The Planning Inspectorate

Appeal Decision

Site visit made on 1 November 2016

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9th January 2017

Appeal Ref: APP/Z4718/W/16/3155993
Land off Lane Head Road, Shepley

- 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 Mr S Blyth against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2016/62/90650/E, dated 24 February 2016, was refused by notice dated 25 May 2016.
- The development proposed is the erection of stables.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
   (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework ("the Framework") and development plan policy;
   (b) The effect of the proposal on the openness of the Green Belt, and;
   (c) If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development in Green Belt

3. The appeal site comprises a small disused piece of land, close to Lane Head Road. It contains two small outbuildings, a wooden garage in poor condition and a stone building with a corrugated iron roof. The appeal proposal would create a stable facility that could accommodate up to 3 horses, including a horse box (trailer) store and a feed store/tack room.

4. Paragraph 89 of the National Planning Policy Framework states that the construction of new buildings in the Green Belt is inappropriate, subject to a number of exceptions. One such exception is the provision of appropriate facilities for outdoor sport or outdoor recreation, so long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.

5. It is common ground between the parties that the proposal would amount to a facility for outdoor sport and recreation. It would therefore be capable in principle of meeting this exception. However, paragraph 89 also requires that such proposals are "appropriate". In this case, the appeal site is only 0.1 hectares in size and does not contain sufficient land for the horses to be grazed or exercised. There is limited information before me as to where any grazing or exercise of the horses would take place, and it does not appear practical to transport up to 3 horses on a regular basis to land elsewhere. For these reasons, I do not consider that the proposal would constitute an appropriate facility for outdoor sport and recreation. It would therefore not comply with the relevant exception at paragraph 89 of the Framework.

6. The appellant has not sought to argue that the proposal would meet any of the other exceptions listed at paragraph 89 of the Framework, and it does not appear to me that it would do so. Accordingly, I conclude that the proposal would be inappropriate development in the Green Belt which paragraph 87 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

7. There are currently two domestic buildings on the site, which are modest in scale. The proposed stables, attached feed store/tack room and horse box (trailer) store would occupy a greater built footprint and would have a greater built volume than the existing structures. The Framework advises at paragraph 79 that openness is an essential characteristic of Green Belts, and the appeal proposal would therefore cause harm by reducing openness.

8. Whilst the development would be partially screened from view by existing trees and bushes, which would be retained, it would still be clearly visible from the road and other public vantage points. This consideration would not alter the loss of openness associated with the proposal. In view of these points, I conclude that the appeal proposal would fail to preserve the openness of the Green Belt.

Other considerations

9. The site is currently disused and the garage building in particular is in a poor state of repair. The appellant states that the proposal would visually improve the appearance of the site. However, the current condition of the land does not significantly detract from the appearance of the area in my view. In any event, the condition of land is a management responsibility for the owner.

10. In addition, the appellant states that the proposal would allow for the better use of the land, which is currently useless to the owner. However, this would be solely a private benefit.

Other Matters

11. The development would use the existing access onto Lane Head Road that is utilised by the adjacent property. Whilst this access would be onto a busy main road, there is good visibility in both directions and I am satisfied that it would not prejudice highway safety. In this regard I note that the Council's Highways section did not object to the development.

12. The appeal site is just outside the boundary of the Shepley Conservation Area. However, the proposed buildings would be relatively small in scale and would be of a design and materials that would be appropriate to a rural location. Accordingly, the appeal proposal would not harm the setting to the conservation area. For the same reasons, the development would not have any unacceptable visual impact on Toll Bar House, which is not listed.

13. A number of interested parties have raised concerns regarding the apparent lack of storage facilities for manure and other waste products. However, from the arguments put to me, this matter appears to be subject to other legislation, and it therefore carries no weight in my decision.

Conclusion

14. I conclude that the other considerations in this case do not clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist. The development would therefore be contrary to Policy D10 of the Kirklees Unitary Development Plan (1999), and guidance contained in the Framework.

15. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 30 November 2016

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 December 2016

Appeal Ref: APP/Z4718/C/16/3147220
Land to the rear of Oakwell House, Nutter Lane, Birstall, Batley, WF17 9LF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Brian Mortimer against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 15 February 2016.
- The breach of planning control as alleged in the notice is: without planning permission: the material change of use of land from agricultural land to land used for the storage and parking of vehicles and trailers.
- The requirements of the notice are to: (i) cease the use of the land [shown] edged blue [on the plan attached to the notice] for the purposes of storage and parking of vehicles and trailers and; (ii) return the land to its former condition by removing the hard surface and resulting debris from the land edged blue.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in s174(2)(a), (d), (f) and (g) of 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 s177(5) of the Act.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with a variation.

The Enforcement Notice

1. The appeal site forms part of a wider property owned by the appellant. It is set back but accessed from Nutter Lane to the north. The appellant operates a haulage business from a building and land ('the haulage area') between the site and the road and that use became lawful through the passage of time.

2. The appellant objects that the land edged in blue on the enforcement plan denotes no current features or points of reference, and is identified by 'arbitrary lines'. He suggests that the plan is at an inappropriate scale and out of date, so that it is open to interpretation. Paragraph 2 of the notice describes the site by reference to the plan, and so the appellant has raised questions about the validity of the notice.

