
Appeal Decision

Site visit made on 7 February 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 23 February 2017

Appeal Ref: APP/P1940/W/16/3164392

Barn, Red Lion Lane, Sarratt, Hertfordshire, WD3 6BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Baker against the decision of Three Rivers District Council.
 - The application Ref 16/1814/FUL, dated 10 August 2016, was refused by notice dated 21 October 2016.
 - The application sought planning permission for erection of a cattle shelter without complying with a condition attached to planning permission Ref 8/539/91, dated 24 October 1991.
 - The condition in dispute is No 3 which states that: *The building hereby permitted shall be used solely in connection with the agricultural use carried out on site and for not [sic] other purpose without the prior permission in writing of the local planning authority.*
 - The reason given for the condition is: *In order to protect the amenities of the Metropolitan Green Belt.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a cattle shelter at Barn, Red Lion Lane, Sarratt, Hertfordshire, WD3 6BN in accordance with the application Ref 16/1814/FUL dated 10 August 2016 without compliance with condition No 3 previously imposed on the planning permission Ref 8/539/91 dated 24 October 1991.

Main Issue

2. The main issue is whether the condition is reasonable or necessary having regard to local and national policy concerning development within the Green Belt in respect of inappropriate development, and Green Belt openness and purposes.

Reasons

3. The appeal building is a small disused field barn positioned within the western corner of an open field, currently used for pasture, adjacent to Red Lion Lane. It is 1 ½ storey in height, is of timber construction, and is located in the open countryside within the Metropolitan Green Belt.
 4. Paragraph 87 of the National Planning Policy Framework (the Framework) recognises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
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Policy CP11 of the Three Rivers District Council Core Strategy 2011 (CS) also states that there is a presumption against inappropriate development in the Green Belt that would not preserve openness or purposes.

5. The Council submit that condition No 3 attached to the original consent is necessary so that a change of use, as well as any related impacts of alterations which may otherwise not require express planning permission can be considered and assessed due to the sensitive location of the building and the great importance attached to the protection of the Green Belt.
6. Specifically, without such a condition, the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) grants planning permission for certain classes of development, including residential use, conditional on a prior approval procedure having been followed. Green Belt land is not incorporated within the list of exclusions for the prior approval process.
7. However, paragraphs 89 and 90 of the Framework also establishes that certain forms of development are not inappropriate in the Green Belt provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. This includes the re-use of buildings. The exceptions are also recognised in Policy DM2 of the Development Management Policies Local Development Document 2013 (LDD) which sets out a number of criteria for the re-use and conversion of buildings in the Green Belt in respect of design, prominence, alterations, landscaping and highways, also referencing Green Belt openness and purpose. The disputed condition therefore seeks to restrict development which is specifically regarded by the Framework as not inappropriate.
8. The Council also state that without such a condition, impact upon Green Belt openness and purposes could not be assessed. Where development is found to be not inappropriate development, case law (*Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404*) has established that it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in it. The case is relevant as the judgment makes it clear that there is no place for a subsequent assessment of the effect of the development on Green Belt openness and as such I only need to consider whether the proposal would conflict with the purposes of including land in the Green Belt where this is part of the assessment of whether or not a proposal is inappropriate.
9. Paragraph 80 of the Framework lists the 5 purposes of Green Belt. The appeal barn is in a countryside location and is in an elevated position due to the undulating topography of the area. However, it has been sensitively located within the top corner of the field adjacent to a number of mature trees and hedgerows forming the field boundary and the boundary with Red Lion Lane. There is also a small bund in front of the barn which provides partial screening when viewed across the open fields from Bottom Lane. Its design and use of sensitive materials also compliments and helps to assimilate the building into its rural environment. I therefore disagree that it is prominently sited and I do not consider that the condition is necessary to safeguard the countryside from encroachment. Nor would any of the other specified purposes apply.
10. I am also mindful that the National Planning Practice Guidance (PPG) is clear that conditions which restrict use of permitted development rights or change of

use will rarely pass the test of necessity¹ as required by paragraph 206 of the Framework and should only be used in exceptional circumstances. In light of my findings above, I do not consider that the impact on Green Belt in itself would constitute an exceptional circumstance.

11. Any future deliberation of the conversion and re-use of the building would be a matter for the Council to consider, under the relevant provisions and conditions of the GPDO which would include issues in respect of design, appearance, transport, noise, contamination, flood risk, and the practicality and desirability of the building's location. I note that these considerations would be similar to the requirements for re-use of buildings set out by LDD Policy DM2 which would also apply should planning permission be required for a specific type of development which would not be covered by the GPDO.
12. I note the recent appeal decision² for the prior approval of the conversion of the barn, whereby the Inspector also commented in respect of the tests of openness and Green Belt purposes. Nonetheless, the fundamental basis for the dismissal of that appeal related to development not being permitted under Article 3(4) of the GPDO due to the condition subject to this appeal. In any case, under section 78 of the Town and Country Planning Act 1990, it now falls to me to assess the necessity of condition 3 as a section 73 appeal, which was not before the previous Inspector. I have done so based upon the submitted evidence and the planning merits of the case in respect of local, national policy and recent case law.
13. Overall I conclude the condition is not reasonable or necessary in respect of Green Belt protection in light of the fact that the re-use of buildings in the Green Belt is recognised by the CS, LDD and the Framework as not inappropriate.

Conditions

14. In allowing the appeal I have considered those conditions imposed on the original planning permission and those suggested by the Council. Conditions relating to standard time limits, materials are no longer relevant to this section 73 appeal as the cattle shelter has already been built. The appellant has suggested that they would consider a condition which would restrict permitted development rights for uses other than as a dwelling. However, in light of my findings above, again I do not consider that restricting such rights would be reasonable or necessary in terms of Green Belt protection. I have therefore imposed no additional conditions.

Conclusion

15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

C Searson
INSPECTOR

¹ Reference ID: 21a-017-20140306

² APP/P1940/W/16/3157269