

Appeal Decision

Site visit made on 2 May 2017

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 5 June 2017

Appeal Ref: APP/Z3635/W/17/3169087

57 Lower Hampton Road, Sunbury-on-Thames TW16 5PR

- 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 Neil Maitland-Walker against the decision of Spelthorne Borough Council.
 - The application Ref 16/00799/FUL, dated 16 May 2016, was refused by notice dated 3 January 2017.
 - The development proposed is to demolish 3 timber buildings totalling 40 square metres on site and erect one 57 square metres building for accommodation use totalling 120 days a year.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The proposed development has been described on the Council's decision notice and the Appellants appeal form as the "Erection of building for recreational purposes, following demolition of 3 existing buildings".
3. However, from the plans before me the development has all the characteristics of a new dwelling with two bedrooms, a shower/bathroom and an open plan kitchen/lounge. Given this characteristic, and having regard to *Gravesham BC v SSE and O'Brien* [1983] JPL 306, I consider that the proposed development is, in practical terms, the erection of a new dwelling.
4. Notwithstanding that, I note that the Appellant intends to only occupy the development for a maximum of 120 days per year and not as a permanent residential dwelling. However, the proposed development would be a new dwelling which, if allowed, would invariably have a Class C3 use. I have therefore determined the appeal on this basis.

Main Issues

5. The main issues are:
 - (i) whether the proposal would be inappropriate development in the Green Belt;
 - (ii) the effect on the openness of the Green Belt;
 - (iii) whether or not the proposal would not be at risk of flooding or increase the risk of flooding elsewhere; and
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- (iv) if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

6. Paragraph 79 of the National Planning Policy Framework (the Framework) outlines the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence.
7. The Framework, at paragraph 89, sets out the categories of development which may be regarded as not inappropriate in the Green Belt. New buildings within the Green Belt are inappropriate unless, amongst other things, they represent outdoor recreation use which preserves the openness of the Green Belt (and does not conflict with the purposes of including land within it) or that the replacement of a building is such that the new building is not materially larger than the one it replaces and is in the same use¹.
8. In respect of the second bullet point, I have already identified that the proposed development would be for a residential use, as opposed to a recreational use, even though it is only intended to occupy it for up to 120 days per year. Therefore, this exemption does not apply to the proposed development.
9. The Appellant has also referred to the third bullet point of paragraph 89 which refers to the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. However, given that the proposal involves the demolition of all buildings on the site, I consider that this exception does not apply to this development.
10. Turning to the fourth bullet point, the proposal would involve the demolition of four structures which from the evidence before me are occupied as seasonal residential accommodation (and a small store). Notwithstanding the precise wording in paragraph 89 of the Framework, which refers to the replacement of a building, taking into account the judgement in *Tandridge DC v SSCLG & Syrett* [2015] EWHC 2503, there is no reason not to apply this to a group of buildings being replaced to establish the baseline size of built development currently on site.
11. From the Appellants figures, the total area of the existing buildings on site are approximately 40 square metres whereas the proposed development equates to 57 square metres which is a 30% increase in size/footprint. However, the Council consider that the proposed footprint is 64 square metres. Whichever of these figures is correct, the proposed development represents a significant increase in the footprint of built form. Furthermore, the height of the proposed building is also greater than any of the existing structures currently on site. Taking these factors into account, the proposed building would be materially larger than the ones which it replaces. Consequently, the development would not benefit from this exemption.

¹ Second and forth bullet points of paragraph 89 of the Framework

12. In respect of the exemptions in the sixth bullet point, the proposal could be considered to be limited infilling. On this basis, it follows that in order to determine whether the proposal would be inappropriate development it is necessary to consider whether or not the proposal would have a greater impact on openness than the existing building.

Openness of the Green Belt

13. The buildings on the appeal site are small low key structures. In contrast, the proposed development would be larger in footprint and height, and would have a much greater massing than the existing structures.
14. Given that the current buildings on site are generally low level, the proposed building would be taller than any of the existing buildings and would have significantly more bulk. To my mind, the increase in footprint and height (when compared to the existing buildings) together with the subsequent increase in massing would lead to harm to the openness of the Green Belt and the character and appearance of the locality.
15. In coming to that view I acknowledge that there was a previous planning permission² on the site. However, I note that this was for a smaller development than the current proposal. In any case, the Appellant has confirmed that this permission was not implemented and has subsequently lapsed. I therefore give that very little weight.
16. My attention has also been drawn to planning permission³ at 47 Lower Hampton Road. However, from the information before me that related to a different form of development than what is before me. Moreover, each development must be considered on its own merits.
17. The Council have also raised concern that the development would project closer to the river frontage than the existing buildings. However, from the information before me the proposal would not project closer to the river than the adjoining properties. It is noted that criteria (g) of Policy EN2 of the Spelthorne Core Strategy and Policies Development Plan Document (2009) (CS) allows development that would not project towards the river further than existing buildings *or adjoining properties* (my emphasis). Consequently I consider that the development accords with that part of Policy EN2. However, that does not outweigh the harm I have found.
18. For the above reasons, I therefore conclude that the development would lead to a loss of Green Belt openness and would therefore constitute inappropriate development impacting on the Green Belt purpose of safeguarding the countryside contrary to the Framework and Policy EN2 of the CS and Policy GB1 of the Spelthorne Borough Local Plan (2001) (LP).

Flood risk

19. From the evidence before me the site lies within Flood Zone 3 and given the nature of the development would be classed as 'more vulnerable' development.
20. I understand that a Flood Risk Assessment has been undertaken and this was considered by the Environment Agency and the Council. However, this has not been provided to me.

² 01/00198/FUL

³ 14/01692/FUL

21. Notwithstanding that, given my findings in relation to the harm to the Green Belt, even if I found that there was no harm in relation to flood risk, this would only be a neutral factor in the overall balance.
22. For the above reasons, and from the limited evidence before me, the proposal does not demonstrate that it would not result in an unacceptable flood risk to the future occupants of the development and that it would not increase flood risk elsewhere. As a consequence, the development would be contrary to Policy LO1 of the CS and the Framework which, amongst other matters, seek to ensure that new development reduces flood risk and its adverse effects on people and property.

Green Belt balance

23. Paragraph 87 of the Framework sets out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development 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.
24. I have concluded that the proposal would be inappropriate development and would therefore, by definition, be harmful to the Green Belt. This factor weighs heavily against the development.
25. The Appellant has suggested that the replacement of the existing structures which are in a poor state of repair with a far more sustainable building, together with the continued outdoor recreational use of the riverbank jetty are a very special circumstance.
26. Whilst I consider that the replacement of the building would have some benefit, to my mind, this does not clearly outweigh the harm to the Green Belt. Consequently, there are no very special circumstances to justify the proposal and the development would conflict with Policy EN2 of the CS and Policy GB1 of the LP and the Framework.

27. Conclusion

28. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR