
Appeal Decision

Site visit made on 10 March 2014

by Wendy McKay LLB (Hons) Solicitor (Non-practising)

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

Decision date: 5 June 2014

Appeal Ref: APP/Q4625/A/13/2209224

66 Salter Street, Earlswood, Solihull, B94 6DE

- 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 Joseph and Bernard Doherty against the decision of the Solihull Metropolitan Borough Council.
 - The application Ref 2013/1483, dated 2 September 2013, was refused by notice dated 4 November 2013.
 - The development proposed is the re-siting of the existing stable building, part retention of hardstanding and access track.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are:
 - Whether the development would be inappropriate in the Green Belt having regard to the development plan and national policy and the effect on the openness and purposes of the Green Belt;
 - The effect on the visual amenities of the Green Belt and the rural character and appearance of the surrounding area;
 - If inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether those considerations amount to the very special circumstances necessary to justify the development.

Reasons

The Appeal Site

3. The appeal site is located within the Green Belt and open countryside. The landscape in this location is generally characterised by small fields and mature hedgerows set within the sloping contours of the valley. It has an area of about 0.28 ha and forms part of a larger landholding of some 0.8ha. The land immediately to the west is laid out for use as a lawful residential caravan site. The original hardstanding has been extended eastwards into the appeal site for a distance of about 55m. The land beyond the appeal site further to the east remains in use as grazing land. In this direction, the land slopes down a natural valley to a watercourse which feeds into the River Blythe. There are

clear views across the valley to and from the houses in Warings Green Road. However, there are limited public views of the appeal site. Access is gained from Salter Street (B4102) via a private drive alongside the Stratford upon Avon Canal which begins adjacent to the car park of the Salter Church of England Primary School.

The Development Plan and other policies

4. Although the Solihull Unitary Development Plan (UDP (2006) was still applicable at the time the application was determined, the Council advises that this ceased to be effective when the Solihull Local Plan was adopted on 3 December 2013. The Development Plan therefore includes the Solihull Local Plan and not the UDP. The relevant policies include Policy P10 – The Natural Environment, Policy P14 – Amenity and P17 – Countryside and Green Belt.
5. Turning to national policy, the Government issued the National Planning Policy Framework, "*the Framework*", in March 2012. It explains that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.¹ Paragraph 79 states that: "*The Government attaches great importance to Green Belts. 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.*" Paragraph 80 sets out the five purposes of including land in the Green Belt; paragraph 81 encourages local planning authorities to plan positively to enhance the beneficial use of the Green Belt and paragraphs 89 and 90 set out the form of development which may be regarded as appropriate in such locations. I find the relevant Development Plan policies in this case to be consistent with the Framework and full weight in accordance with their statutory status should therefore be attached to them. So far as other national policy is concerned, the Planning Practice Guidance was issued on 6 March 2014. However, in the light of the particular facts of this case, I am satisfied that the issue of this policy guidance does not alter my conclusions and has no bearing upon my decision in this appeal.

Recent Planning History

6. In 2010, planning permission² was granted for the adjacent caravan site which forms part of the wider landholding. It permitted the change of use of land to a gypsy and traveller site comprising three pitches for three touring caravans together with ancillary development including day rooms, bathrooms, utilities on each pitch, and retention of existing stables, dog kennels and boundary fencing/landscaping.
7. In 2011, a retrospective planning application³ for an extension of the approved caravan site, including an increase in the number of caravans from one to three per pitch, the laying of additional hardstanding and landscaping was refused by the Council. Enforcement notices were served in respect of the unauthorised site extension on 14 July 2011. The appeals against the refusal of planning permission and service of enforcement notices were heard at a Hearing in January 2012. The two change of use notices were upheld but the two

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

² Ref: 2010/1336

³ Ref: 2011/1020

operational development notices were found to be a nullity on the grounds that they did not specify a compliance period.

8. In November 2012, a planning application⁴ for the erection of a stable building, re-siting of an existing stable building, retention of hardstanding and construction of an all-weather riding arena was refused by the Council. The subsequent appeal was dismissed by decision dated 2 July 2013.