3. I saw that the appeal site is defined on the ground; it is roughly surfaced, enclosed by fencing to south and east, and enclosed by a low wall to the north. The access from Nutter Lane leads through the haulage area, into the site via its northwest corner, and then through the site by a fence to the west. The appellant accepted that the lines on the plan 'indicate approximate locations of field boundaries'; I find that the location, size and shape of the site are drawn with reasonable accuracy.

4. I also consider that the site is correctly plotted in relation to nearby buildings, even if 'recent extensions' to them are not shown. Since it is not unusual for attached plans to be at a 1:1250 scale, I am satisfied that the notice is not unacceptably vague. It is clear where the breach of planning control is alleged to have taken place and where the requirements of the notice must be carried out.

The Appeal on Ground (d)

5. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of a breach of planning control which may be constituted by the matters stated in the notice. The onus of proof is on the appellant and the standard of proof is the balance of probabilities.

6. Under s171B(1) of the 1990 Act, no enforcement action may be taken in respect of operations until after the end of the period of four years beginning with the date of substantial completion. S171B(2) relates to a change of use of a building to use as a single dwellinghouse. Under s171B(3), no enforcement action may be taken in the case of 'any other breach of planning control' until after the end of the period of ten years beginning with the date of the breach.

7. The alleged material change of use falls to be considered under s171B(3). The appellant does not claim that the change of use had occurred by 15 February 2006 or that the use continued for any ten year period. His case is that the hard surface falls to be considered under s171B(1) and was substantially completed more than four years prior to the date of the notice. The surface is not described in the breach of planning control, however, and it cannot be subject to a ground (d) appeal.

8. The appellant suggests that the notice is inconsistent because the hard surface is subject to a requirement and not the allegation. However, it is a well-established principle of enforcement case law that a notice directed at a material change of use may require the removal of works integral to the use, even if the works would be immune from enforcement action in their own right. I shall consider whether the requirement to remove this hard surface is excessive under ground (f).

9. I conclude that, at the date that the notice was issued, it was not too late for the Council to take enforcement action in respect of the alleged material change of use of land. The appeal on ground (d) fails.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

Scope of the Ground (a) Appeal and the DPA

10. The appellant does not dispute that the alleged change of use took place; he concedes that vehicles and trailers were stored or parked on the land through 'natural expansion' of the haulage business. However, he has also said that lorries and other vehicles have been removed from the site; only six trailers remain and these are being used to store straw and hay for his livery business. He explained that it is essential to site trailers on the land for storage related to the 'outdoor sport and recreation' use, which represents an agricultural diversification scheme.

11. Like ground (d), ground (a) relates to 'the matters stated in the notice'. The DPA is for the development which has been carried out; it derives its terms directly from the allegation. Under s177(1)(a) of the Act, planning permission may be granted in relation to the 'whole or any part of those matters or…the whole or any part of the land to which the notice relates' but I have no power to grant permission for something completely different from that being enforced against.

12. It is also apparent from the notice that the Council considers agriculture to be the lawful use of the site. The grazing of horses need not result in a material change of use of farmland – but recreational equestrian activities can do so depending on fact and degree. With no information as to the extent of the livery business or when it commenced, I could not speculate as to whether the use of the land for the storage of hay and straw in trailers for a livery would be lawful now or represent a different material change of use from that being alleged.

13. Notwithstanding that the alleged use may have ceased, the appellant has paid the fee for consideration of ground (a) and the DPA. He stated in his grounds of appeal that 'the change of use ought to be granted planning permission'. I shall consider the case for permitting the storage and parking of vehicles and trailers.

Main Issues

14. The appeal site lies within a Green Belt. The *National Planning Policy Framework* (the Framework) states that inappropriate development in the Green Belt is harmful to the Green Belt by definition and should not be approved except in very special circumstances. The main issues for this appeal are:

- whether the material change of use of land to use for the storage and parking of vehicles and trailers is inappropriate development in the Green Belt;
- the effect of the use on the openness of the Green Belt and the purposes of including land within it;
- its effect on highway safety; 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 necessary to justify the development.

Reasons

Green Belt

15. The Framework states that the construction of new buildings is inappropriate development in the Green Belt except in specified circumstances. The Framework then describes other forms of development which need not be inappropriate in the Green Belt – and the list does not include the making of a material change of use of land. This means that the alleged change of use to the storage and parking of vehicles and trailers is inappropriate development in the Green Belt.

16. The Framework states that engineering operations need not be inappropriate development in the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The formation of the hard surface on the site was an engineering operation but this development is not alleged and I cannot consider the case for permitting it in its own right[1]. Insofar as the surface is associated with the unauthorised use, it facilitates harm to the openness and purposes of the Green Belt as discussed below.

17. I conclude that the alleged material change of use is inappropriate development in the Green Belt and harmful to the Green Belt by definition. In accordance with the Framework, I attach substantial weight to this harm.

The Openness and Purposes of the Green Belt

18. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence. The purposes of including land in Green Belts include assisting in safeguarding the countryside from encroachment.

19. The site adjoins the haulage area to the northwest, the garden at Oakwell House to the north, and fields to the east, south and west; it is mainly surrounded by open land. As noted below, the site was itself previously a grassed field and so it would have been an area of countryside that added to the openness of the Green Belt.

[1] Had I allowed the appeal on ground (a) and granted permission for the use, the notice would have been quashed and then the appellant would not have needed to comply with the requirement to remove the hard surface.

20. Permitting the alleged use could plainly lead to the storage and parking of lorries and lorry trailers – which I would describe as long and bulky chattels or structures. The site is sufficiently large that the use could occur on a significant scale; a condition could restrict the number of vehicles and trailers kept, but not so as to place a disproportionate burden on the appellant. I find that the extent and nature of the use would result in a serious loss of openness in the Green Belt.

