The Planning Inspectorate

Appeal Decision

Site visit made on 9 December 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 09 January 2017

Appeal Ref: APP/A4710/C/16/3150035
Land at 1 Hazelgreave Hall Farm, Rishworth Road, Barkisland, Halifax, West Yorkshire HX4 0FE

- The appeal is made by Deborah Megson under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 14/60447/ENF) issued by Calderdale Metropolitan Borough Council on 13 April 2016.
- The breaches of planning control alleged in the notice are "the material change of use of the Land from agricultural use to domestic garden (Breach 1); and the construction of a building, decking and formation of an access track on the Land (Breach 2)". The land referred to is the area shown edged red on the plan attached to the notice.
- The requirements of the notice are as follows: -
  "(i) Permanently cease the use of the Land as a domestic garden
  (ii) Permanently remove the building, timber decking and access track from the Land
  (iii) Permanently remove all the materials arising from the demolition of the building, the access track and timber decking
  (iv) Make good all the areas exposed by the removal of the building, timber decking and access track by re-seeding the affected area to enable the Land to integrate with the surrounding agricultural land."
- The period for compliance with these requirements is three months for Requirements (i), (ii) and (iii) and six months for Requirement (iv).
- The appeal is proceeding on the ground set out in section 174(2)(a).

Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990.

Reasons for the decision

Introduction

2. The land shown edged red on the plan attached to the notice is on the edge of a small settlement of houses and agricultural buildings and is in an exposed moorland location, from where there are panoramic views of the landscape. It is within the Green Belt and the Special Landscape Area, as designated in the Replacement Calderdale Unitary Development Plan, which was adopted in 2006 and amended in 2009 ("the RCUDP").

3. The residential curtilage of the house was defined by planning permissions granted in 2002 and 2015. Breach 1 relates to those parts of the land shown edged red on the plan that have been added to the garden and which are beyond the approved curtilage. They consist of a sizeable cultivated bank and additional land around the edge of the forecourt. Breach 2 also relates to land beyond the approved curtilage. It concerns the extension of an area of elevated decking, which adjoins the house, and the construction of an outbuilding beneath the extended decking, together with a lengthy track that curves round the cultivated bank to provide vehicular access to the outbuilding from the north-western side of the property.

The main issues in the appeal

4. The main issues in deciding whether planning permission should be granted in respect of either of these breaches are: - (i) Is the development inappropriate development in the Green Belt for the purposes of the RCUDP and the National Planning Policy Framework ("the Framework")? (ii) Whether it is inappropriate development or not, what is its effect on openness and the character and appearance of its surroundings, including the Special Landscape Area? (iii) If it is inappropriate development, is the potential harm to the Green Belt by reason of inappropriateness, and any other harm, clearly outweighed by other considerations, so as to amount to very special circumstances sufficient to justify its approval?

Breach 1

5. The RCUDP Green Belt Policy GNE 1 seeks to restrain development outside the urban areas. Policy NE 6 of the RCUDP deals specifically with new gardens for houses in the Green Belt. It states that there will be a general presumption against them "except in very special circumstances where a real need can be demonstrated, they are small scale, are adjacent to the dwelling(s) they serve" and meet six criteria. The first and second criteria are relevant to the appeal. They are that there would not be an adverse impact on the openness of the Green Belt nor harm to the visual amenity and character of the landscape. In addition, Policy NE 12 of the RCUDP states that development will not be permitted in the Special Landscape Area if it adversely affects the quality of the landscape. The Framework also encourages the enhancement of landscapes and visual amenity in Green Belts.

6. The Framework does not list the change of use of land from agricultural use to domestic garden as development that is not inappropriate in the Green Belt. Consequently, as established by Court decisions, the following provisions of the Framework apply: "As with previous Green Belt policy [a reference to PPG2, which is quoted in the RCUDP], inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. … When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations".

7. The Council recognised, when the 2015 planning permission was granted, that the amount of garden area the 2002 permission provided for the house was

inadequate. The 2015 permission authorised the retention of a wider garden area next to the house, but this did not include the cultivated bank and the land around the edge of the forecourt. These parts are further away from the house and they are not small scale, since together they amount to a major increase over and above the size of the authorised garden area. The appellant has explained how the present situation has arisen, but has not demonstrated that there is a "real need" for additional garden areas beyond the wider area authorised in 2015.

8. The additional garden areas are inappropriate development in the Green Belt, by definition. They do not have a significant effect on the openness of the Green Belt, but the change in the appearance of the land affected, compared to the previous agricultural use, has harmed the quality, visual amenity and character of the landscape in a sensitive location, contrary to Policies NE 6 and NE 12 and the advice in the Framework.

9. I have given careful consideration to the appellant's representations. I realise that she has not been fully aware of planning procedures and has sought to improve her property, but in my opinion there are no considerations arising in relation to Breach 1 that clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and the harm to the landscape, so as to amount to the very special circumstances needed to justify the development.

Breach 2

10. As with Breach 1, Policy GNE 1 seeks to restrain development outside the urban areas, Policy NE 12 states that development will not be permitted in the Special Landscape Area if it adversely affects the quality of the landscape, and the Framework encourages the enhancement of landscapes and visual amenity in Green Belts.

11. Policy NE 1, which related to development in general within the Green Belt, was deleted when the RCUDP was amended in 2009. Planning applications in the Green Belt were thereafter assessed by reference to the Government policy set out in PPG2, which has since been replaced by the Framework.

12. The Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate, with certain exceptions, none of which applies to the outbuilding that has been built under the extended decking. The decking extension itself and the laying out of the track are engineering operations, which the Framework states are not inappropriate in the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. Whilst they do not have a significant effect on openness, they do conflict with one of these purposes, namely to assist in safeguarding the countryside from encroachment.

13. The outbuilding, the decking extension and the track are therefore all inappropriate development in the Green Belt. They have also harmed the quality, visual amenity and character of the landscape here, contrary to RCUDP Policy NE 12 and the advice in the Framework. The Framework provisions quoted in paragraph 6 above apply, namely "… inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. … When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm

to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations".

14. As I did in relation to Breach 1, I have given careful consideration to the appellant's representations. Again, I realise that she has not been fully aware of planning procedures and has sought to improve her property. I note also that she maintains that the track gives access to the septic tank. However, it does not fully link up with the tank and has clearly been laid to provide access to the outbuilding. In my view, there are no considerations arising in relation to Breach 2 that clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and the harm to the landscape, so as to amount to the very special circumstances needed to justify the development.

Conclusion

15. For the above reasons, I have concluded that planning permission should not be granted for any of the development identified in Breach 1 or Breach 2. The appeal has therefore been dismissed and the notice has been upheld.

D.A.Hainsworth

INSPECTOR