
Appeal Decision

Site visit made on 22 January 2018

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2018

Appeal Ref: APP/B2355/W/17/3188367

Land Opposite 10, Northfield Road, Rising Bridge, Accrington, Lancashire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr David Flynn against the decision of Rossendale Borough Council.
 - The application Ref 2017/0322, dated 23 June 2017, was refused by notice dated 9 August 2017.
 - The application sought planning permission for the erection of an agricultural building without complying with conditions attached to planning permission Ref 2017/0228, dated 22 June 2017.
 - The conditions in dispute are Nos. 3 and 4 which state that:
"3. The building hereby permitted shall be removed from the land in its entirety if it is not used for the purposes of agriculture for a period of six months, within ten years of the building being substantially complete."
"4. The building hereby permitted shall only be used for the purposes of agriculture."
 - The reasons given for the conditions are:
"3. To ensure the development accords with the permission sought and to protect the open and rural character of the countryside."
"4. To ensure the development accords with the permission sought and in the interests of neighbour amenity and highway safety."
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an agricultural building at Land Opposite 10, Northfield Road, Rising Bridge, Accrington, Lancashire in accordance with the application Ref 2017/0322, dated 23 June 2017, without compliance with conditions Nos. 3 and 4 previously imposed on planning permission Ref 2017/0228, dated 22 June 2017, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr David Flynn against Rossendale Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application subject to this appeal sought removal of conditions 3 and 4 of planning permission reference 2017/0228 as listed in the appeal decision header. In the interest of consistency and for the avoidance of doubt, I have

used the address listed on the Council's decision notice relating to that planning permission.

4. The site lies within land designated as Green Belt. The reasons for the conditions make no specific reference to Green Belt. However, the Council's evidence expresses a view that whilst an agricultural building is not inappropriate development in the Green Belt, if the building is no longer required for agricultural purposes in the future, its removal under condition 3 would be necessary to prevent the accumulation of redundant buildings and resultant harm to the openness of the Green Belt. I, therefore, include consideration of that matter in the main issues listed below.

Main Issues

5. The main issues are whether the disputed conditions are reasonable and necessary with regard to:
 - the effect of the development on the Green Belt, including openness and the other purposes of including land within it;
 - the effect of the development on the character and appearance of the area;
 - the effect of the development on the living conditions of occupiers of neighbouring properties, and;
 - the effect of the development on highway safety.

Reasons

Green Belt

6. The appeal site is within the Green Belt in a countryside setting on the northern side of Northfield Road. The site consists of a part timber fence and part dry stone wall enclosure with access via a gated entrance that is set back from the road edge. The site has an area of hardstanding, a number of metal storage containers sited towards its northern extent and some external storage of commercial paraphernalia. At the time of my visit, the planning permission granted for the agricultural building under planning permission reference 2017/0228 had not commenced.
7. The site adjoins open fields to the north and west with undulating land levels that are denoted on the submitted plans as within the appellant's ownership. The wider surroundings to the north and west are of a similar undulating topography with some groupings of agricultural and residential buildings visible in more elevated positions within the landscape. An A56 overpass is located close by to the west and a wooded area in an elevated position lies behind the dry stone wall immediately to the east.
8. Policy 1 of the Rossendale Core Strategy Development Plan Document 2011-2026 (CS), adopted November 2011, makes reference to Green Belt and indicates that proposals outside the boundary will be determined in accordance with the relevant national and local planning guidance. The CS pre-dates the publication of the National Planning Policy Framework (the Framework). I, therefore, necessarily consider the proposal relative to the Framework in so far as it is relevant to it.
9. Paragraph 89 of the Framework states that the construction of new buildings should be regarded as inappropriate in Green Belt, unless it falls within certain

listed exceptions. The listed exceptions include at bullet point one, buildings for agriculture and forestry. The Council granted planning permission for the building subject to this appeal on the basis that it had been designed and would be used for agricultural purposes. When taking account of the site, the proposal and the associated land, I have no reason to take a different view. Consequently, the proposed agricultural building is not inappropriate development in Green Belt as it meets the exception listed at bullet point one of paragraph 89 of the Framework.