21. The site is within hearing distance of but not visually associated with the M62. Dwellings in the wider area are separated from the site by countryside. There is a public footpath to the east and the use would be seen from there as being in the foreground of and an extension to the haulage area. The site is some metres from the footpath; it is also partly screened, particularly from Nutter Lane. Nevertheless, the use would not have any positive impact on the openness of the Green Belt in visual terms, so as to outweigh or justify the actual loss of openness.

22. Since the site was previously used for grazing, I also find that the alleged use would encroach upon the countryside, in conflict with the purposes of including the land within the Green Belt. I attach substantial weight to the harm caused to the openness and purposes of the Green Belt.

Highway Safety

23. Nutter Lane is an unclassified rural road that leads from the A652 past Oakwell Hall and Country Park and the appellant's property to Nova Lane, which serves a more built-up area and terminates at the B6125. Thus, Nutter Lane is part of a through route and it provides access to land other than the site. However, I saw that the carriageway is sufficiently narrow that even the drivers of cars must slow down to pass each other and/or wait at passing places.

24. Since the appellant's haulage business became lawful through the passage of time, it follows that HGVs will have been driven along Nutter Lane for at least ten years. I cannot speculate as to the planning status of the livery business but I will accept, for the purposes of considering this planning issue, that horse boxes and trailers have also been driven to and from the appellant's land. The Council has not shown that these existing uses have led to, for example, recorded road traffic accidents.

25. However, the site is large enough that the alleged use could take place on a considerable scale. In my view, allowing the parking and storage of vehicles and trailers here would result in a material rise in the movement of heavy vehicles along the constricted Nutter Lane. There would be an increased risk of congestion and collisions, if and when, for example, drivers reverse to passing places.

26. The Framework expects that developments which would generate significant amounts of movements should be supported by a Transport Statement or Assessment, and should achieve safe and suitable access. I find that the use would be liable to generate a significant amount of movement in relation to the standard of the carriageway. The appellant has not provided information to persuade me otherwise, or show that the use would have a safe and suitable access.

27. From the size of the site, the nature of the use, the layout of Nutter Lane and the lack of evidence from the appellant, I conclude that allowing the appeal would be liable to result an unacceptable loss of highway safety. The use would conflict with the Framework and Policy T10 of the *Kirklees Unitary Development Plan* (UDP), which does not permit development that would create or materially add to highway safety problems or, if it would generate a significant number of journeys, it could not be served adequately by the existing highway network. Given the serious consequences associated with loss of highway safety, I attach considerable weight to the harm that could be caused by the use in this respect.

Other Considerations

28. The Framework describes that 'very special circumstances' will not exist unless harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

29. The Framework supports sustainable economic development, including the development and diversification of agriculture and land-based rural businesses. However, the appellant has not shown that the appeal use could only be operated from this site, or that it would achieve economic or other benefits capable of clearly outweighing the harm caused to the Green Belt. Since I cannot consider the case for the use of trailers for storage in association with a livery business, I attach little weight to the considerations advanced in favour of the appeal.

Planning Balance and Conclusion

30. I have found that the alleged use is inappropriate development in the Green Belt. I attach substantial weight to the harm caused to the Green Belt by definition, and through loss of openness and encroachment into the countryside. The scales are further tipped against the appeal by the threat posed by the use to highway safety – and the other considerations advanced do not outweigh the harm.

31. I have had regard to all other matters raised. Looking at the case as a whole, in accordance with the Framework, I conclude that very special circumstances do not exist to justify a grant of planning permission for the development, which conflicts with the Framework and UDP Policy T10. It follows the appeal on ground (a) should fail and the DPA should be refused.

The Appeal on Ground (f)

32. Ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, or any injury to amenity which has been caused by the breach. In considering whether the steps are excessive, it is necessary to look at the purpose of the notice. It alleges that a material change of use has taken place and it requires that the use must cease; this means that the purpose of the notice is to remedy the breach.

33. I have found that the plan attached to the notice makes it clear where the breach has taken place and the requirements apply. I have considered the merits of the use under ground (a) and concluded that planning permission should be withheld. It is not excessive for step (i) of the notice to be that the use must cease. The appellant has not proposed a lesser step which might remedy the breach.

34. Turning to step (ii), the appellant claims that that the hard surface was laid to provide circulation space for horseboxes and trailers, and the loading/unloading of horses and ponies. While an enforcement notice concerned with a material change of use can require the removal of operational development which is integral to the unauthorised use, that principle does not apply if the works were undertaken for a different and lawful use, and could be re-used for that lawful purpose.

35. However, the appellant has not shown that there is a lawful livery use and I cannot determine whether this is so through this appeal. I also note that the 2009 and 2011 Google Earth photographs appear to show lorries on the land which were similar to lorries on the haulage area. The appellant's final statement refers to the hard surface being used for parking HGVs and '*also* a degree of storage for hay and straw' [my emphasis]. It has not been shown that the hard surface was laid or could be re-used for a lawful purpose.

36. The appellant suggests that the reference in step (ii) to the 'former condition' of the site is vague, but s173(4)(a) is explicit that the requirements of a notice may achieve purposes including 'remedying the breach…by restoring land to its condition before the breach took place'. The landowner is often the person with the best knowledge of what that condition was and the appellant has stated here that the land was grassed before he laid the hard surface.

