
Appeal Decision

Site visit made on 1 September 2016

by K R Saward Solicitor

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

Decision date: 20 September 2016

Appeal Ref: APP/B1550/C/16/3149265

Land at Brookside Cafe, London Road, Rayleigh Essex SS6 9ES

- 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 Albert Stevenson against an enforcement notice issued by Rochford District Council.
 - The enforcement notice was issued on 24 March 2016.
 - The breach of planning control as alleged in the notice is without planning permission:
 1. The erection of a steel framed canopy structure marked A on the plan attached to the notice and edged blue.
 2. The erection of a steel framed canopy structure marked B on the plan attached to the notice and edged green.
 3. The siting of a store/office structure marked C on the plan attached to the notice and edged red.
 - The requirements of the notice are:
 1. Remove Canopy A from the Site, including any resultant materials.
 2. Remove Canopy B from the Site, including any resultant materials.
 3. Remove the store/office structure from the Site, including any resultant materials.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 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.
-

Decision

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

Background

2. The site lies in the Green Belt. The appellant acknowledges that the portakabin described as a store/office 'possibly' amounts to inappropriate development in the Green Belt and confirms that it will be removed, as required by the notice. No arguments are made for its retention. The ground (a) appeal is brought in relation to the two canopies and I refer to these as 'the development'.
3. The appeal site is located along London Road from where a hand car washing business is operated. Planning permission for such use was granted in 2014. Later that year, a retrospective planning application to retain the canopies and store was refused. No appeal was made against that decision.

Main Issues

4. Therefore, the main issues are:-
-

- whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- the effect of the development on the openness of the Green Belt and on the character and appearance of the area;
- 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 required to justify the development.

Reasons

Whether inappropriate development in the Green Belt

5. The two canopies consist of tall, sturdy metal poles with long horizontal brackets providing support for a suspended domed frame over which material is stretched. Each has a spotlight attached. One canopy provides a covering under which cars are washed. Cars are parked beneath the other canopy.
6. The appellant says that the canopies are simply bolted down to bases set in the ground, but there is no doubt from their degree of attachment that these are permanent structures.
7. Policy GB1 of the Council's Local Development Framework Core Strategy, 2011 provides that the Council will direct development away from the Green Belt as far as practicable and will prioritise the protection of Green Belt land based on how well the land helps achieves the purposes of the Green Belt. Those purposes are identified in the introductory text and correspond with the main purposes set out in paragraph 80 of the Framework. Of most relevance here is the purpose to assist in safeguarding the countryside from encroachment.
8. Paragraph 89 of the Framework establishes that new buildings within the Green Belt are inappropriate unless they fall within a prescribed exception. The term 'building' includes any structure or erection (section 336 of the 1990 Act). Therefore, the canopies would constitute a 'building' for the purposes of paragraph 89. There is no applicable exception. Consequently, the canopies are inappropriate development within the Green Belt.

Openness and character and appearance

9. Paragraph 79 of the Framework identifies openness as an essential characteristic of the Green Belt. Policy DM11 of the Council's Development Management Plan, 2014 states that the Council will support existing lawfully established businesses in the Green Belt subject to various criteria. One criterion is that the development has been designed to minimise impact on the character, appearance and openness of the Green Belt.
10. The canopies and portakabin introduce structures into a space where none existed before, thereby reducing openness. The canopies are sizeable structures in terms of height, bulkiness of the frame and expanse of material. There is a significant negative effect on openness.
11. One canopy is positioned centrally within the site, the other one is next to the western side boundary nearer to the front of the site. Both are readily apparent from the highway even though they are set back from the frontage. Trees along the western boundary provide limited screening only. The central

canopy is particularly noticeable given its direct alignment with the point of entry. The solid bold blue colour of the coverings increases their prominence. They are also highly visible above the shared boundary fence with the neighbouring aquatic and garden centre. Whilst there is development both at this adjoining site and to the other side where there is a café and nursery, it does not mitigate the obtrusive effect of the canopies.

12. There are other buildings in the vicinity, but the surrounding area is predominantly rural with fields stretching into the distance. Notwithstanding the extent of development at adjacent sites, the size, position and degree of prominence of the canopies have a significant adverse effect on the character and appearance of the rural surroundings. Taking into account also the significant reduction in openness, the development fails to accord with Policies DM11 and GB1, as aforementioned.

Other considerations

13. Paragraph 88 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm.
14. The appellant argues that the area is not prime Green Belt given that this part of London Road has had various commercial businesses for a number of years and the location of the site 'sandwiched' between other developed land. I attach moderate weight to the site being in lawful commercial use already as the use will have affected the degree to which the land helps to achieve the purposes of the Green Belt. I give some weight to there being development on either side.
15. Limited weight only attaches to the health and safety benefits to employees from the shade afforded by the canopies whilst working in the sun when such protection could be achieved without such large canopies. Alternative and visually less intrusive means could be used. Whilst these may simply be bolted down structures, they are still development and so I can give little weight to the submission on that ground. Similarly, I attribute little weight to the very limited screening afforded by trees and amount of setback from the highway given the extent to which the development remains visually dominant.

Green Belt balance

16. The development is inappropriate development in the Green Belt which is harmful by definition. According to the Framework substantial weight must be given to any harm to the Green Belt. There is a significant reduction in openness and significant harm to the character and appearance of the area. For the appeal to succeed the combined weight of other considerations must clearly outweigh the totality of the harm arising.
17. I have come to the view that the totality of harm arising from the canopies is not clearly outweighed by the combined weight of the other considerations raised in support. Very special circumstances to justify the development do not therefore exist and the canopies are at odds with the Framework and Policies DM11 and GB1.

Conclusion

18. For the reasons given above, and having had regard to all other matters raised,

I conclude that the appeal on ground (a) and the application for deemed planning permission should fail. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 act, as amended.

KR Seward

INSPECTOR