

Appeal Decision

Site visit made on 13 March 2017

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 23rd March 2017

Appeal Ref: APP/T0355/W/16/3160308

Wyevale Garden Centre, Dedworth Road, Windsor, Berkshire SL4 4LH

- 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 GFL Management & Wyevale GC against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/00653, dated 21 February 2016, was refused by notice dated 13 September 2016.
 - The development proposed is the installation of a double canopy; wash screen; two cabins for office/rest room and secure storage; water storage tank and fence.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be 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 proposal on the openness of the Green Belt; and
 - Would any harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so would this amount to the very special circumstances that would be required to justify the proposal.

Reasons

Whether the proposals are inappropriate development in the Green Belt

3. There is no dispute between the parties that the site lies within the Green Belt.
 4. The Council's concerns focus on the erection of the canopies and the storage containers which it concludes are buildings and result in operational development. The Council accept that the use, as a car wash, is ancillary to the main use of the site as a garden centre and do not raise concerns with the use. The appellant accepts that the canopies are fixed to the ground and are operational development. However, the appellant contends, in part, that the containers are not 'buildings' and therefore should be considered in the context of the siting of the containers being a change of use and as the use is incidental to the main use they would not require permission.
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5. A building is defined as any structure or erection and any part of a building, (Sec 336 of the Town and Country Planning Act 1990. Three primary factors have been identified by the courts as decisive of what was a building, in short these are: the size, permanence and physical attachment. The size of the containers are such that they were brought onto the site and did not require to be constructed. However whilst they can be transported on the back of a truck this is a specialist vehicle including lifting equipment or apparatus and the containers would not be capable of being readily moved without such equipment. The buildings have been in situ for some time and the permission sought is not time limited. The containers are robust, heavy duty and are not of an insubstantial construction of themselves. Although the appellant suggests that the contractual obligation is time limited there is nothing to prevent that from being extended or re-negotiated. Although the containers are not physically attached to the land they are of a weight and solidity that in practice ensures they are fixed. The containers are also connected to services to facilitate the uses they contain.
6. As a matter of fact and degree I conclude that the storage containers are buildings. It is already accepted that the canopies are buildings.
7. Policies GB1 and GB2 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (the Local Plan) indicate that permission will only be given except in very special circumstances for a list of buildings and seek to protect the openness of the Green belt, amongst other matters. The list of buildings is derived from the development that would not be inappropriate as set out in PPG2 which was then extant. This is reasonably consistent with the reformulation of Green Belt policy in the National Planning Policy Framework (the Framework), albeit that the Framework has made some alterations, however, these are not material in this case.
8. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence.
9. Paragraph 89 of the Framework advises that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to certain exceptions. The containers would be larger than the modest dimensions of the previous shed this would amount to a material difference in size of the building. The exception refers to the replacement of a building and judges the change in size in relation to that building not the buildings across the whole site. In this context the containers do not fall within this exception.
10. The site could reasonably be described as a previously developed site, which is in a continuing use, and the proposal would be a partial redevelopment of that site. The proposed containers and the canopies would add to the built form on the site and enclose additional space. Whilst the canopies have open sides they are enclosing space. In this context the proposal would result in a modest increase in the impact on openness which would be greater than the previously authorised buildings associated with the car wash facility. On that basis I conclude that the containers and canopies would not fall within the exception given by bullet point 6 of paragraph 89.
11. The proposals would not fall within any of the other exceptions identified in paragraph 89 or 90 of the Framework and therefore by virtue of the containers and the canopies the proposals would be inappropriate development in the

Green Belt. As paragraph 87 of the Framework advises inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances.

Openness

12. As part of my considerations of whether the proposals would be inappropriate development I have concluded that there would be a modest harmful effect on the openness of the Green Belt. Openness has a spatial as well as a visual aspect and it is wrong in principle to arrive at a specific conclusion as to the openness by reference to visual impact alone. Therefore whilst I accept that the site is relatively discreetly located and well screened, this does not fully address the spatial aspect of additional built form enclosing space and the impacting on openness. I accept that the buildings are small and in the context of the wider site have a relatively minor effect on the openness in comparison to that which the whole site does. However, the further addition of more buildings adds to the buildings on the site and therefore its effect on openness. On this basis I consider that the harm to the openness of the Green Belt would be modest. This is still harm and I will weigh this in the balance at the end of my decision

Other matters

13. Residents have raised concerns about the impact of the development on the character of the area and the setting of the listed building adjacent. I see no reason to disagree with the conclusions of the council in the officer report in this regard. The site is well screened the structures associated with the development are small in scale and would only be open to view from very limited points and the views would be filtered through surrounding mature landscaping. There is no harm arising in this regard.
14. The proposed use of a car wash as an ancillary service on the site is accepted by the Council and subject of a previous appeal decision. The disturbance associated with the use is therefore to be considered in that context and again I do not consider harm would arise. For similar reasons I do not accept that there are material flooding issues with the proposed development. There is no substantive evidence to directly link the concerns of residents with this use. Any ground water issues would be a matter for other legislation.

Other considerations

15. Paragraph 88 of the Framework requires the harm to the Green Belt by reason of inappropriateness, and any other harm, to be clearly outweighed by other considerations. The appellant has identified a number of other considerations which it is contended should be weighed in that balance.
16. The appellant contends that the development makes investment in the rural economy and results in the employment of staff. Whilst the level of investment is questioned by the Council there is an evident operation which has staff engaged and this would result in additional money in the rural economy. Given the limited numbers I afford this only moderate weight.
17. It is contended by the appellant the container is required to meet various obligations both legal and welfare. However, much is made of the use being ancillary to the garden centre and there is no convincing reason why many of these activities could not be provided in the garden centre, including the cash

register and staff facilities, which I am sure are also available to garden centre staff.

18. It is further contended that the buildings are essential to a use which preserves the openness of the Green Belt. I have addressed this matter above.

Green Belt balance

19. Paragraph 88 of the Framework requires that any harm to the Green Belt by reason of inappropriate development, and any other harm, should be clearly outweighed by other considerations. I have found that the proposal would represent inappropriate development, and would give rise to moderate harm to the openness of the Green Belt. In accordance with paragraph 88 I give this harm substantial weight. There are no other harms that I have identified arising from the other matters. Against that harm are the other considerations identified above. I have only ascribed these matters moderate weight at best and a number I have not agreed that they provide any benefit. Overall I am not satisfied that together they combine to clearly outweigh the substantial harm to the Green Belt related to this development. The proposals would therefore conflict with Policies GB1 and 2 of the Local Plan and the advice in the Framework regarding protection of the Green Belt.

Overall conclusions

20. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
21. For the reasons given above I conclude that the appeal should be dismissed.

Kenneth Stone

INSPECTOR