37. I also find that the requirement to remove the hard surface and 'resulting debris' is plain, unambiguous and necessary to ensure that the site is restored to its previous condition. I conclude that the requirements of the notice are not excessive to remedy the breach of planning control. The appeal on ground (f) fails.

The Appeal on Ground (g)

38. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggests that he would need 12 months rather than one in order to restore the site to its previous condition.

39. I have been unable to speculate as to the lawfulness of the livery use but that has implications for the hard surface. It would be reasonable to extend the period for compliance with step (ii) to give the appellant time to discuss this matter with the Council and/or apply for planning permission or a lawful development certificate.

40. In the event that the surface must be removed, I am not persuaded that this could only take place in fair weather. I accept that returning the site to its previous condition might involve the spreading of soil and grass seed, but even so the works as a whole need not take long. The appellant might need to maintain the grass for his own purposes, but not to comply with the notice.

41. Taking all of the circumstances into account, I conclude that it would be reasonable to vary the notice so that the appellant has six months to comply with step (ii). From the representations on ground (g), however, and the fact that some vehicles have already been removed, I have no reason to extend the period for compliance with step (i). To a limited extent, the appeal on ground (g) succeeds.

Conclusion

42. For the reasons given above and with regard to all other matters raised, I conclude that the enforcement notice should be varied and the appeal should be dismissed.

Decision

43. The enforcement notice is varied by deleting the text of paragraph 5 in its entirety and substituting: '*(i) within one month of the date that this notice takes effect, cease the use of the land edged blue on the plan attached to this notice for the purposes of the storage and parking of vehicles and trailers; and (ii) within six months of the date that this notice takes effect, return the land to its former condition by removing the hard surface and resulting debris from the land edged blue on the plan attached to this notice*.'

44. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Jean Russell

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 24 January 2017

by Andrew McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 February 2017

Appeal Ref: APP/Z4718/D/16/3163310
4 Linefield Road, Upper Batley, Batley WF17 0ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to planning permission.
- The appeal is made by Mr Mohammed Mulla against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2016/62/92102/E, dated 17 June 2016, was refused by notice dated 5 September 2016.
- The development proposed is single storey rear and side extension in a conservation area.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the host property and the Upper Batley Conservation Area.

Reasons

3. The appeal site is a detached bungalow situated on Linefield Road and is set back from the public highway. It forms part of a regular pattern of development along the south side of the road consisting of large detached bungalows of similar design and appearance on spacious plots. To the front of the appeal property is a large grassed garden area with a driveway and detached garage to the side. To the rear is a good-sized garden which is screened by hedging and shrubs to the southeast, southwest and northwest. The adjacent properties either side of the appeal site, Nos 2 and 6 Linefield Road, have similar amounts of amenity space to the front and rear and between the properties there are substantial spaces. The appeal property is located within the Upper Batley Conservation Area (CA).

4. The proposed scheme would extend the original building considerably. Whilst the flat roof elements to the rear would lack any architectural subtlety, they would not be visually prominent. However, they would diminish the character of the host property and alter the appearance of the surrounding area. Furthermore, the combination of the rear addition and the significant side extensions would erode substantially the amount of space around the property.

5. Despite the use of sympathetic materials and its set back from the highway, the bulk of the proposal, particularly relating to the side additions, would be prominent when viewed from the access lane at the front of the property. The side additions would result in the property appearing further elongated and would extend the building across the full width of its plot. This would effectively close the visual

gaps between the appeal property and its detached garage and also between the property and No 6. It would therefore create a terracing effect which would be out of keeping with the prevailing spacious character of the streetscene and would be detrimental to the uniform yet spacious appearance of the group of bungalows on Linefield Road.

6. The appellant states that access paths are to be retained to each side of the property which, it is argued, would diminish any terrace effect. Notwithstanding this, the extent of the frontage of the property incorporating the proposed side additions would be substantially increased and would have a significant adverse impact on its appearance and the character of the area. Furthermore, I note that the proposed floor plan drawings submitted by the appellant indicate that there would be no gap between the proposed side extension and the existing detached garage of the appeal property. As a result, I am not convinced that the proposal would have not create a substantial and seemingly continuous frontage to the property which would be harmful to its character and appearance and that of its surroundings.

7. There is a wall between the appeal property and its boundary with No 6 which, the appellant argues, already creates a terracing effect. However, the wall is set back from the main frontage of the property by a significant distance and therefore does not form part of the main frontage of the property. The bulk, height, scale and position of the proposed side extensions would create an extended frontage which would have a greater visual impact on the streetscene. Furthermore, it would create a significant terrace effect consisting of Nos 2, 4 and 6 Linefield Road.

8. I note the substantial natural boundaries between the properties on Linefield Road to which the appellant refers and the appellant's view that these would soften any adverse impact of the proposal. However, in my view, these would have only a limited mitigating effect on the detrimental effect that the proposed development would have on the spacious character of the area.

9. Whilst reasonably localised in its extent, the effect of the scheme would be to diminish unacceptably the character, appearance and integrity of the host property and the group of bungalows on Linefield Road with consequent harm to the spacious character and appearance of the CA. Whilst the harm to the CA would be less than substantial, I have not been made aware of any public benefits of the proposal which would outweigh that harm I have identified. Moreover, the proposal would fail to preserve or enhance the character or appearance of the CA.