10. The exception from inappropriate development in Green Belt in bullet point one of paragraph 89 of the Framework relating to agriculture and forestry buildings is without qualification. The effect upon the openness of the Green Belt of such a building is, therefore, implicitly taken into account. Consequently, once the development of an agricultural building is found to be not inappropriate in Green Belt, the impact of the building on the openness of the Green Belt or the other purposes of including land within it are not matters requiring further assessment.
11. Turning to the disputed conditions, paragraph 206 of the Framework states that *"planning conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects"*. The appellant in applying for planning permission for the agricultural building clearly intended it to be permanent. However, condition 3 of planning permission ref: 2017/0228 imposes a restriction upon the building relating to its use that would necessitate its removal if it would not be used for agricultural purposes for a period of six months, within ten years of the building being substantially complete. Planning Practice Guidance (PPG)¹ is clear that *"a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness"*.
12. Having regard to the above, a recent appeal decision² relating to removal of a similar condition imposed on an agricultural building at Vale Lodge in Rossendale Borough has also been drawn to my attention. I agree with the Inspector that a period of non-use, such as the six month period specified in disputed condition 3, does not constitute cessation or termination of the use for which planning permission has been granted. Furthermore, the Inspector was also correct that a building would lawfully remain an agricultural building until it was used for another purpose and would, therefore, continue to be not inappropriate development in Green Belt even if it were not being actively used for agricultural purposes. In that context with regard to paragraph 206 of the Framework and the guidance within the PPG, it follows that the disputed condition 3 is not reasonable or necessary to prevent a harmful effect of the development on the Green Belt, including its openness and the purposes of including land within it.
13. In reaching the above findings, I have also taken into account that paragraph 90 of the Framework states that certain other forms of development are not inappropriate in Green Belt, subject to the qualifications that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The re-use of buildings provided that they are of permanent and substantial construction is listed at bullet point four of

¹ PPG, Use of Conditions, Paragraph: 014 Reference ID: 21a-014-20140306 Revision date: 06 03 2014

² Appeal Ref: APP/B2355/W/17/3174775 - Allowed with Conditions - 1 November 2017

paragraph 90. In that context, it is reasonable that the Framework implies that re-use of a building for a purpose other than those listed in paragraph 89 of the Framework does not constitute inappropriate development by definition and re-use does not inevitably introduce an adverse impact upon the openness of the Green Belt or harm the other purposes of including land within it. As the interaction of paragraphs 89 and 90 in terms of re-use of buildings in Green Belt is not time qualified, the application of disputed condition 3 for a period of ten years from completion would not be a reasonable or necessary restriction in terms of paragraph 206 of the Framework.

14. Agricultural buildings are also usually subject to permitted development rights under Schedule 2, Part 3, Classes Q, R and S of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). A qualifying time period would ordinarily apply for a new agricultural building to be used solely for an agricultural use as part of an agricultural unit for a period of at least ten years before the date of development under Schedule 2, Part 3, Classes Q, R and S of the GPDO. The disputed condition 4 would serve to remove the permitted development rights conferred to redundant agricultural buildings in the GPDO in that respect.
15. The PPG³ is clear that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. There is no substantive evidence before me which demonstrates that there are considerable numbers or an accumulation of redundant agricultural buildings and former agricultural buildings in the Green Belt within the locality or elsewhere within Rossendale that have an adverse impact upon its openness or the inclusion of land within it. Consequently, there is no evidence before me which justifies that the removal of permitted development rights or restrictions upon changes of use relating to agricultural buildings would be necessary to prevent harm to the openness of the Green Belt or the other purposes of including land within it. The exceptional circumstances for such conditions, therefore, do not exist.
16. Having regard to all of the above, I conclude that the disputed conditions 3 and 4 are not reasonable or necessary to ensure that the proposal would not be inappropriate development in Green Belt or prevent harm to the openness of the Green Belt and the other purposes of including land within it, including to comply with Policy 1 of the CS and the Framework in those respects.
17. Notwithstanding the above, a conclusion that the development would not be inappropriate in Green Belt or harmful to openness or the other purposes of including land within it, should the disputed conditions be removed, does not override the necessity to consider the other main issues.

