



Hub26 Ltd
Hunsworth Lane
Cleckheaton
West Yorkshire
BD19 4LN

T: 01274 062082
E: charlottesmckay@iop-consulting.co.uk
W: www.iop-consulting.co.uk

Mr Michael Townsend
Townsend Planning Consultants
10 Rishworth Street
Wakefield
WF1 3BV

Our Ref:Needham
19 May 2020

Dear Mr Townsend,

**DETAILED PLANNING APPLICATION FOR 1NO DWELLING FOLLOWING
DEMOLITION OF EXISTING STABLES (VARIATION TO PREVIOUS
APPLICATION 2018/0706) – LAND OFF BAR LANE, MAPPLEWELL – MR P
NEEDHAM**

1. Introduction

- 1.1 I am instructed by Mr P. Needham in relation to the above matter.
- 1.2 The Site is situated adjacent to the rear of properties located just off Bar Lane, Mapplewell, Barnsley.
- 1.3 The stables which are the subject of the planning application were constructed by a previous owner in 2007 following the Council granting planning permission for the development.
- 1.4 However, it transpired that the stables had not been constructed in accordance with the planning permission. Therefore, an application for a Certificate of Existing Lawful Use was submitted to the Council (App 2016/0010) and subsequently approved on the 13 April 2018. During the processing of that application it was demonstrated to the Council that the stables had been used for both private and commercial purposes. The Site

therefore constitutes a lawful stable building following the Council issuing a Certificate of Lawful Use for the building.

- 1.5 The appellant previously applied for planning permission for the demolition of the stables and the erection of 1 dwelling at the Site. This was refused and dismissed on appeal. However, since the Council's previous decision the development plan, national policy and case law have changed and the applicant is submitting the current application as we consider that the proposed development fully accords with the up to date policies and advice.

2. National Planning Policy Framework ("NPPF")

- 2.1 The NPPF sets out the Government's planning policies for England and how these should be applied. The Government published a revised NPPF in February 2019 and this is the most up to date version.
- 2.2 The NPPF at paragraph 145 confirms that the construction of new buildings in the green belt is inappropriate unless one of the exceptions set out within the NPPF applies. Paragraph 145 provides:

"A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

- a) buildings for agriculture and forestry;*
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;*
- c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*

- d) *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
- e) *limited infilling in villages;*
- f) *limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and*
- g) ***limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:***
 - ***not have a greater impact on the openness of the Green Belt than the existing development; or***
 - ***not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.”***

2.3 The NPPF defines previously developed land as being:

“Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”

3. **Previously Developed Land**

3.1 As set out above Previously Developed Land is defined within the NPPF. Agricultural land and buildings are specifically excluded from the definition of previously developed land.

3.2 Section 336 Town and Country Planning Act 1990 provides the following definition of agriculture:

“includes horticulture, fruit growing, seed growing, dairy farming, the keeping and breeding of livestock (including any creature kept for the production of food, wool, skins, fur or for the purpose of the farming of the land), the use of land as grazing land, meadowland, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of the land for other agricultural purposes, and ‘agricultural’ shall be construed accordingly.”

3.3 In the case of **Sykes v. Secretary of State for the Environment [1981]** the Court held that the term in the statutory definition of agriculture referring to the breeding and keeping of livestock does not apply to the breeding and keeping of horses (except in connection with any farming use). If a field is used only as grazing land it will be regarded as for agricultural use and planning permission will not be required. However, the horses must only be on the land for the primary purpose of grazing. If the horses are given supplemental feed and kept in the field for exercise and accommodation, then the predominant use of the land is not regarded as agricultural. The keeping of horses for recreational use does not fall within the definition of agriculture.

3.4 In the case of **Woodhouse Farm, Leeds (APP/N4720/A/2202180)(March 2014)** planning permission was granted for redevelopment of stables to a single dwelling. The Council tried to argue in this appeal that there was a distinction to be drawn between paragraph 89 of the NPPF bullet point 6, where it refers to “previously developed sites” and the definition in the NPPF Glossary where it provides a definition of “previously developed land”.

However, the Inspector accepted the appellants argument that the use of the word “site” was simply a method of defining land which is enclosed by a boundary.