10. Consequently, I conclude that the proposal would have a materially harmful effect on the host property and the Upper Batley Conservation Area. It would therefore be contrary to Policies BE1, BE2, BE5 and BE14 of the Kirklees Unitary Development Plan and the National Planning Policy Framework. Amongst other matters, these policies and guidance seek to ensure that development is not detrimental to the character and appearance of buildings and the surrounding area and that it preserves or enhances the character or appearance of heritage assets, including conservation areas.

Conclusion

11. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 29 November 2016

by Martin Joyce DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 December 2016

Appeal Ref: APP/Z4718/C/16/3146587
Land on the north west side of Coal Pit Lane, Carlinghow, Batley, West Yorkshire

- 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 Mr J H Priestley against an enforcement notice issued by the Kirklees Council.
- The enforcement notice, Ref: COMP/15/0093, was issued on 20 January 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of land from agriculture to mixed use of agriculture and waste processing/storage and the erection of two buildings.
- The requirements of the notice are to cease the use of the site for the storage and processing of waste including the burning and dismantling of any article or any other method of processing waste; remove from the site all equipment and vehicles used in waste processing such as an incinerator and any vehicles/caravans, parts of vehicles/caravans or articles that are awaiting processing; and, wholly demolish the two buildings outlined in blue on the plan attached to the notice and remove all resultant debris from the site.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in Section 174(2)(c) and (e) of the Town and Country Planning Act 1990 as amended. As the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under Section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The Appeal Site

1. The appeal site comprises an irregularly-shaped area of rising land on the north-western side of Coal Pit Lane, a public bridleway that runs south-west from Chaster Street. The curtilages of dwellings in Chaster Street to the east, and Spring Mills Grove and Greenfield View, part of a modern housing estate to the north, form boundaries, in places, with the site.

2. The site is divided into three main enclosures by post and wire fencing, and much of it is grassed and used for agricultural or horse grazing purposes. At the time of my visit there were six goats, four sheep and a donkey on the land, with two horses moved temporarily onto adjoining land that was not in the appellant's control. A gateway at the south-eastern corner of the site provides access to a yard area that contains a number of structures, including a large open-sided building, measuring about 15.4m in length, 3.6m in width and 2.4m in height, which is one of the two required to be removed by the notice. That

building, divided into bays, is partly used for stabling purposes, and partly for storage, including agricultural equipment and machinery. It is constructed mainly of timber and plywood.

3. A range of further buildings and structures, including a framework shrouded in tarpaulins, runs along the short easternmost boundary. Further storage takes place in these structures, and also the repair of vehicle components in a rudimentary workshop under the shrouded area. Within the remainder of the yard is a tightly-packed miscellany of sheds, trailers, vehicles, including tractors, other agricultural machinery, a Hymac tracked excavator, a touring caravan, a horsebox, stacks of wood, stone, rubble and vehicle parts, as well as containers holding animal feed.

4. Another gate to the south-west provides a second access to the land from Coal Pit Lane. Close to this gate are two buildings, one of which is the other building at which the notice is, in part, aimed. It is a small animal shelter, open on one side, constructed mostly of plywood sheets, and measuring about 4.2m in length, 2.2m in width and 1.9m in height. It has been damaged by wind and was in a poor condition at the time of my inspection, but still used for shelter for the animals on the land. A more substantial stable building is sited close to the gate, but it is not shown on the plan attached to the notice and is not subject to the requirements of the notice.

5. The south-eastern boundary of the site, beyond the second gateway, is formed by a substantial hedgerow. Within this boundary is a strip of land that appears to be largely used for the storage and processing of waste material, although it does also contain some agricultural machinery, such as a muck spreader. I saw trailers and horse boxes containing a variety of material, including vehicle parts, tractor tyres, wood and metal waste, as well as a substantial pile of soil material, within which has been created an area used for burning waste. One trailer, fitted with high canvas or tarpaulin screening, was embellished with the words "Waste Management".

THE APPEAL ON GROUND (e)

6. The appeal on ground (e) is based upon the contention that others with an interest in the land were not served with a copy of the enforcement notice, specifically, the appellant's sister, brother-in-law and nephew. The Council accept that others help on the land but they are not registered as owners and no evidence has been provided to show that anybody, other than the appellant, has a legal interest in the land. This has been confirmed by a Land Registry search made in November 2015.

7. In considering these matters, I note that the Council chose, in part, to rely upon a response to a Planning Contravention Notice (PCN) served on the appellant in 2014 in connection with action under Section 215 of the Town and Country Planning Act 1990 (The Act). They state that it was obvious, from the answers given by the appellant to that PCN, that the appellant did not understand any of the questions thus, given his documented threatening behaviour and in the knowledge that he "struggles" to understand planning policy and legislation, it was decided to proceed to formal enforcement action without prior contact, as to do otherwise would be futile.

8. I find it surprising that, notwithstanding any communication difficulties, the Council did not seek further information, including through a PCN about the

specific matters alleged in the notice, as that issued in 2014 does not contain any allegation about unauthorised uses or the erection of buildings on the land. Indeed, Section 215 of The Act is concerned with the proper maintenance of land, rather than unauthorised development. Moreover, they acknowledge that others do have an interest in the land, albeit not an apparent legal interest.