Character and appearance

18. Policies 1, 23 and 24 of the CS, when taken together, seek that new developments are of the highest standard of design that respects and responds to local context, distinctiveness and character, including in terms of style, siting, scale, massing, density, layout, visual impact and materials, taking account of the relationship to the countryside. The policies are consistent with the design objectives of the Framework and its intention that the intrinsic character and beauty of the countryside is recognised.

³ PPG, Use of Conditions, Paragraph: 017 Reference ID: 21a-017-20140306 Revision date: 06 03 2014

19. The Council granted planning permission for the development of the agricultural building. It, therefore, reasonably follows that it considered that the erection of the agricultural building and its associated design, scale, massing, proportions and materials would meet the requirements of Policies 1, 23 and 24 of the CS and the Framework in terms of its siting and appearance in the location proposed. Based upon the evidence before me, I have no reason to take a different view. The agricultural building within the site would not appear out of place when viewed against the backdrop of the woodland and open fields immediately adjacent and the wider undulating landscape which includes other rural buildings. The presence of the agricultural building would also enhance the assimilation of the site with the character of the countryside, given that the incongruous metal containers within the site would be removed in accordance with condition 6 of planning ref: 2017/0228 prior to its first use.
20. Having regard to the above, the planning permission requirements applicable to the re-use of agricultural buildings and the permitted development rights conferred to agricultural buildings in the GPDO provide adequate safeguards to prevent harm to the character and appearance of the countryside area should a use for non-agricultural purposes be sought in the future. Furthermore, there is no evidence before me that there are considerable numbers or an accumulation of redundant agricultural buildings and former agricultural buildings within the locality or elsewhere within Rossendale which have an adverse impact upon the character and appearance of the area and the countryside. Consequently, there is no substantive evidence before me which justifies the imposition of disputed conditions 3 and 4 with respect to matters of character and appearance.
21. I conclude that the disputed conditions 3 and 4 subject to this appeal are not reasonable or necessary to make the development acceptable with regard to the effect on the character and appearance of the area or to comply with Policies 1, 23 and 24 of the CS and the Framework in that respect.

Living conditions – neighbouring properties

22. Policy 24 of the CS, amongst other things, seeks that development protects the amenity of the area, including residential amenity in terms of satisfactory daylight, sunlight, outlook, privacy, soft landscaping and by mitigating noise and light pollution. The policy is consistent with the core principle of the Framework that seeks a good standard of amenity for all existing and future occupants of land and buildings.
23. The Council granted planning permission for the development and it reasonably follows that it considered that the erection of the agricultural building and associated activities within the site would not harm the living conditions of occupiers of neighbouring properties. Based upon the evidence before me and my observations, I have no reason to take a different view. The nearest residential properties are located on the opposite side of Northfield Road with intervening landscape screening between the rear gardens and nearest habitable windows. The prevailing noise environment for those properties is influenced by the presence of the busy A56 overpass nearby and, therefore, noise generating activities within the site would be less likely to be observed by occupiers of neighbouring properties.
24. In any case, the planning permission requirements applicable to the re-use of agricultural buildings and the permitted development rights conferred to

agricultural buildings in the GPDO provide adequate safeguards to prevent harm to the living conditions of occupiers of neighbouring properties should a use for non-agricultural purposes be sought in the future. In that context, there is no substantive evidence before me which justifies the imposition of disputed conditions 3 and 4 with respect to the living conditions of occupiers of neighbouring properties.

25. I conclude that the disputed conditions 3 and 4 subject to this appeal are not reasonable or necessary to make the development acceptable with regard to the effect on the living conditions of occupiers of neighbouring properties or to comply with Policy 24 of the CS and the Framework in that respect.