3.5 The Council also sought to argue in this appeal that the “exception” applying to the redevelopment of previously developed sites should only relate to large sites. However, the Inspector did not accept this argument either.

3.6 The Inspector concluded that the stables and their curtilage did fall within the definition of previously developed land as set out within the NPPF.

3.7 Curtilage was defined in the leading legal authority, **Sinclair-Lockhart’s Trustees v. Central Land Board (1950) 1 P.& C.R. 195.** This judgment provided:

“The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way.”

3.8 In the case of Burnley **(May 2014)(APP/22315/A/14/2212311)** outline planning permission was sought for four dwellings. It was accepted by both the appellant and the Council that the stables which were on the site constituted previously developed land in accordance with the NPPF. However, there was a disagreement over the remainder of the site which included a riding arena and grassed area. The Council argued that this was not previously developed land. The Inspector noted that the definition of previously developed land included the curtilage of buildings. The Inspector found that the arena and grassed areas were within the curtilage of the stables and as such the stables, arena and grassed area were considered to be previously developed land.

3.9 In **Whitworth (August 2013)(APP/B2355/A/13/2194105)** permission was sought for the demolition of existing buildings and the erection of a single 2

bedroom bungalow. One of the buildings to be demolished had been used as a stable for horses. The Council accepted and the Inspector agreed that unless horses were being used for agricultural purposes, the stabling of horses would not be an agricultural use. On this basis the Inspector concluded that the stables and their curtilage were previously developed/brownfield land.

- 3.10 In **Epping, Essex (July 2015)(APP/J1535/W/15/3007926)** the appellants wanted to demolish existing stables and hardstanding and erect 5 dwellings. The Inspector accepted that the stables and their curtilage constituted previously developed land in accordance with the NPPF definition. #
- 3.11 The first part of the definition of previously developed land specifies that the site must be or must have been occupied by a permanent structure. There is no doubt that the current stables on the Site are a permanent building which occupies the Site. Therefore, this “test” is satisfied.
- 3.12 The definition of previously developed land then goes on to list exclusions. The Site is currently in equestrian use. The horses are not kept for the purposes of agriculture and as set out above the use of a site for the stabling of horses falls outside of the definition of agriculture. The Site does not fall within any of the exclusions to what constitutes previously developed land.
- 3.12 As set out above the definition of previously developed land includes the existing buildings and their curtilage. The proposed application site for the dwelling constitutes the land on which the stables are built and the curtilage of the stables. Therefore, the site on which the dwelling is proposed is all previously developed land in accordance with the NPPF, as confirmed by case law.
- 3.13 The status of the Site as previously developed land has been established and was accepted by the Inspector in relation to the last appeal (APP/R4408/W/18/3213869) where at paragraph 8 of his decision the Inspector states:

“...I find that the appeal site is therefore PDL...”

- 3.14 In accordance with the NPPF the redevelopment of previously developed land is not inappropriate provided that it would not have a greater impact on the openness of the Green Belt.

4. **Openness**

- 4.1 As it is accepted that the Site is previously developed land one must move on to the second limb of paragraph 145(g) which relates to openness.
- 4.2 Once it is accepted that land is previously developed land paragraph 145 of the NPPF requires you to consider whether the proposal has ***a greater impact on the openness of the Green Belt than the existing development.*** Provided that the proposal does not have a greater impact on the openness of the Green Belt than the existing development then the development is not inappropriate development within the Green Belt.
- 4.3 The latest National Planning Policy Guidance on the Green Belt was published on 22 July 2019. Paragraph 1 provides:

“What factors can be taken into account when considering the potential impact of development on the openness of the Green Belt?”

Assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:

- *openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation.”*

- 4.4 In **Turner [2016] EWCA Civ 466** the court (Arden, Floyd and Sales LJ) confirmed at paragraph 14 of the judgement:

“The concept of “openness of the Green Belt” is not narrowly limited to the Volumatic approach suggested by Mr Rudd. The word “openness”

is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if the redevelopment occurs (in the context of which volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness within the Green Belt presents.”

4.5 When considering the question of impact on the openness of the Green Belt it is very clear that the decision maker must consider the impact of the proposal compared to the existing impact on the Green Belt. One is not considering the impact of the proposal compared to an open field in no use.