9. In this context, the provisions of Section 172(2) of The Act are pertinent. They state that a copy of an enforcement notice shall be served by the Local Planning Authority on (a) the owner and occupier of the land to which it relates, and (b) any other person having an interest in the land, being an interest which, in the opinion of the Authority, is materially affected by the notice. Service of a notice is not, therefore, confined solely to those with a legal interest in the land, as stated by the Council, but extends to occupiers including those with a lease, licence or even oral permission to use the land. This would include the relatives of the appellant who the Council acknowledge help the appellant with his activities on the land. It follows, therefore, that the Council should have served others with a copy of the enforcement notice and their failure to do so is a breach of the requirements of Section 172 of The Act.

10. There is, however, another limb to this matter. Whilst an appeal under Section 174(e) may correctly be made in circumstances where the Council has failed to serve a notice in accordance with Section 172, the provisions of Section 176(5) allow such failure to be disregarded if neither the appellant nor any other person has been substantially prejudiced by this failure to correctly serve the notice. I consider that this situation applies in this case. Whilst the three relatives of the appellant have not been served with the notice there is no suggestion that they were not aware of it, and the appellant does not contend that they have suffered any prejudice through the failure of the Council to follow the correct procedure. Moreover, the other persons with an interest in the land, presumably as a consequence of an oral permission to use the land, are likely, in my view, to have contributed to the grounds of appeal put forward by the appellant, not least because of the presence of two of them at the site inspection, with the appellant's sister showing control of relevant paperwork associated with the notice and the appeal.

11. In all of these circumstances, I conclude on this ground of appeal that the Council has not served the notice in accordance with Section 172 of The Act, but their failure to do so should be disregarded, in pursuit of Section 176(5) of The Act, because, on the balance of probabilities, no prejudice to the appellant or others with an interest in the land has been shown. The appeal on ground (e) therefore fails.

THE APPEAL ON GROUND (c)

12. The appeal on ground (c) relates solely to the allegation that two buildings have been erected on the land without planning permission, and there is no challenge to the alleged material change of use of the land to a mixed use for agriculture and the storage and processing of waste, albeit that the appellant states that the fires on the land have been for the burning of agricultural waste. The appellant also questions why other farmers in the area are permitted to erect buildings, without the need for planning permission, and I take this to be a contention that the buildings at which this notice is aimed do not need planning permission because they are used for the purposes of agriculture.

13. The Council do not directly address the question of whether or not the buildings are exempt from the need for planning permission, rather they contend that they are operational development, having regard to the provisions of Section 55 of The Act, and they draw attention to the fact that the appellant accepts that one of them was completed in the last 14 months. However, neither matter is pertinent to the appeal that has been made, especially as there is no appeal on ground (d).

14. The appellant's contentions seem to relate to the fact that the site is in agricultural use, as accepted in the terms of the enforcement notice, and that the buildings in question are being used for agricultural purposes, as I saw at my site inspection. However, whilst the erection of buildings which are reasonably necessary for agricultural purposes is permitted under the terms of Class A of Part 6 of Schedule 2 to The Town and Country Planning (General Permitted Development (England) Order 2015 as amended, this only relates to agricultural land comprised in an agricultural unit of 5ha or more. I have no evidence before me that the appeal site forms part of an agricultural unit of over 5ha, and the site itself comprises only about 1.7ha of land. There are, therefore, no permitted development rights relating to the erection of agricultural buildings on this site, thus those that have been erected require a grant of planning permission which has not been obtained.

15. As for the storage and processing of waste, the only explanation given by the appellant concerns a claim that the burning of waste, witnessed by a number of local residents, is of farm waste, which he contends is permissible. However, I saw clear evidence of the storage of various types of waste on the land, as detailed above, including significant amounts of wood in the form of cut trees which must have been imported onto the land as there is no evidence of the clearance of woodland from within the site itself. Vehicle parts and other metal waste has also been imported and stored on the land. None of these activities are exempt from the need for planning permission and no such permission has been either sought or obtained.

16. In all of the above circumstances, I conclude that the matters alleged in the notice constitute a breach of planning control as the use of the land for the storage and processing of waste, and the erection of the two buildings in question, requires planning permission which has not been granted. The appeal on ground (c) therefore fails.

Other Matters

17. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

Conclusions

18. For the reasons given above I consider that the appeal should not succeed.

FORMAL DECISION

19. The appeal is dismissed and the enforcement notice is upheld.

Martin Joyce

INSPECTOR

The Planning Inspectorate

Appeal Decisions

Site visit made on 9 January 2017

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 January 2017

Appeal A: APP/Z4718/C/16/3159837
Appeal B: APP/Z4718/C/16/3159838
1 Northfield Road, Dewsbury, WF13 2JX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeal is made by Mr Mohsin Daji (Pharmacist2u Ltd) (Appeal A) and Mrs Shereen Daji (Appeal B) against an enforcement notice issued by Kirklees Metropolitan Council.
- The notice was issued on 26 August 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a fence exceeding 1 metre in height adjacent to a highway (shown blue on the attached plan).
- The requirement of the notice is:
  Reduce the height of the fence (shown blue on the attached plan) to no more than one metre in height above the ground level that existed prior to the erection of the fence.
  N.B For the avoidance of doubt ground level is the height of the ground in between the fence and existing stone boundary wall.
- The period for compliance with the requirements is 4 weeks.
- Appeal B is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act also fall to be considered.

Decision

1. The appeals are dismissed, planning permission is refused and the enforcement notice is upheld.

Procedural matters

2. Some of the appellants' evidence is that sections of the fence, marked on the plan in their submitted evidence as sections 1A and 1B, are replacement fences no higher than existed previously, and as such are not a breach of planning control. This is in effect an appeal on ground (c) – that those sections of fence do not amount to a breach of planning control. Although an appeal was not lodged on that basis the Council have addressed the matter in their statement. As such, I consider that it would not result in any injustice to either party to address this matter in my decision.

