
Appeal Decision

Site visit made on 31 October 2016

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 19th January 2017

Appeal Ref: APP/P1940/W/16/3154462

River Cottage, Solesbridge Lane, Chorleywood, Hertfordshire WD3 5SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Peter Green against the decision of Three Rivers District Council.
 - The application Ref 16/0209/FUL, received as valid by the Council on 5 February 2016, was refused by notice dated 1 April 2016.
 - The development proposed is to use and occupy an existing dwelling within the grounds of Solesbridge Water as a single independent dwelling without having to comply with the restrictions on occupancy of this dwelling which are set out in the Section 52 agreement dated 30 April 1980.
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Decision

1. The appeal is dismissed.

Background

2. The proposal relates to a small single-storey dwelling, known as River Cottage, which is situated to the north of Solesbridge Water, a large detached house set within substantial grounds adjacent to the River Chess and just to the east of the M25 within the Metropolitan Green Belt.
3. The Council granted planning permission for River Cottage on 14 July 1980¹ which involved the demolition and re-building of an existing dwelling. The permission was subject to a condition which removed permitted development rights for enlargements, improvements and other alterations, including the erection of curtilage buildings and any other structures or enclosures incidental to the enjoyment of the dwelling.
4. The reason given for this condition was that the dwelling was permitted as an annex to the main house and the nature of the site required strict control over any additional development. The dwelling was made subject to a Section 52 agreement which termed it 'staff accommodation'. In summary, this agreement restricts occupation of River Cottage to the owner of Solesbridge Water and to immediate dependent relatives or to staff in conjunction with the use, occupation of or employment at the main dwelling and prevents its separate disposal, by either sale or lease.
5. The proposal seeks a new planning permission which would allow the dwelling to be used and occupied as an independent dwelling without the restrictions

¹ Reference 8/726/79

imposed through the Section 52 agreement. An equivalent proposal was the subject of an appeal² dismissed on 5 December 2000 and this earlier decision is a material consideration. This current proposal, however, includes also the demolition of a section of the garage block that stands adjacent to River Cottage.

6. The ancillary use of River Cottage is governed by the Section 52 agreement, which also prevents its disposal separate from Solesbridge Water, and not through a planning condition attached to the original permission. The advice I have found leads me to believe that a Section 52 agreement made under the 1971 Town and Country Planning Act is dischargeable only through Section 84 of the Law of Property Act, on application to the Lands Tribunal, and not by a planning application. Nevertheless, this appeal has been decided on the basis of which it was made, which is against the Council's decision that the use of River Cottage as an independent residential unit would be inappropriate development in the Green Belt to the detriment of its openness.

Main Issues

7. The main issues in this case are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant development plan policy.
- If inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

8. The development plan comprises the Council's Core Strategy³ (CS) and Development Management Policies⁴ (DMP). CS Policy CP11 establishes a general presumption against inappropriate development that would not preserve the openness of the Green Belt, or which would conflict with the purpose of including land within it. This policy, and the explanatory text that precedes it, whilst adopted prior to its publication, is consistent with Part 9 of the Framework which sets out Government policy for protecting Green Belt land.
9. The Framework establishes the great importance Government attaches to Green Belts, where the fundamental aim of policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and permanence.
10. DMP Policy DM2, post-dating the Framework, regards the construction of new buildings as inappropriate in the Green Belt with certain exceptions in common with paragraph 89 of the national guidance.

² APP/P1940/A/00/1047799

³ Three Rivers District Council Local Development Framework – Core Strategy – adopted 17 October 2011

⁴ Three Rivers District Council Local Plan – Development Management Policies Local Development Document – adopted July 2013

11. The proposal relates to a use and proposes no development other than the demolition of part of the garage block. Paragraph 90 of the Framework would find the re-use of a building of permanent and substantial construction, as in the case of River Cottage, to be a form of development not inappropriate in Green Belt, provided this preserved its openness and did not conflict with the purposes of including land within it. There is no definition of openness in the Framework but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. The relevant Green Belt purpose in this case would be to assist in safeguarding the countryside from encroachment.
12. DMP Policy DM2 follows paragraph 90 of the Framework in finding the re-use and conversion of buildings in the Green Belt as not inappropriate, subject to a number of provisos. In respect of these, the scale of the existing building would be in keeping with its surroundings, the use would not cause noise, smell or heavy traffic to the detriment of the locality and the existing curtilage would not involve a garden encroaching into open or agricultural land. The dwelling is small, with two bedrooms one of which is of box-room size, but would be suitable for independent occupation by a small household.
13. The Council's concerns centre upon the independent occupation of River Cottage intensifying its residential use, with ramifications in respect of pressure for future extensions, boundary treatments, ancillary structures and general domestic paraphernalia which would appear excessively prominent and have a significant adverse effect on the openness of the Green Belt contrary to Policy DM2 ii).
14. I am not persuaded that national policy has changed markedly since the previous 2000 appeal and the support given to the re-use of existing Green Belt buildings remains dependant on preserving its openness. The dwelling could be occupied by a small household as independent accommodation without further additions, and a condition could remove permitted development rights to allow the Council to retain control in this respect. However, the small scale of the dwelling is more appropriate to ancillary accommodation whereby there would not be the same pressure for the likely residential changes consequent upon independent occupation.
15. The occupation of River Cottage under the restraints imposed by the Section 52 agreement could still result in the demand for alterations and extensions, the introduction of a greater degree of domestic paraphernalia, such as play equipment, washing lines, barbeques, and generate ancillary parking and vehicular movements. However, the occupation ancillary to the main dwelling would currently result in an overlap in these activities and a sharing of facilities.
16. I am in no doubt that, if permitted to be occupied entirely separately from Solesbridge Water, that there would be an intensification of the use of River Cottage than would result in changes that would encroach into the Green Belt and serve to reduce its openness. The removal of a part of the existing garage block would not compensate for this loss of openness. Neither would the present wooded context of River Cottage, with its own curtilage and low hedged enclosure, alter the harm found.

17. Due to its implications on openness this proposal would be inappropriate development in the Green Belt contrary to CS Policy CP11, DMP Policy DM2 and Part 9 of the Framework.

Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the proposal.

18. Under Paragraph 87 of the Framework, inappropriate development is by definition harmful to the Green Belt. As this proposal would be for a change in the occupation of an existing dwelling, and the effect upon the Green Belt would result from the consequential changes this would be likely to cause, the harm that would arise is held to be moderate. No other harm, other than in respect of that to the Green Belt, has been found with this proposal. However, through paragraph 88 of the Framework, substantial weight should be given to any harm to the Green Belt which would arise as a consequence of this proposal.
19. Consideration has been given to River Cottage having been a replacement of an earlier dwelling which was not the subject of any occupancy restriction. However, the Section 52 agreement would have been voluntarily entered into and now alters this situation. I have also considered that the appellant would accept conditions similar to those that currently apply to River Cottage which remove domestic permitted development rights. Weight has been given to the fact that the proposed removal of part of the existing garage block would restore a degree of openness to this part of the Green Belt. Whilst Green Belt policy would support the use of an existing building, this would be remain secured through its current ancillary residential role.

Conclusion

20. I find that the other considerations in this case do not clearly outweigh the harm I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist. Therefore, having taken into account all other matters raised, I conclude that this appeal should be dismissed.

Jonathan Price

INSPECTOR