Highway safety

26. Policies 1, 9 and 24 of the CS, when taken together, relate to the accessibility of new development and public safety. The policies are consistent with the Framework in so far as it requires that safe and suitable access to the site can be achieved for all people.
27. The Council granted planning permission for the development and it reasonably follows that it considered that the erection of the agricultural building and use of the site for such purposes would not have a detrimental impact upon highway safety. Based upon the evidence before me and my observations, I have no reason to take a different view. The site lies on the outside of a gentle bend on Northfield Road which provides adequate visibility from the access in either direction across grass verges in the absence of a pedestrian footway. The site entrance through timber gates is set back from the road edge to allow vehicles to park off the road when opening them so as not to obstruct Northfield Road. Furthermore, there would be adequate space within the site to allow vehicles to turn so that they may enter and exit the access onto Northfield Road in forward gear. The site is accessible for pedestrians due to the presence of a pedestrian footway on the opposite side of the road.
28. Having regard to the above, the planning permission requirements applicable to the re-use of agricultural buildings and the permitted development rights conferred to agricultural buildings in the GPDO provide adequate safeguards to prevent harm to highway safety should a use for non-agricultural purposes be sought in the future. In that context, there is no substantive evidence before me which justifies the imposition of disputed conditions 3 and 4 with respect to the effect on highway safety.
29. I conclude that the disputed conditions 3 and 4 subject to this appeal are not reasonable or necessary to make the development acceptable with regard to the effect on highway safety or to comply with Policies 1, 9 or 24 of the CS and the Framework in that respect.

Other Matters

30. The appellant has raised additional concerns in terms of whether disputed condition 3 is sufficiently precise in its wording with respect to its definition of a six month period and whether identification of vacancy would be enforceable. A condition should only be imposed if it satisfies all six tests set out in paragraph 206 of the Framework. In that respect, given my findings in terms of each of the main issues that the disputed conditions 3 and 4 are not reasonable or necessary to make the development acceptable they do not meet

the requirements of paragraph 206 of the Framework. Consequently, it is not necessary to consider the other tests in so far as how the conditions would be implemented or enforced.

31. The appellant has also drawn to my attention that the Council did not impose similar conditions on other planning applications for rural developments in Rossendale and nor have Inspectors who have considered appeals relating to agricultural⁴ and rural buildings⁵ elsewhere within the Borough. However, I do not have the full details of those schemes or the evidence before the Inspectors which led to their conclusions and therefore, cannot be certain that the circumstances and evidence were the same as the appeal before me. I have considered this appeal on its own merits.

Conditions

32. The advice contained within the PPG makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In allowing this appeal and granting planning permission I have considered the other conditions imposed in planning permission Ref 2017/0228. As I have no information before me regarding the status of the other conditions imposed on the original planning permission, I shall re-impose all those that I consider to remain relevant having regard to the advice contained within paragraph 206 of the Framework and the guidance contained in the PPG. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
33. Having regard to the above, given my conclusions on each of the main issues that the disputed conditions 3 and 4 are not reasonable and necessary in the interest of the effect of the development on the Green Belt, the character and appearance of the area, the living conditions of occupiers of neighbouring properties and highway safety, they do not meet the requirements of paragraph 206 of the Framework. I, therefore, intend to grant a new planning permission that does not include them and therefore, re-number the other conditions accordingly.

Conclusion

34. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed and planning permission is granted for the erection of an agricultural building, without compliance with conditions Nos. 3 and 4 previously imposed on planning permission Ref 2017/0228.

Gareth Wildgoose

INSPECTOR

⁴ APP/B2355/A/14/2212821 - Allowed with Conditions - 4 June 2014

⁵ APP/B2355/C/15/3139574 - Allowed with Conditions - 5 October 2016

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from 22 June 2017.
- 2) The development hereby permitted shall be carried out in accordance with the following plans and documents unless required by the conditions below:
 - Submitted application form date stamped 9th May 2017 by the Local Planning Authority.
 - Site Location Plan date stamped 9th May 2017 by the Local Planning Authority.
 - Proposed Plans and Elevations (Drawing Number MF-02-05-17) date stamped 21st May 2017 by the Local Planning Authority.
- 3) Any construction works associated with the development hereby approved shall not take place except between the hours of 7:00am and 7:00pm Monday to Friday and 08:00am and 1.00pm on Saturdays. No construction shall take place on Sundays, Good Friday, Christmas Day or Bank Holidays.
- 4) Prior to the first use of the building hereby approved, the five existing metal storage containers shall be removed from the land. The metal storage containers shall not thereafter be returned to the site.