
Appeal Decision

Site visit made on 19 April 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 18 May 2017

Appeal Ref: APP/C4615/W/17/3167632

Land at Illey Brook Farm, Illey Lane, Halesowen, Birmingham B62 0HE

- 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 Philip Smith against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P16/1351, dated 27 September 2016 was refused by notice dated 16 November 2016.
 - The development proposed is change of use from agricultural land into residential curtilage (C3) (retrospective).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site has been incorporated into the curtilage of the two dwellings formed by the conversion of the former barn. The application sought retrospective planning permission for the change of use of this land.
3. The reason for refusal refers to Policy SO1 of the Dudley Unitary Development Plan (UDP) (2005). Following the Council's adoption of the Dudley Borough Development Strategy (DBDS) in February 2017 the UDP no longer forms part of the development plan for the area. This now comprises the Black Country Core Strategy (2011) (BCCS) and the DBDS. The parties have been invited to comment on the application of the DBDS policies to the appeal proposal but no comments were received within the timescales set for the making of such submissions. I have considered the appeal having regard to the development plan as it now exists.

Main Issues

4. The main issues are:
 - (a) whether the change of use constitutes inappropriate development in the Green Belt;
 - (b) if inappropriate, whether there are any material considerations which would justify a grant of planning permission; and
 - (c) the effect on the character and appearance of the area having regard to its designation as an area of high historic landscape value.
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Reasons

Green Belt

5. DBDS Policy S23 states a presumption against inappropriate development in the Green Belt and that development will not be permitted except in the circumstances set out in the National Planning Policy Framework (Framework). Paragraph 89 of the Framework states that the construction of new buildings should be regarded as inappropriate other than in a limited number of exceptions. Paragraph 90 states that certain other forms of development are also not inappropriate provided that they preserve the openness of the Green Belt and do not conflict with its purposes.
6. A change of use from agricultural land to residential curtilage does not fall within any of the exceptions in paragraph 89 or the categories of development listed in paragraph 90 and does, therefore, constitute inappropriate development in the Green Belt. Paragraph 87 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. The boundary hedge and fence to the northern and western boundaries are of modest height but the incorporation into and use of this land as part of the residential curtilage has a harmful effect on the openness of the Green Belt. That harm would be added to by the introduction of the domestic paraphernalia frequently found in residential gardens. Although permitted development rights for development within the curtilage could be restricted by means of a planning condition that would not provide adequate mitigation of that harm. In my judgement, the development has also resulted in the encroachment of the domestic curtilage into land that was formerly part of the open countryside and is, therefore, in conflict with one of the 5 purposes of including land in the Green Belt.
8. In accordance with paragraph 88 of the Framework, substantial weight must be given to any harm to the Green Belt and 'very special circumstances' will not exist unless the potential harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.

Character and appearance

9. The appeal site is largely screened in views from Lilley Lane by the roadside vegetation and intervening topography. However, due to its location in an open, hill top position, the site is prominent in views from the public footpath that runs south from Lilley Lane and that which runs east-west along alongside of the new boundary treatment. In views from these paths the extended residential curtilage and new boundary treatments have a distinctly domestic appearance that contrasts sharply with the rural character of the surrounding landscape. This change is detrimental to this attractive landscape and to the way that users of those rights of way experience the landscape when passing through the area.
10. Accordingly, I find that the change of use has caused significant harm to the character and appearance of the landscape in an area of high historic landscape value. The development conflicts with DBDS Policy S13 which states that, within such areas, development which would be detrimental to the character, quality and historic integrity of the landscape will be resisted. It also conflicts

with BCCS Policy ENV2 which seeks that all development should protect the special qualities and local distinctiveness of the Black Country.

Other Matters

11. The appellant argues that the new boundary is more logical than that approved under the planning permission for the conversion of the barns because it follows an existing hedgerow. However, the approved boundary also related to a line of mature and semi-mature trees and hedges that have subsequently been removed. I do not accept that the approved boundary would leave a 'no man's land' between the garden and the public footpath. Rather, it would leave this section of path running across a field as it does in other sections of the route and users of the path would enjoy a better experience of the attractive landscape. Reinstatement of the approved boundary would also provide a greater level of privacy for anyone sitting in the rear gardens.
12. I note the appellant's reference to the grant of permission for a garden curtilage within the Cheshire Green Belt but it is clear from the information provided that the circumstances in that case were quite different. I also note the suggestion that a grant of retrospective permission for the change of use would make it less likely that the appellant would use his permitted development rights to develop on agricultural land. In the absence of any specific proposals I am unable to conclude either that the exercise of those rights would be a realistic fallback position or that any development undertaken within the scope of those rights would be more harmful to the Green Belt.
13. No evidence has been produced to support the claim that the biodiversity of the site has been enhanced by the development and I am, therefore, unable to treat this as potential benefit. The appellant's claim that the land that has been incorporated into the curtilage is underused agricultural land is also unsupported by any evidence. However, even if this was the case, that would not justify inappropriate development in the Green Belt. Having a larger garden might be of benefit to the occupiers of the two dwellings but this is a wholly private benefit that would not outweigh the harm to the Green Belt and the character and appearance of the area.

Conclusions

14. The change of use comprises inappropriate development in the Green Belt. It also harms openness and the purposes of including land in the Green Belt and the character and appearance of the area. There are no material considerations that would outweigh that harm and, accordingly, the very special circumstances needed to justify a grant of planning permission have not been demonstrated. I therefore conclude that the appeal should fail.

Paul Singleton

INSPECTOR