

Appeal Decision

Site visit made on 20 September 2016

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 3 October 2016

Appeal Ref: APP/E3715/C/16/3142842

Land at Fosse Cottage Farm, Street Ashton, Warwickshire CV23 0PL

- 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 Ms Fiona Hudson-Kelly against an enforcement notice issued by Rugby Borough Council.
- The enforcement notice was issued on 10 December 2015.
- The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding shown edged blue on the attached plan and the erection of a lean to shed shown edged green on the attached plan.
- The requirements of the notice are :
 1. Demolish the outbuilding shown edged blue on the attached plan and remove all fixture and fittings from the site edged red.
 2. Demolish the lean to shed shown edged green on the site and removal all fixture and fittings from the site edged red.
 3. Remove all material arising from steps "1" and "2" from the land edged red.
- The period for compliance with the requirements is 6 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as varied is upheld as set out below in the Formal Decision.

The appeal on ground (a)

Main Issues

1. The main issues are:
 - i) whether the development represents inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - ii) the effect of the development on the openness of the Green Belt;
 - iii) if the proposal is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development.

Reasons

Inappropriate development and openness

Outbuilding

2. The Framework establishes that the construction of new buildings within the Green Belt should be regarded as inappropriate development except in certain, defined circumstances, set out at paragraph 89. One such exception is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Within the Green Belt, Policy CS1 of the Rugby Borough Core Strategy (2011) (Core Strategy) advises that development will be permitted in the Green Belt, only where national policy on Green Belt allows.
3. The outbuilding, a detached building separated into three sections, replaces a former outbuilding. I note the comments made by both parties regarding the use of the new outbuilding as B1 offices. However, the appellant suggests that the building is to be used for domestic purposes ancillary to the main dwelling and this equates to what I saw at my site visit.
4. In order to assess whether or not the proposed replacement building is inappropriate development it is necessary to determine whether it is materially larger than the building it replaces.
5. The Council indicates that the outbuilding is 57% greater in volume and 27% larger in footprint than the former building. This calculation is based on information submitted as part of an earlier planning application Ref: R14/0677. The appellant submits that no precise measurements exist as the previous building was not subject to a measured survey. Whilst the Council's calculations are disputed, the appellant acknowledges that the new outbuilding is of different dimensions. This is evident in the photographs of the former outbuilding provided by the appellant which show a smaller building with a sloping roof compared to the larger new building with a pitched roof currently in situ.
6. The appellant argues that the new building replaces not only the previous outbuilding but sheds and a pig sty. My attention has been drawn to 2005/6 aerial photographs which the appellant considers shows further built structures covering a significant amount of ground behind the outbuilding. However, the photographs are not sufficiently clear to discern the extent of any such structures in sufficient detail. Moreover, the exact location of any sheds/pig sty is not clear from the information provided sufficient to ascertain whether the sheds/pig sty referred to were removed to allow development of the wooden clad office building or the outbuilding.
7. The Council currently adopt a volume calculation for development within the Green Belt and resist proposals which exceed a 30% increase. The appellant contests the Council's use of this volume calculation and suggests that a more balanced and qualitative assessment of the impact on the openness of the Green Belt is more appropriate. From the information provided the new building is not only of an increased footprint, but also an increased overall height due to the addition of a pitched roof. This results in a building which is materially larger than the one it replaces. Consequently, the proposal does not fall within any of the exceptions set out in the Framework and thus constitutes inappropriate development in the Green Belt. Thus, the outbuilding is contrary to Policy CS1 of the Core Strategy.
8. The Framework indicates that openness is an essential characteristic of the Green Belt. Albeit the outbuilding is partially screened by vegetation, due to the increased height and bulk of the outbuilding openness has been reduced

when compared to the outbuilding that was in place previously. However, in isolation the loss of openness is minimal.

Lean-to shed

9. In relation to the lean-to shed, another exception in paragraph 89 of the Framework is 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. There is no definition of disproportionate in either Policy CS1 of the Core Strategy or the Framework. Notwithstanding the appellant's comments regarding the Council's inconsistent approach in applying paragraph 89, assessing proportionality is primarily an objective test based on the cumulative size of extensions over the original building.
10. I saw at my site visit that this open fronted lean-to shed appears as a modest addition to the existing shed. Moreover I note from the Council's Officer Report Ref: R15/2056 that the Council were content to consider an increase in the volume of the original shed of approximately by approximately 39%. In this particular case, I consider that the size of the lean-to shed does not appear as a disproportionate addition.
11. I conclude that the lean-to shed is not inappropriate development in the Green Belt. Thus, there is no conflict with Policy CS1 of the Core Strategy.
12. I have found that the lean-to shed is not inappropriate development in the Green Belt. The impact on openness is implicitly taken into account in the exceptions within the Framework unless there is a specific requirement to consider the actual effect on openness. The relevant exception within paragraph 89 of the Framework does not expressly state the effect of the development on openness as a determinative factor in gauging inappropriateness, therefore there is no requirement to assess the impact of the lean-to shed on the openness of the Green Belt.

Other considerations

13. The Council has not outlined any harm that would be caused to the character and appearance of the area or the living conditions of residents, and I have no reason to disagree with this view.
14. I have had regard to the appellant's comments regarding the imposition of a planning condition restricting permitted development rights concerning the extension of the outbuilding and the provision of further outbuildings within the garden area of the appeal property. I have identified that the outbuilding is inappropriate development in the Green Belt which is harmful by definition. I consider that the imposition of any such condition would not overcome the identified harm.
15. The outbuilding and lean-to shed are of an appropriate design and appearance and do not harm the character and appearance of the area or the neighbours' living conditions. There would be no other harm caused to any other interests of importance. However, I have identified that the outbuilding is inappropriate development in the Green Belt which is harmful by definition. In addition, there is, albeit minimal, loss of openness.
16. According to the Framework substantial weight has to be given to any harm to the Green Belt. These other considerations are not sufficient to clearly

outweigh the totality of the harm which is the test they have to meet. Consequently, I do not consider that the very special circumstances that are necessary to justify inappropriate development in the Green Belt exist.

Other matters

17. I understand local residents' concerns about the appellant's apparent disregard of the planning process but I have to consider the development on its individual planning merits and enforcement action is intended to be remedial and not punitive.
18. Also, I have taken into account the objections raised by residents including comments regarding highway safety. However, I have seen no evidence to show that highway safety would be compromised.

Conclusion

19. For the reasons give above, I conclude that the appeal on ground (a) should succeed in relation to the lean-to shed. I shall grant planning permission for that part of the application deemed to have been made under s177(5) of the 1990 Act as amended, but shall refuse to grant permission for the outbuilding.
20. S180(1) of the 1990 Act as amended provides, that where, after the service of a notice, permission is granted for any development carried out beforehand, the notice shall cease to have effect so far as inconsistent with that permission. In other words, the requirement to demolish the unauthorised lean-to shed and remove all its fixtures, fittings and materials from the site as set out in the notice will be overridden by the grant of permission.

The appeal on ground (g)

21. The appeal on ground (g) is that the time give to comply with the requirements of the notice is too short. The appellant seeks twelve weeks to identify and commission a contractor to undertake the work.
22. In my view, 6 weeks is a particularly short time to find and instruct a contractor and I consider that twelve weeks would be more reasonable and would strike the appropriate balance between private and public interests so as not to place a disproportionate burden on the Appellant. I therefore consider the period for compliance with the notice should be increased to twelve weeks and the appeal on ground (g) should succeed.

Formal Decision

23. I allow the appeal on ground (a) insofar as it relates to the lean-to shed shown edged green on the enforcement notice plan and I thereby grant planning permission on the application deemed to have been made under s177(5) of the 1990 Act as amended, for the erection of a lean-to shed on land at Fosse Cottage Farm, Street Ashton, Warwickshire CV23 0PL.
24. It is directed that the enforcement notice be varied by the deletion of the words "6 weeks" and the substitution therefor of the words "12 weeks" as the time for compliance.
25. I dismiss the appeal in respect of the remaining part of the development shown edged blue on the enforcement notice plan, uphold the enforcement notice as varied, and refuse planning permission on the application deemed to have been

made under s177(5) of the Act for an outbuilding on land at Fosse Cottage Farm, Street Ashton, Warwickshire CV23 0PL.

Elizabeth Jones

INSPECTOR