
Appeal Decision

Site visit made on 12 June 2017

by R C Kirby BA (Hons) DipTP MRTPI

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

Decision date: 23rd June 2017

Appeal Ref: APP/X0415/W/16/3161324

Elmwood Kennels, Swan Bottom, The Lee, Great Missenden HP16 9NQ

- 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 Mark Burton against the decision of Chiltern District Council.
 - The application Ref CH/2016/0885/FA, dated 10 May 2016, was refused by notice dated 22 August 2016.
 - The development proposed is conversion of detached building into a single dwelling house.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal site is located within an area of Green Belt. Accordingly the main issues are:
 - whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - the effect of the proposal on the openness of the Green Belt;
 - whether or not the proposal would conserve and enhance the natural beauty of the Chilterns Area of Outstanding Natural Beauty;
 - the effect of the proposal on the portfolio of employment sites and premises within the District; and
 - 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 it.

Reasons

3. The appeal site comprises a brick building with a pitched, tiled roof which includes a number of rooms on the ground floor and in the roof space, and a detached garage to the side of Elmwood House. It has its own vehicular access from the adjoining highway, a parking area, and a small area of grass between the brick built building and garage. No external alterations to the buildings are proposed, but the grassed area would be reduced in size to allow vehicular access to the garage. A new boundary fence would be erected between Elmwood House and the appeal site. The surrounding area is attractive, open countryside comprising mainly fields, hedgerows and areas of woodland, with a
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scattering of buildings along the road. Swan Bottom Nursery is located on the opposite side of the road to the appeal site.

Whether Inappropriate Development in the Green Belt

4. The Framework states that the re-use of a building that is of permanent and substantial construction is not inappropriate in the Green Belt provided it would preserve the openness of the Green Belt and not conflict with the purposes of including land in it. Policy GB2 of the Chiltern District Local Plan (LP) adopts a similar approach and refers to a number of other policies whose criteria should be met.
5. Policy GB11 of the LP relates to the re-use of non-residential buildings in the Green Belt for residential use. The policy states that such re-use will not be considered inappropriate development providing, amongst other matters that the building to be converted is not in business, general industrial or storage or distribution use. LP Policy GB22A has a similar purpose and states, amongst other matters, that development will not be permitted for any purpose other than business, general industrial or storage or distribution use on any site in the Green Belt which is currently used, or was last used for business, general industrial or storage or distribution purposes. The policy advises that such uses are as defined in the Town and Country Planning (Use Classes) Order 1987 (UCO). Where a use is sui-generis, Policy GB22A states that the Council will consider carefully the precise nature of the use and if its main purpose and function is closely similar to uses in Classes B1, B2 or B8 it will treat the development proposals as falling within the scope of Part B.
6. The planning history for the site as set out in both parties' evidence indicates that planning permission was granted under a 2004 planning application for a replacement kennel building with office, cloakroom and grooming room. Since this permission, a further application submitted in 2007 was granted planning permission. It appears from the evidence before me that the building that was constructed differed from the approved scheme, and an application was submitted in 2008 to rectify this. This was subsequently approved by the Council. The appellant submits that the brick building was used in association with the dog kennel business run by his family; dogs have been kennelled in the building on an 'as and when required' basis, when there was a need to isolate a dog from others.
7. Whilst accepting that the brick built building on the site has a sui generis use¹, the Council consider that there are some elements of the use that fall within the 'B' Use Class, including the office, reception, greeting area and storage facilities. The appellant disputes this. On the basis of the evidence before me, I find that the nature of the use of the building with isolation room, food preparation area, grooming parlour, medical store and storage area is materially different from uses falling within the B Use Classes. The reception/office space within the building forms a small area of the overall floorspace on the ground floor and to my mind is ancillary to the main use of the building associated with the family's business as boarding kennels. I find similarly in respect of the storage areas at first floor. The Council is silent on the use of the garage building upon the site, but from my observations this is associated with the residential use of Elmwood House. In light of the above, I find that the main purpose and function of the buildings are not closely similar

¹ As set out in reason for refusal 1 of the Council's Decision Notice

to uses in Classes B1, B2 or B8 of the UCO. There is no conflict with the aims of LP Policy GB22A in this regard.

8. Where the building to be converted is not in a community use or business, general industrial or storage and distribution use, LP Policy GB11 states that providing a number of matters are addressed then the re-use of a building to residential use would not be considered to be inappropriate development. These matters include that the building is of a permanent and substantial construction; has a form, bulk and general design in keeping with its surroundings; has been substantially completed at least 10 years before the date of the application and the residential use would not have a materially greater impact on the openness of the Green Belt and the purposes of including land in it than the existing use.
9. There is no dispute that the buildings are of permanent and substantial construction, and in keeping with the character of the area. The appellant submits that the kennel building was substantially completed by August 2007. This is not disputed. No details relating to the length of time that the garage building has been constructed have been provided. Notwithstanding this, it is clear that the kennel building has not been substantially complete for 10 years and as such the proposal conflicts with LP Policy GB11.
10. However, in that there is no reference to the length of time a building needs to be constructed within the Framework, I find that Policy GB11 is not consistent with national planning policy in this regard. In order to determine whether or not the proposal comprises inappropriate development, it is necessary to assess the effect on the openness of the Green Belt. This is considered below.