4.6 In **Euro Garages Limited v. Secretary of Statement for Local Government [2018] EWHC 1753 (Admin)** Mrs Justice Jefford found:

“[21] “Openness” is not a defined term but, in my view, it is clear in this context that it is openness of the Green Belt that must be considered not the site as such. That is not merely the wording of the paragraph but must be the case because any infill would, almost by definition, have an impact on the openness of the site.

...

[23] ...Firstly it seems to me that Mr Leigh is right to submit that, in the context of the exceptions under paragraph 89, for there to be a greater impact on the openness of the Green Belt there must be something more than just some change to the environment. In each of the instances under the bullet points, it is contemplated that there will be some change to what is presently there. But, despite that change, the openness of the Green Belt will be preserved...So for there to be a greater impact there must be something more...

[24] I would not wish to decide, for all purposes, that the concepts of not having a greater impact on the openness of the Green Belt and of preserving the openness of the Green Belt are identical. Having said

that, there is an obvious reason why the wording in differs paragraphs and bullet points differs. Where there is no existing development, consideration must be given to whether the development preserves the openness of the Green Belt. Where there is some existing development, the openness of the Green Belt has not been wholly preserved and there will necessarily have been some impact on the openness of the Green Belt already. It makes sense therefore, to consider whether there will be a greater impact...

[29] It does not seem to me that this decision defines the meaning of “greater impact” or even of “preserving” the openness of the Green Belt but it supports the view, firstly, that a mere change in the current build is not sufficient to establish that there is a greater impact in the openness of the Green Belt. Put another way, whether the openness of the Green Belt is preserved, or conversely harmed, is not simply a question of whether something, which by definition has a spatial impact, is to be built...

[31] Pulling these points together, the policy requires the decision maker to consider and make an assessment, under bullet point [6], of whether the openness of the Green Belt is impacted or harmed by the proposal to a greater extent than that openness has already been impacted. This is an open-textured assessment and there is no check list to be gone through but, where openness of the Green Belt is in issue, visual impact, as well as spatial impact, requires consideration, subject to a margin of appreciation.”

- 4.7 Therefore, it is for the decision maker to consider “...whether the openness of the Green Belt is impacted or harmed by the proposal to a greater extent than that openness has already been impacted...”
- 4.8 The Supreme Court in **R (Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council [2020] UKSC 3** has recently provided clarity as to the interpretation of the openness of the Green Belt.

- 4.9 Lord Carnwath, on behalf of the Supreme Court, at paragraph 22 of the judgement noted on the interpretation of ‘openness’ and issue of ‘visual impact’ that:

“The concept of “openness” in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land.”

- 4.10 The Supreme Court re-enforced the importance of planning judgement within the role of the decision maker by stating at paragraph 39:

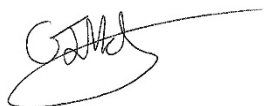
“...As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law.”

- 4.11 The most recent case therefore makes it very clear that whilst visual impact of a particular proposal may be judged as a relevant factor in assessing openness of the Green Belt it, in itself, will not be a strict nor mandatory determinative factor.

5. **Conclusion**

- 5.1 The Site clearly falls within the definition of previously developed land and this was accepted by the Inspector in relation to the previous appeal.
- 5.2 The proposed development of this previously developed (brownfield) site with a house is therefore not considered to be inappropriate development provided that the proposed dwelling does not have a greater impact on the openness of the Green Belt.
- 5.3 The Inspector when considering the previous appeal found that the previous proposal would have had a greater impact on the openness of the green belt. However, the character of the Site has changed since the previous appeal, the curtilage has been fenced off and planting has taken place (full details are provided within the submitted planning statement). When devising this re-submission scheme the applicant has reviewed the previous decisions and considered the changes in national policy, local policy and case law.
- 5.4 The proposed dwelling is considerably smaller than the built form currently on the Site and the proposed residential curtilage has been reduced. Full details of the proposal are provided within the submitted planning statement. In our opinion the proposal with the reduction in built form will bring significant benefits to the openness of the Green Belt.
- 5.5 The proposal is therefore not considered to be inappropriate development in accordance with paragraph 145 of the NPPF. We therefore respectfully request that planning permission should be granted.

Yours sincerely



Charlotte McKay LLB (Hons) FCILEx

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