Reasons

Whether the development would be inappropriate in the Green Belt

9. The Framework, paragraph 89, advises that the construction of new buildings in the Green Belt should be regarded as inappropriate in the Green Belt unless it falls within the specified exceptions. These include the provision of appropriate facilities for outdoor recreation as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
10. The Appellants submit that the lawful use of the land outside the authorised gypsy and traveller site, including the appeal site, is for keeping horses and that equine-related activities including the keeping, breeding and training of horses are appropriate uses of land in the countryside and the Green Belt. They contend that the keeping of horses is a form of outdoor recreation and the proposed built development to support that activity constitutes appropriate development in the Green Belt.
11. The Council accepts that stables are often considered to fall within the category of appropriate facilities for outdoor sport and recreation, if genuinely required in relation to an approved recreational use. The Council questions whether the keeping of horses in association with the Appellants' traveller lifestyle falls within the category of 'outdoor sport or recreation'. However, the Appellants state that the horses are kept for hobby purposes. They train their horses and take them to trotting races at horse fairs. For this purpose, they need to keep them stabled in order to control their diet. I see no distinction, in principle, between this recreational activity and other equestrian sports whether or not it reflects their traveller lifestyle. This also largely corresponds with the view of the 2013 Inspector on that topic.
12. Given the scope for imposing planning conditions to control the future use of the appeal site, I attribute little weight to the Council's concerns that the site would effectively function as an extension of a caravan site. However, the permission sought is not simply for the erection of stabling. It also seeks the retention of part of the hardstanding and access track. The provision of stabling would necessarily involve some form of hardsurfaced area and access. Nevertheless, the unauthorised importation of materials onto the land which took place in 2011 has materially raised the level of the land on which the stables would be sited and lessened the gradient of the slope. In dismissing the appeal in 2013 the Inspector commented: "*Retention of a significant amount of the hardstanding, albeit in a modified form, goes well beyond ground works that would be needed for accommodating the stables, arena and turning circle. It seems to me that the scheme has been contrived to keep a lot of the deposited material in place rather than face the prospect of having to*

⁴ Ref: 2012/1314

remove it. The deposited material has had an impact on the openness of the Green Belt which in my view has introduced an unnecessary and artificially high land level that has inevitably encroached into the Green Belt as well."

13. The positioning of the proposed stable block on artificially raised land in an exposed and prominent position on the valley slope would have a significant adverse impact on the openness of this part of the Green Belt. I concur with the Council that this effect would be exacerbated by the retention of part of the unauthorised raised hardsurface as an access roadway and turning area. The intrusion of this artificially raised land into the open countryside in this way would also conflict with the purpose of the Green Belt to assist in safeguarding the countryside from encroachment.
14. Whilst the present scheme is different from that which was recently dismissed on appeal and does not, for example, include an arena, similar concerns remain. The proposal would involve the retention of a substantial area of raised hardstanding on which to site the stables and provide the proposed access and parking/turning area for vehicles. This aspect of the development would materially harm the openness and purposes of the Green Belt. The scheme as a whole does not represent the provision of an appropriate facility for outdoor recreation. Indeed, it goes way beyond the scope of such development. Since the scheme does not fall within any of the exceptions to Green Belt policy set out in the Development Plan or the Framework it represents inappropriate development in the Green Belt and would not be in accordance with Local Plan Policy P17. Paragraph 87 of the Framework explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

The effect on the visual amenities of the Green Belt and the rural character and appearance of the surrounding area

15. The scheme proposes that the remainder of the unauthorised hardstanding would be *"reduced in height or removed, and covered with top soil which would be sown with grass seed."* However, the track, turning area and stables would be artificially raised above natural ground levels appearing as a prominent and alien feature in the landscape.
16. The 2013 Inspector recognised that, in principle, the proposed horse-related infrastructure would not look out of place. Nonetheless, he concluded that: *"Also, the artificially higher ground would make the stables more prominent than they would otherwise need to be if it were not for the unjustified presence of the imported material."* I share the same concerns in this case.
17. The Appellants point out that the planning system is concerned with the protection of the public interest rather than the private rights of individual property owners. Whilst the appeal site is not readily visible from public viewpoints, it would be quite apparent from the rear of properties on Warings Green Road, albeit at a distance. Although I do not afford such views the same weight as those from public vantage points, they can still contribute to an area's overall character and how it is perceived by those living within it.
18. The conflict with the natural contours of the valley slope would exacerbate the visual impact of the development which would appear incongruous and out of keeping with the surrounding landscape. It would have a significant adverse

impact on the character and appearance of the surrounding countryside and the visual amenities of the Green Belt.

19. My observations at the time of my site visit confirmed the Council's evidence that the stables would do little to screen views into the site due to falling land levels. For the same reason, it would be difficult to achieve effective screening through planting. Although tree planting is proposed immediately to the east/rear of the stables, and further up the slope adjacent to the boundary with the caravan site, given the characteristics of the surrounding landscape any such effective planting would, itself, be likely to look odd and out of keeping in this environment. The visual objection to the proposal could not be satisfactorily overcome by the imposition of landscaping conditions. The development would not be in accordance with Local Plan Policy P10.

Whether there are any very special circumstances necessary to justify the development

20. The Appellants need to show very special circumstances to justify the development in this location. Very special circumstances can arise from a combination of circumstances. It is necessary to balance all factors that weigh in favour of the grant of permission in each case against the harm to the Green Belt by reason of inappropriateness and any other harm. The harm to the Green Belt by reason of the inappropriate nature of the development is a factor to which substantial weight must be given. I have identified additional harm to the openness, purposes and visual amenities of the Green Belt, and to the character and appearance of the surrounding countryside.
21. The Appellants state that they have a need for the proposed development. They are members of the local Irish Traveller community and the keeping of horses is an important part of their lifestyle. They have other grazing land elsewhere available to them and the size of the stables is justified by the number of horses that they own. They submit that the provision of stables together with a hardstanding where horses can be loaded/unloaded or attended to by a farrier is an inevitable consequence of the "in principle" acceptance of equine-related activities and development in the countryside.
22. The Council recognises that the customary acceptance, in principle, of small stables in the Green Belt should weigh to some extent in support of a case for very special circumstances. Given that the proposal accords in general terms with paragraph 81 of the Framework as a beneficial use of land in the Green Belt, I concur with such an approach.
23. The Appellants draw support from other stable/stable yard developments which have been approved in the Borough and the fact that such development necessarily involves the provision of some form of hard surfaced stable yard and access. These developments are of much greater size in terms of ground coverage by hardstandings compared to the appeal proposal.
24. The Council acknowledges that to be the situation, but indicates that it is not aware of another case in the area where a proposed stable would entail the retention of an area of unlawful raised hardstanding which raises similar concerns. The Appellants complain that the Council has not treated them in a fair and equal manner compared to the settled community in relation to the provision of horse-related facilities in the Green Belt and has had no regard to the need to facilitate their way of life. However, I find no substantial evidence

to support such a conclusion. It would seem that this other horse-related development which has been permitted is not directly comparable to that which is proposed at the appeal site. In any event, I have considered this appeal on the basis of its own particular facts and circumstances. I do not regard this other development which the Appellants mention to be a strong argument in support of this appeal. It is a factor to which I attribute little weight.

25. The Appellants also propose to carry out mitigation measures such as reducing the height of the remaining imported material and planting. The Council indicates that it is currently pursuing formal action to secure a remedy of the breach of planning control by other means. The proposed mitigation measures are not factors which I believe would satisfactorily overcome the harm identified and little weight can be given to them in this instance.
26. The Appellants submit that the proposal would allow Joe Doherty to move his stables off his caravan site where children may be playing, into a safer area and more suitable area. The need for purpose-built stabling outside the area of the caravan site is a factor to which some weight can be attributed.
27. I have considered all the various factors in support of these appeals including the personal needs and circumstances of the Appellants and the children. I conclude, on the particular facts of this case, that the material considerations in support of this appeal, either on their own or in combination, do not outweigh the harm to the Green Belt by reason of inappropriateness and the other harm which I have identified. They do not amount to very special circumstances in the context of this case.
28. I have taken into account all the others matters raised in the course of this appeal but none outweighs those which have led me to my decision. For the reasons given above, I conclude that the appeal should be dismissed.

Wendy McKay

INSPECTOR