



Appeal Decision

Site visit made on 15 August 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 1st November 2017

Appeal Ref: APP/B2355/W/17/3174775

Vale Lodge, Meadow Park, Ramsbottom, near Bury, Lancashire BL0 0QR

- 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 Tim Vines against the decision of Rossendale Borough Council.
 - The application Ref: 2017/0126, dated 14 March 2017, was refused by notice dated 27 April 2017.
 - The application sought planning permission for the erection of an agricultural building without complying with a condition attached to planning permission Ref: 2017/0017, dated 13 March 2017.
 - The condition in dispute is No. 3 which states that: The building hereby permitted shall be removed from the land in its entirety and the land restored to agricultural land if it is not used for the purposes of agriculture for a period of six months, within 10 years of the building being substantially complete.
 - The reason given for the condition is: An agricultural building on the site is considered to be appropriate based on the submitted information, however if the building is no longer required for agricultural purposes in the future its removal will avoid the proliferation of buildings in the site's Green Belt location.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an agricultural building at Vale Lodge, Meadow Park, Ramsbottom, near Bury, Lancashire BL0 0QR in accordance with the application Ref: 2017/0126 dated 14 March 2017, without compliance with condition number 3 previously imposed on planning permission Ref: 2017/0017 dated 13 March 2017, and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan date stamped 23 January 2017, Plan and Elevations (Revision A) date stamped 23 January 2017; and Site Plan (Drawing No. TV-08-12-16) date stamped 23 January 2017.
 - 2) Any manure produced as a result of the use of the building hereby approved shall be spread on the land and shall not be stored on the land unless a scheme of manure storage and management has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include full details of how manure generated by animals using the building hereby permitted shall be stored and disposed of, and any proposed measures to prevent the passage of manure into any nearby watercourses. Any required storage shall thereafter be implemented in accordance with the approved details.

Application for costs

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

Main Issue

3. The application sought the removal of condition 3 attached to planning permission reference 2017/0017, which permitted the erection of an agricultural building. The condition requires that the building shall be removed from the land in its entirety and the land restored to agricultural land if the building is not used for the purposes of agriculture for a period of six months, within 10 years of the building being substantially complete.
4. The reason given for imposing the condition is that an agricultural building on the site is considered to be appropriate based on the submitted information, however, if the building is no longer required for agricultural purposes in the future, its removal will avoid the proliferation of buildings in the site's Green Belt location.
5. The main issue in this appeal is therefore, whether the condition is necessary in order to prevent harm to the openness of the Green Belt.

Reasons

6. At the time of my site visit the building appeared to be largely complete.
7. In relation to planning conditions, the National Planning Policy Framework (the Framework) sets out that local planning authorities should consider whether otherwise unacceptable development can be made acceptable by the use of conditions. It also sets out 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. Conditions which do not meet these tests should not be used. A condition must satisfy all six tests to be valid.
8. In relation to the test of necessity, the key question is whether it would be appropriate to refuse planning permission without the requirements imposed by the condition.
9. The Council officer's report in respect of planning permission reference 2017/0017 does not identify any conflict with the policies in the development plan or the Framework. Nor does it identify any harm that would result to the character and appearance of the area, the living conditions of nearby residents or highway Safety. The report also concludes that the development is not inappropriate development within the Green Belt. The Council's report does not identify any immediate adverse effects that the development would have.
10. The Council state that the condition is necessary to prevent the accumulation of redundant buildings in the landscape which is within a Green Belt. However, no evidence has been put to me that would demonstrate that there are substantial numbers of redundant agricultural buildings either in this locality or elsewhere within the Borough, or that there are agricultural buildings which it is known will become redundant in the future.
11. Similarly, there is no evidence before me that would indicate that the appeal building, which is a recently constructed building designed for agricultural use,

is at risk of becoming redundant in the next ten years. There is no other indication in the reports that without the requirements imposed by the condition the Council would have contemplated refusing planning permission on the grounds that the proposal would result in a proliferation of buildings in the countryside.

12. The Council's officer reports in connection with the original planning application and the subsequent Section 73 application that forms the subject of this appeal both state that, given its size and massing the building would undoubtedly impact on the openness of the Green Belt. Whilst it is accepted in both reports that the building is not inappropriate development, the Council contend in their statement of case that if the agricultural use were to cease at a future date, the building would, in effect, become inappropriate development that would be harmful to the openness of the Green Belt. It is on this premise that the Council's argument turns.
13. However, in my view this logic is flawed. The exception in Paragraph 89 of the Framework for buildings for agriculture and forestry is entirely unqualified and does not require an assessment of the effect on openness of the Green Belt. Once a development is found to be not inappropriate, the question of the impact of the building on openness is no longer an issue. The use of the building as established by the grant of planning permission referenced 2017/0017 is for an agricultural use, which is not inappropriate development. The building has been constructed and there is no suggestion that the planning permission has not been implemented in accordance with its terms.
14. It is a principle of planning law that a use will persist until such time as it is supplanted by another use, or by the implementation of an inconsistent permission, or the carrying out of acts inconsistent with the continuation of any existing use. A period of non-use, such as the six month period specified in the disputed condition, does not equate to cessation or termination of the use for which planning permission has been granted. The building would lawfully remain an agricultural building until it was used for another purpose and the development would, therefore, continue to be not inappropriate, even if it were not being actively used for agricultural purposes. It is inherent in national planning policy, as set out in the Framework, that development that is not inappropriate in the Green Belt, is not to be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt.
15. A condition must not be imposed unless there is a definite planning reason for it. From the evidence before me, the condition is not required to maintain the openness of the Green Belt, or to make an otherwise unacceptable development acceptable by mitigating the adverse effects of the development. I therefore conclude that the disputed condition does not meet the test of necessity set out in the Framework and the Planning Practice Guidance. As a condition is required to meet all six tests in the Framework, for this reason alone the appeal should succeed regardless of whether the remaining five tests are met.

Other matters

16. I have had regard to the points raised in representations from third parties. Some of these have been addressed above and the remainder relate to the principle of the development on the site, which is not at issue here as planning

permission has been granted for the building by planning permission reference 2017/0017.

Conditions

17. As the development has been implemented it is not necessary to impose a time limit condition for the commencement of the development. The guidance in the Planning Practice Guidance makes 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. As conditions 2 and 4 of planning permission reference 2017/0017 remain relevant I have imposed them on this permission.

Conclusion

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

John Dowsett

INSPECTOR