Appeal site

3. 1 Northfield Road (No. 1) is a large two storey semi-detached dwelling house constructed in stone, and positioned in an elevated and prominent corner position at the junction of Northfield Road and Halifax Road within the

Northfield Conservation Area (NCA). Due to its corner position No. 1 has front and side gardens fronting the highway following the sweeping curve of the property's stone boundary wall.

4. A hedgerow that existed above the wall has been removed and replaced with a fence, now subject of this appeal, made from horizontally aligned timber boards. The fence is constructed in two parts; the first part is the length indicated as 1A on the appellants' plan which runs perpendicular from the back edge of the highway and forms part of the separating boundary with No. 3. The second part is that which runs along the front of the property and includes the return element indicated as 1B on the appellants' plan.

The appeal on ground (c)

5. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. This relates to the sections of fence indicated by the appellants as 1A and 1B. The burden of proof in a ground (c) appeal, being on the balance of probability, is on the appellant.

6. Article 3 and Class A, Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') grants planning permission ("permitted development") for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However, the permission at A.1.(c) excludes any fence/wall which would exceed its former height, or, the height referred to in paragraph A.1 (a) or (b) of the Order as the height appropriate to it (1 metre in this particular case) if erected or constructed, "*whichever is the greater"*.

7. The fencing is higher than 1 metre but the appellants argue that the appeal fencing is no greater in height than previously existed.

8. The appellants rely principally on their own photographs and a Google image to demonstrate that the appeal fencing is no higher than previously existed. However, these images offer limited views and appear to differ from the Council's images attached to their statement which show lower height fences. As such there is considerable ambiguity in respect of this part of the appellants' evidence. On balance, from the submitted photographs from both parties, it appeared to me during my visit to the site that the sections of fence at 1A and 1B were higher than previously existed. Overall, on the evidence before me, I conclude that the appellants' have not discharged the burden of proof upon them that the replacement fencing is no higher than previously existed.

9. Given these factors, and the limitation in the Order at Class A.1.(c), I am unable to find that the fencing is permitted development. Consequently, since no planning permission exists for the development, it is a breach of planning control.

10. The appeal on ground (c) therefore fails.

The appeal on ground (a)

11. The main issue is the effect of the development on the character and appearance of the area with particular regard to the NCA, and the effect on highway safety.

Character and appearance

12. Northfield Road is a wide tree lined-street. It comprises mainly mature residential properties constructed in stone, set back in their plots and separated from the pavement by low stone walls. I saw that this layout of plots and their boundary walls is typical of the prevailing character and appearance of the adjoining streets and this part of the NCA. Some plots have hedgerow or other shrubbery screening projecting above the low boundary walls. A few have timber fences, some of which have been drawn to my attention by the appellants.

13. The Council acknowledges, and I agree, that the fence is well made. However, due to its overall length, height, materials and contrasting appearance, I consider that it is starkly at odds with the form and construction of the low stone boundary walls which form a key element of the street scene and the NCA. Given the long sweeping property boundary to the junction with Halifax Road it is particularly incongruous in its immediate context at this very prominent location. Overall, I find that it results in an unacceptable level of harm to the character and appearance of the area and the NCA.

14. I acknowledge the appellant's evidence, including photographs, in respect of boundary fencing at other properties in the area. However, those are in far less prominent positions than is the fence subject of this appeal. They amount to relatively few exceptions to the prevailing character and appearance of the NCA I have described. They do not therefore set a precedent for allowing this appeal which I have found to result in an unacceptable level of harm.

15. The appellants say that the fence improves the property in terms of security and child safety. However, there are many ways of achieving such aims. There is no convincing evidence before me which demonstrates that those aims could not be achieved in other ways without resulting in the level of harm I have identified.

16. While I acknowledge the comments from third parties in support of the appeal these do not lead me to reach any different conclusion.

17. I conclude that the fence results in significant harm to the character and appearance of the area and fails to preserve or enhance the character of the NCA. As such it conflicts with Policies BE5, BE1 and BE2 of the Kirklees Unitary Development Plan (UDP).

Highway safety

18. The new vehicular access replaces a pedestrian only access, and hence now permits the entry and exit of motor vehicles.

19. I have no doubt that the appellants would take every care to avoid accidents. However, the height of the fence where it meets the back edge of the pavement results in the safety of pedestrians walking along the pavement towards the access (from either direction), particularly children, being very much dependent on drivers using the access, instead of pedestrians themselves also being able to have a sufficient view of emerging vehicles.

20. Given these factors I consider that the height of the fence has significantly increased the risk of harm with regard to highway safety. As such, it conflicts with the aims and objectives of UDP Policy T10.

21. I am not convinced that the fence at the original vehicular access, closest to the junction with Halifax Road, has resulted in any significant increase in risk of harm with regard to highway safety than was previously the case. However, this does not overcome the harm I have already found with regard to the character and appearance of the area.

Conclusion

22. The fence results in significant harm to the character and appearance of the area; it fails to preserve or enhance the character and appearance of the NCA; it also results in an increased risk of harm with regard to highway safety.