Openness

11. Paragraph 79 of the Framework makes it clear that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and permanence.
12. I have no reason to doubt that the area of the appeal site is used as garden by the occupiers of Elmwood House. There is currently limited domestic paraphernalia upon the appeal site, other than a picnic table which I am told is used by the occupiers of Elmwood House and clients of the dog kennel business. An earlier appeal² on the site was dismissed. This included a smaller area of domestic curtilage to that before me. My colleague was concerned about the intensive residential use of this area and the effect that this would have on the openness of the Green Belt (paragraph 9).
13. The proposal includes a larger domestic curtilage than that previously considered. The appellant submits that this would allow for a less intensive use of the land within the immediate vicinity of the new dwelling. I accept that there would be likely to be less pressure for outbuildings such as garaging as a result of the existing garage being incorporated into the new curtilage. However, the intensification of residential use upon the site, which would result in 2 domestic curtilages where there is currently one would be likely to have an impact on the openness of the Green Belt as a result of domestic paraphernalia being placed around the dwellings. I do not accept that a larger curtilage

² Ref APP/X0415/A/12/2181404

would result in a less intensive use of the land around the new dwelling; more space would provide greater opportunity for structures, enclosures and play equipment to be erected within the garden. This would have the effect of reducing openness. Whilst the loss of openness would be limited and localised, harm would be caused to the Green Belt and its purpose.

Green Belt Conclusion

14. The proposal would result in a reduction of openness in the Green Belt. Openness would not be preserved and the proposal would therefore comprise inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt.

Chilterns Area of Outstanding Natural Beauty

15. The appeal site is located within the Chilterns Area of Outstanding Natural Beauty (AONB). Paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty in, amongst other areas, AONB. Such areas have the highest status of protection in relation to landscape and scenic beauty.
16. Whilst set below the level of adjoining agricultural land and partially screened by vegetation, the appeal site is visible from public places including the adjoining highway. Although the new dwelling would be viewed in the context of nearby residential properties, the more intensive residential use of the site and the loss of openness would be readily apparent in this attractive rural area landscape. This would detract from the landscape character and scenic beauty of the Chilterns AONB, in conflict with the aims of LP Policy LSQ1 and Policy CS22 of the Local Development Framework Core Strategy for Chiltern District (CS). There would also be conflict with the core planning principle of the Framework relating to the different roles and character of different areas, including the protection of Green Belt, and the recognition to be given to the intrinsic character and beauty of the countryside.

Portfolio of Employment Sites and Premises

17. Whilst the appellant's circumstances and nature of the business have changed since the kennel building was constructed, it represents a building used for employment purposes. The aim of CS Policy CS16 is to secure the long-term retention of a portfolio of employment sites and premises within the District which are attractive to the market, and which would provide a range of jobs to meet local needs. The supporting text to the policy states that to establish that there is no reasonable prospect of continuing commercial use, appropriate evidence will be required. This policy broadly accords with the economic growth aims of the Framework which also recognises that where there is no reasonable prospect of a site being used for that purpose, the long term protection of sites allocated for employment use should be avoided (paragraph 22).
18. The Council's decision notice makes reference to CS Policy CS19. I have not been provided with a copy of this and am therefore unable to take this into account in my consideration of the appeal proposal.
19. The appellant has advertised the kennel building as a business opportunity in local newspapers, magazines and shop windows. The submitted press adverts indicate that this occurred in 2013. It is also submitted that a number of

veterinary practices and dental practices have been approached in respect of using the building; however, no expressions of interest have been received. I am told that a number of estate agents have indicated that the brick building is too small and too isolated in location for an employment use and in their opinion that it would make an ideal home.

20. The appellant has drawn my attention to a number of buildings where planning permission has been granted for residential use. Reference is made to the Hay Barn and Bolt Hole Farm. Whilst noting these submissions I am not aware of the circumstances surrounding these examples. I am therefore unable to ascertain whether they are directly comparable to the scheme before me. Each application and appeal should be determined on its individual merits and this is the approach I have taken in this case. I therefore attach limited weight to the examples quoted in my overall Decision.
21. It is clear that the appellant has undertaken marketing of the premises in the past, however I have not been provided with evidence of recent marketing or indeed other evidence to demonstrate that there is no reasonable prospect of the continuing commercial use of the premises. On this basis, I cannot be satisfied that the proposal would not have an adverse effect upon the portfolio of employment sites and premises within the District. The proposal conflicts with the aims of CS Policy CS16 and the Framework in this regard.

Other Considerations

22. The Framework makes it clear at paragraph 87 that inappropriate development should not be approved except in very special circumstances. Paragraph 88 states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' 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.
23. Due to the ill-health of his father, the once thriving dog kennel business, which the appellant's family invested savings and borrowed money into, has had to be scaled back such that the brick building is no longer required. The appellant has indicated that it would be his intention to live in the new dwelling. He operates the nurse business across the road from the site. The location of the property, in close proximity to Elmwood House would allow him to continue to care for his parents. I attach moderate weight to a new home resulting in this location, but given my findings above, I attach limited weight to the assertion that the building is no longer required for the business.

Conclusion

24. The proposal would be inappropriate development in the Green Belt. Further harm would be caused as a result of loss of openness and the unjustified loss of an employment building in this location and the effect this would have on the portfolio of employment sites and premises in the District. The Framework establishes that substantial weight should be given to any harm to the Green Belt. I have considered the matters advanced in support of the case, however, the substantial harm that would be caused to the Green Belt and other harm identified above is not clearly outweighed by these matters. Consequently, the very special circumstances necessary to justify the proposal do not exist.

25. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR