The Planning Inspectorate

Appeal Decision

Site visit made on 20 August 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/R1010/W/24/3337881
Westwood House, Church Lane, Tibshelf, Alfreton DE55 5NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Ms Gemma Binch against the decision of Bolsover District Council.
- The application reference is 23/00170/FUL.
- The development proposed is installation of a raised platform for horsebox parking, a gravel/hardstanding area and timber post and rail fencing.

Decision

1. The appeal is allowed and planning permission is granted for installation of a raised platform for horsebox parking, a gravel/hardstanding area and timber post and rail fencing at Westwood House, Church Lane, Tibshelf, Alfreton DE55 5NW, in accordance with the terms of the application, Ref 23/00170/FUL and subject to the following conditions:

    1) The development hereby permitted shall be carried out in accordance with the following drawings: LP Binch 2023 03 21 A (Location Plan); SL Binch 2023 03 21 A (Site Layout).

    2) The development hereby permitted shall be only used for horsebox parking in association with the keeping of horses for private purposes.

    3) Any vehicle parked on the platform hereby permitted shall not be used as sleeping accommodation at any time.

Application for costs

2. An application for an award of costs has been made by Ms Gemma Binch against Bolsover District Council. This is the subject of a separate decision.

Preliminary Matter

3. I saw the platform in situ at my visit and have considered the appeal on a retrospective basis as the Council did. However, I have omitted reference to 'retrospective' from the description of development as this does not itself refer to an act of development. I have otherwise used the revised description of development given on the appeal form, which is indicated to have been agreed by the parties.

Main Issue

4. The main issue is whether the proposal would be appropriate development in the countryside, having regard to i) relevant development plan policies, and ii) the effect on the character and appearance of the area.

Reasons

Development Plan Policy

5. Policy SS9 of the Bolsover Local Plan (March 2020) (the BLP) permits development in the countryside where it falls within certain categories. The erection of the raised platform is stated to be in connection with the appellant's private equestrian facilities on the land. The platform has been built beyond an existing area of hardstanding within an undeveloped field.

6. Criterion (a) requires the proposal to involve a change of use or re-use of previously developed land, provided the proposed use is sustainable and appropriate to the location. The appellant's evidence claims that the use is incidental to the residential use of the land and not a separate use. However, setting aside arguments regarding lawfulness, the construction of the platform into the adjacent field, which was previously undeveloped, would not comprise either the change of use or re-use of previously developed land. Therefore, the proposal would conflict with criterion (a).

7. The equestrian use is private and it is not part of a business nor does it provide employment. Therefore, the development does not gain support under criteria (b) or (c). Whilst the appellant refers to use of the site by personal friends, there is no indication that the site is available for use by the wider community. Neither does it relate to development to an existing building. Hence, it would not secure retention and/or enhancement of a community facility under (d), or a vacant or redundant building that makes a positive contribution to the character of the area under (e). Lastly, the proposal would not be in accordance with a made neighbourhood plan under criterion (g) and the platform, being purely functional in design, could not be described as a building of exceptional quality to satisfy criterion (h).

8. As a result, the development fails to gain support under Policy SS9.

Character and Appearance

9. Policy SC3 seeks high quality design in terms of placemaking, buildings and landscaping, which amongst other things accord with and respond to the established character and local distinctiveness of the surrounding landscape.

10. The appeal site is a collection of buildings, yards and paddocks accessed via a long drive which itself leads from the narrow, poorly surfaced track of Church Lane. Apart from a cluster of agricultural buildings a short distance to the east, the site stands by itself amid open countryside. The nearest dwellings on Derwent Drive are some distance away and views of the platform itself are screened by other buildings on the wider site.

11. There is a public footpath running immediately alongside the platform, separated by an established hedgerow that screens the platform on approach from the countryside towards Church Lane. Walkers heading into the countryside would observe the platform and any vehicle parked on it as they pass the existing open yard area immediately in front, but from here the platform would be viewed in the context of the wider complex of stables, barn, open yards and the dwelling itself. The platform would not appear as an isolated or exposed structure in these specific views.

12. Elsewhere, views from the north would be at significant distances, the nearest properties being on Sitwell Grange Lane several hundred metres away across a number of expansive fields. As this distance, observers would not be able to see the platform in detail, in particular as foliage has already grown up around the exposed sides of the platform and started to screen it, whilst a vehicle parked on it would have similar visual presence as if it were parked on the adjacent hardstanding. In either case, the development is seen against the backdrop of the other buildings on the appeal site and not as a detached or conspicuous structure in the open countryside.

13. It is also pertinent that the Council accepts that equestrian uses are inherently appropriate to the countryside and it has previously supported the erection of the adjacent stables on the land, which are larger in size. The platform in this case provides for a dedicated parking space for a large horsebox. The platform is necessarily functional in design, albeit the appellant has laid artificial grass on top to temper the stark appearance of the concrete blocks. Nonetheless, such functional structures are not uncommon in rural areas, particularly farmyards and other working locations, and my observations were of a modest, practical structure with very limited visibility and little tangible effect on the expansive, agrarian landscape which surrounds the appeal site.

14. As already indicated, the parking of a vehicle on the platform would be perceived as part of the existing complex of buildings and equestrian-related activity on the land, which is appropriate to a countryside location. I see little practical difference in visual impact were the vehicle instead parked on the adjacent hardstanding as suggested by the Council. In any event, horse transporters are a feature of equestrian facilities and so would not form an aberrant sight on the land in this location.

15. For these reasons, I find that the development preserves the wider character and appearance of the countryside, and so accords with the aforementioned requirements of Policy SC3, and those of Policy SS9 relating to design and effect on character and appearance.

Other Material Considerations

16. The appellant has advanced that the appeal development is incidental/ancillary to, and within the same planning unit, as the host dwelling Westwood House. Reference is made to case law and appeal decisions pertaining to questions of incidental use, the planning unit, residential curtilage and lawfulness. However, while I note the matters raised therein and those stated in two statutory declarations made by the appellant and a previous owner of the land, it is not my role in this appeal to formally determine matters of lawfulness in respect of the use of the land, the extent of the planning unit or whether the development is incidental to the residential use of Westwood House. These are matters properly assessed under an application made under Sections 191 or 192 of the Act.

17. This aside, the appellant accepts that the development in question is probably not within the curtilage of Westwood House, and so relies upon an argument of lawfulness based on land being used as residential amenity space for at least ten years without enforcement action having been taken.

However, the *Blaby*[1] appeal decision, which cites case law in *O'Flynn*[2], related solely to the use of land, and so differs from the present case where operational development is involved. Therefore, regardless of whether the land in question is or has been used incidentally to the residential use of Westwood House, none of the evidence attests to the *platform* having been in situ for such time as to be immune from enforcement action, nor are arguments advanced that the platform either constitutes permitted development or is so minor as to be *de minimis* in planning terms.

18. Consequently, there is not clear evidence before me that the platform is lawful in planning terms by other means or that a fall-back position exists for the appellant. This limits the weight I afford these arguments as material considerations. What I do draw from the evidence is that equestrian activity is long established on the site, and it is clear that it already involves an amount of built form to which the platform has been added.

19. Whilst not a decisive consideration, the appellant has set out that that the parking of a vehicle on the existing yard area would interfere with the daily movements of horses to and from the surrounding paddocks/fields, and of a tractor accessing the barn. There is also a benefit to having a suitable space for a vehicle to transport horses safety, and in having sufficient room for other transport to access and turn on site, such as emergency vehicles, which has been necessary in the past.

Planning Balance

20. The proposal does not fully accord with the criteria of Policy SS9 relating to supported forms of development in the countryside. However, the harm in this case is tempered as the development in question is related to an established equestrian use on the land, an activity which the Council accepts is suitable in a countryside setting and for which it has previously granted permission for other development on the land.

21. I also recognise that, were the appeal scheme related to a commercial equestrian use, it would have the potential to be supported under Policy SS9, whereas development related to a private use does not, even if they are otherwise identical in form and location. In essence, the conflict with SS9 is a technical one based on the particular private nature of the equestrian use to which it relates, rather than development being inappropriate in principle in the countryside.

22. Moreover, the overarching requirement of Policy SS9 is that development respects the form, scale and character of the landscape, through careful location, design and use of materials. I have found that the proposal complies with the policy in these respects, as it would Policy SC3.

23. No other harm has been identified by the Council. The proposal would not result in any tangible loss of agricultural land, nor would it affect any public footpath, designated view or protected landscape. Conversely, there would be modest benefits in terms of the functionality of the equestrian use on the land which, though not a public facility, is used by local residents in addition to the landowner.

[1] Appeal Decision APP/T2405/X/19/3232820
[2] *O'Flynn v SSCLG & Warwick DC* [2016] EWHC 2984 (Admin)

24. Overall, these material considerations, taken together, weigh sufficiently in favour of the proposal to outweigh the limited conflict with Policy SS9 and justify a decision other than in accordance with the development plan.

Conditions

25. As development has already been carried out, a time limit condition is not necessary. However, a condition setting out the approved plans is required to define the permission and provide certainty. It is also necessary to restrict the use of the platform for parking associated with personal equestrian use, as use other than for the purposes described may generate unforeseen adverse visual impacts and/or conflict with the adjacent residential use or equestrian activity on the land. It is also necessary that any vehicle parked on the platform is not used as sleeping accommodation, as this would be an inappropriate form and location for such activity.

Conclusion

26. For the reasons set out, I conclude that the appeal should be allowed.

K Savage

INSPECTOR