23. For all the above reasons the appeal on ground (a) fails.

Thomas Shields

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 30 November 2016

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6th January 2017

Appeal Ref: APP/Z4718/W/16/3157829
Pog Hall Farm, High Flatts, Huddersfield HD8 8XU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015.
- The appeal is made by Mr Howard Brook against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2016/91024, dated 29 March 2016, was refused by notice dated 26 May 2016.
- The development proposed is alterations to existing barn to form one dwelling.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposal is permitted development under Schedule 2, Part 3, Class Q of the General Permitted Development Order (GPDO) 2015, having particular regard to the following:
   (a) Whether the site was used solely for an agricultural use as part of an agricultural unit on 20 March 2013; and
   (b) Whether the building operations proposed are reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouse).

Reasons

Agricultural Use

3. The appeal relates to a small detached single storey building set in a small paddock. The building has a low wall of coursed block work on all four sides, above which are timber walls and a corrugated mono-pitch metal roof, which includes transparent plastic elements to allow natural light into the building. The building is accessed from a long private road that serves a number of buildings including Pog Hall Farm. The access is outside the red line of the application and also serves an adjacent greenhouse (also outside the appeal site) and provides opportunities to access the adjoining field. The site is screened from the main road by a dense bank of coniferous trees.

4. Development is not permitted under Class Q(a) if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013. According to the Council, planning permission was granted in 2003 for the building to be used as stables. While the planning history of the unit is not

necessarily determinative in itself, the fact the building was not originally intended to be used as a barn means that it is particularly important to have clear and conclusive evidence that the building was solely in agricultural use on 20 March 2013.

5. The information provided in support of the application is limited. All I have are simple statements from the appellant and tenant that the building has been used in association with sheep farming since 2005. However, I have nothing which provides substantive evidence of the timing of the use, or the relationship between the building and the agricultural unit to which it relates. For example, I have not been provided with such things as copies of lease agreements or any other documentary evidence that would support the appellant's statement.

6. The Council saw no evidence of on-going agricultural use on their site visit. I observed some hay bales in empty stalls and empty feeding troughs outside the building, but these are not conclusive proof of any recent activity relating to sheep farming. While these visits took place after the relevant date and thus carry little weight in themselves, they provide little comfort that the conditions of the GPDO have been met.

7. In addition, the information relating to the agricultural unit is also unclear. The appellant's statement indicates that the agricultural unit to which the building relates is Pog Hall Farm. However, other evidence indicates its use as part of a tenant's agricultural business, which also includes other land owned by different landowners. If it were related to the former, then I have no information as to whether Pog Hall Farm was a working farm on this date or not. If it were the latter, then there is no information relating to the extent of the agricultural unit as a whole or what other land is involved in the business.

8. Paragraph W of Schedule 2, Part 3 of the GPDO places the responsibility to demonstrate compliance with the limitations of Class Q with the applicant. I find I have insufficient evidence to conclude that the building was solely in use for agricultural purposes as part of an established agricultural unit on 20 March 2013. The lack of detail, clarity and apparent inconsistency in the evidence means that I am unable to conclude with any certainty that the relevant GPDO conditions, limitations and restrictions have been met.

Building works

9. Class Q(b) of the GPDO refers to building operations that are 'reasonably necessary to convert the building' being permitted development. This can include the installation and replacement of walls, windows, doors, roofs and for partial demolition. The National Planning Practice Guidance (PPG) makes it clear that it is not the intention of the permitted development right to include the construction of new structural elements. It further states that the permitted development right only applies where the existing building is structurally strong enough to take the loading which comes with any permitted external works.

10. No structural surveys have been provided to support the application. The appellant's statement indicates that the existing low block work would be replaced by a new full height cavity wall and that this would be clad in stone at the lower level. A new steel roof would also be installed, along with new windows, doors and concrete floor. The statement suggests that the existing

timber would be reused to clad the wall. However, this does not appear to tally with the submitted plans which indicate that there would be new red cedar cladding to "match the profile of the existing building".

11. Irrespective of any reuse of the timber, the extent of demolition and level of new construction would result in a considerable amount of new building with very little, if anything, of the original structure remaining. Owing to the extent of demolition and replacement involved, I cannot conclude that the proposed works would not be structural in nature and that any internal works would go beyond that necessary for the maintenance, improvement or other alteration of the building. I also have nothing substantive that demonstrates the replacement walls and roof would not need new foundations to support the additional weight.

12. There is insufficient information to conclude that the existing building is capable of functioning as a dwelling without significant structural works. Moreover, the evidence I do have suggested that what is proposed would go beyond what is 'reasonably necessary' to convert the building and would constitute what is essentially a rebuild.

13. Taking all relevant factors into account, it is my view that the extent of the works proposed for the building to be used as a dwelling would fall outside the scope permitted under Class Q. Therefore, even if I had found that there was conclusive evidence of the building having been in sole agricultural use on 20 March 2013, I would have still concluded that the development would not be permitted development under the requirements of the GPDO.

Other matters

14. The appellant has provided additional information on their personal circumstances, the downsizing of the agricultural use and the process they went through with the application. However, these factors do not have a significant bearing on whether the development would meet the specific conditions of the GPDO.

15. The appellant has drawn my attention to other permissions relatively near to the appeal site. However, I have not been provided with the details of these and thus cannot conclude that they are comparable to this proposal. In any event, I have considered the appeal on its own merits.

Conclusion

16. For the reasons outlined above, the proposed development does not satisfy the limitations in Part 3, Class Q of the GPDO. As such, I consider that the appeal should be dismissed.

S J Lee

INSPECTOR