragraph 154(b) includes *'the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it'*.
7. Policy GB1 of the Erewash Local Plan Saved Policies 2005 ('the Local Plan') is broadly consistent with the aims of the Framework in seeking to protect the Green Belt. However, its wording is not entirely consistent with Paragraph 154(b) as it refers to 'essential' rather than 'appropriate' facilities and consequently limits the weight I can attach to Policy GB1 in this regard. Policy 3 of the Erewash Core Strategy (Adopted March 2014) ('the Core Strategy') refers to the retention of the Green Belt and having regard to statutory purposes rather than addressing specific exceptions.
8. The development consists of cricket practice nets which are located within the field next to a gravel driveway which runs along the side of the dwelling. The cricket nets are around 3.1 metres high and are held up with metal poles which are installed on a platform which has timber sides, concrete and roadstone which forms the base which also has artificial turf. It is a 22 yard practice cricket pitch which is 3.6 metres wide.
9. The reference to outdoor sport and recreation in the stated exception is not limited to public rather than domestic use. The exceptions¹ also refer to a change of use as well as an existing use although the allegation relates solely to operational development.
10. In the absence of a definition of 'appropriate,' each case has to be assessed on its own particular facts. Cricket is outdoor sport and recreation and the development is designed to provide a practice facility for that sport. The development is, in my view, an appropriate facility for the purpose of outdoor sport. However, paragraph 154(b) also requires development to preserve

¹ Paragraph 155 (e) of the Framework

openness and not to conflict with the purposes of including land within the Green Belt which I shall now address.

Openness and Green Belt purposes

11. The Framework indicates that openness is an essential characteristic of the Green Belt. Openness has both a spatial as well as a visual aspect. In terms of preserving openness and avoiding conflict with Green Belt purposes, the relevant paragraphs allow for the provision of qualifying structures in connection with outdoor sport. However, a balanced judgement needs to be made with regard to the openness and purposes of the Green Belt having regard to all the particular facts and circumstances of each individual case.
12. The appeal site at Golden Brook Farm is made up of three former agricultural barns which have been converted to a dwelling as well as a field which is located between the dwelling and the rear gardens of dwellings on Derby Road. The development is located within a field which is owned by the appellant but which was not part of the red line site for the planning approval for the conversion of the barns. Its location extends built development associated with the residential use into the field.
13. The appellant refers to the lightweight and transparent nature of the nets having no material visual impact but the development consists of more than just the nets. The development also consists of a solid raised platform base with a series of poles and it has been built to meet regulation size in terms of its dimensions. There is therefore modest visual impact on openness particularly on the approach to the appeal site where the height and scale of the development is particularly noticeable.
14. However, its introduction into a largely open field without built development also reduces the spatial openness of this part of the Green Belt and results in physical encroachment in the countryside. Assisting in safeguarding the countryside from encroachment is one of the five purposes of including land in the Green Belt.
15. As a matter of judgement, the development does not assist in safeguarding the countryside from encroachment due to its location and therefore conflicts with one of the five purposes of including land in the Green Belt as well as having modest impact upon openness.
16. The development does not preserve the openness of the Green Belt and does conflict with the purposes of including land within it. It does not therefore fall within the exception contained in Paragraph 154(b) of the Framework and is inappropriate development.

The Conservation Area

17. The bulk of the appeal site including the development and the appeal dwelling are within the Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be given to the desirability of preserving or enhancing the character or appearance of a conservation area. Paragraph 205 of the Framework states that when considering the impact of a development on the significance of a designated heritage asset, great weight is to be given to their preservation and conservation.

18. The significance of a Conservation Area is dependent upon how it is experienced as well as its appearance. Development must be judged according to its effect on the Conservation Area as a whole and have a moderate degree of prominence. I have very limited information about the significance or characteristics of the Conservation Area. No Conservation Area Appraisal has been provided and the Council has not indicated what it considers to be the characteristics of the Conservation Area.
19. The Council's concern with regard to the Conservation Area appears to be limited to the siting of the development interrupting the historic pattern of the former barn buildings. However, the views of the development are largely seen against the backdrop of those buildings which now form a dwelling rather than a historical pattern. The nature and design of the development means that it is not particularly prominent against that backdrop.
20. Although the rear gardens of dwellings on Derby Road share a boundary with the appeal site, the boundary is largely made up of mature trees and hedgerows. Any views from the rear gardens would be of the higher parts of the development consisting of nets and poles against a backdrop of the dark brick work of the side of the appeal dwelling. There is a right of way across a neighbouring field which is to the east of the appeal site. However from my site visit observations, there are very limited views of the development from the path due to the presence of mature hedging and a brick wall along the boundary.
21. The development is not detrimental to the character and appearance of the Conservation Area as it is not particularly prominent. The development is not out of character in an area where there is a mix of agricultural and residential use with Golden Brook House to the rear of the appeal site and dwellings on Derby road to the other side of the field to the north. The development has a neutral effect upon the Conservation Area which leaves it unharmed and meets the statutory objective of preserving the Conservation Area.
22. For the reasons given, I conclude that the development does preserve the character or appearance of the Conservation Area. It is therefore not contrary to Policies EV5 of the Local Plan and Policy 11 of the Core Strategy which collectively state that new development will only be supported where it preserves or enhances the special character and appearance of the conservation area. The development is also not in conflict with the relevant paragraphs of the Framework which address 'Conserving and enhancing the historic environment' or the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other Considerations

23. The appellant states that the structure has been erected to provide a sporting facility for his son who is keen young cricketer. However, the appellant refers to the design being similar to practice net facilities at cricket clubs including Risley Cricket Club which is nearby. The development was constructed during the Covid pandemic when access to sports facilities were limited. No further details are provided as to why a permanent facility of this nature is still required for what is likely to be seasonal use. I therefore attach limited weight to this matter.

Planning Balance and ground (a) conclusion

24. The development is inappropriate development in the Green Belt, with a modest loss of openness and it is in conflict with one of the purposes of the Green Belt. The Framework states that substantial weight should be given to *any* (my emphasis) harm in the Green Belt. The absence of harm to the Conservation Area is a matter of neutral weight. Very special circumstances will not exist unless the harm to Green Belt and any other harm are clearly outweighed by other considerations.
25. On the other side of the scales, I have attached limited weight to the appellant's personal circumstances and the reasons for having cricket nets. This consideration does not clearly outweigh the harm to the Green Belt that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist and the development conflicts with the Framework and Policy GB1 of the Local Plan and the principles of Policy 3 of the Core Strategy.

Conclusion

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

E Griffin

INSPECTOR