



Appeal Decisions

Site visit made on 13 June 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal A Ref : APP/G2245/C/18/3215848

Land at Wild Wood, 15 Green Court Road, Crockenhill, Swanley, Kent, BR8 8JG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Lynn James against an enforcement notice issued by Sevenoaks District Council.
- The notice was issued on 17 October 2018.
- The breach of planning control as alleged in the notice is unauthorised operational development, being the erection of an unlawful building for the use as a hair and beauty salon, unauthorised change of use to mixed use for residential and hair and beauty salon and unlawful decking.
- The requirements of the notice are the removal of a detached outbuilding (marked with a red cross), the removal of decking leading from the drive and surrounding the outbuilding, cease the use of the site as a hair and beauty salon, the disposal of the resultant materials and the return of the land to its former condition.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a),(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out in the Formal Decision

Appeal B Ref : APP/G2245/C/18/3207591

Land at Wild Wood, 15 Green Court Road, Crockenhill, Swanley, Kent, BR8 8JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990
- The appeal is made by Ms Lynn James against the decision of Sevenoaks District Council.
- The application Ref SE/18/01149/HOUSE, dated 10 April 2018, was refused by notice dated 4 July 2018.
- The development proposed is raised decking (0.45m above ground level) and outbuilding to be used as a summer house

Summary of Decision: the appeal is allowed

Preliminary Matters

1. The notice the subject of Appeal A refers to the outbuilding as being 'marked with a red cross'. The plan attached to the notice depicts the location of the outbuilding with a red box. There is no misunderstanding between the parties

as to the land affected by the notice but in the interests of accuracy and as no injustice will be caused I shall amend the notice if appropriate.

2. The Appellant argues that the outbuilding is used for purposes that are incidental to the enjoyment of the main dwellinghouse. This is essentially an argument that a change of use to a mixed use of residential and hair and beauty salon as alleged in the notice has not occurred as a matter of fact. This is more pertinent to a ground (b) appeal and as the parties have addressed this issue in their representations I consider that no injustice will be caused if I deal with it as a hidden ground (b) appeal for the purposes of Appeal A.
3. I have used the description of development as set out in the application the subject of Appeal B rather than the version that appears in the refusal notice.

Appeal A hidden ground (b) appeal.

4. This ground of appeal is that the breach of planning control has not occurred as a matter of fact. The onus of proof rests on the Appellant and the test of evidence is the balance of probabilities.
5. The parties disagree as to whether the use of the building for part of the week as a hair and beauty salon comprises a material change of use to a mixed use of residential and use as a hair and beauty salon requiring planning permission. The Appellant's argument is that this change of use has not occurred because use as a salon remains ancillary to the primary residential use.
6. The lawful use of the planning unit is residential. Whether there is a material change of use of land is a matter of fact and degree to be assessed in relation to the specific circumstances in each case. In considering whether a particular use is ancillary it is necessary to look at the overall nature of the use and determine if there is some significant difference in the character of activities undertaken from what has gone on previously. The test to be applied in determining whether a material change of use to a mixed use of residential and beauty and hair salon has occurred is whether the overall character of the planning unit has changed as a result of the business.
7. The Appellant says that the outbuilding is used as a hair and beauty salon three days a week (Thursday, Friday, Saturday) for a maximum of 19 hours a week between the hours of 09.00 and 19.00. The salon is operated by the Appellant's daughter and there are no other employees. She says that the business accommodates an average of 6 clients per day. She says that for the rest of the time the outbuilding is used as a home office/crafting/play space incidental to the primary residential use of the main dwellinghouse.
8. I visited the property at a time when it was laid out and being used as a salon. It comprised two salon chairs in front of mirrors and one beside an area for washing hair, a welcome desk, a wc, kitchenette with sink and kettle, a room laid out with a massage bed for beauty treatments and a room being used for storage.
9. The Appellant's evidence does not need to be independently corroborated in order to be relied on. The evidence produced by the Council does not in my view cast serious doubt on the Appellant's version of events. The fact that the online booking system can make appointments outside the stated hours of business and that a customer has identified that services were provided by more than one person is not determinative of the intensity of use of the site

and I have no reason to doubt the explanations provided by the Appellant. There is no traffic evidence or neighbour complaints about adverse highway implications before me to suggest that the use has given rise to an increase in traffic and I note that the front driveway can accommodate a number of parked cars. Whilst I note the reference by some neighbours to the potential for cars to park in the rear garden this is not proposed. Hairdressing and beauty services are not unusual in a residential area and I note that the Planning Portal specifically refers to hairdressing as potentially comprising an ancillary use at a residential property. The fact that the salon is a home business does not mean that the use automatically requires planning permission. The test to be applied is whether the use has become a primary use and changed the overall character of the planning unit.

10. Whilst I note the concerns of local people and the Parish Council I am not persuaded on the evidence before me that there is an overall change in the character of the land by virtue of its use for part of the week as a salon. On the evidence before me I conclude that the mixed use cited in the notice has not occurred as a matter of fact.
11. For the reasons given above I conclude that the ground (b) appeal succeeds and I shall amend the notice accordingly if appropriate.

Appeal A Ground (a) appeal and Appeal B

12. As I have found no mixed use to have occurred the deemed application the subject of Appeal A is for the erection of the outbuilding (for use ancillary to the main dwelling) and the decking. This mirrors the development the subject of Appeal B and I shall determine both appeals together.
13. The appeal site is within the Metropolitan Green Belt and so the main issues in the determination of these appeals are
 - Whether or not 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;
 - If the proposal is 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.
14. Great importance is attached to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework sets out the purposes of Green Belts and measures for their protection. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
15. The appeal site comprises a two storey semi-detached dwelling in a primarily residential area. It is located in the Metropolitan Green Belt. It has a relatively large rear garden in which the outbuilding and decking the subject of these appeals is located. The decking (which was incomplete at the time of my site visit) connects the patio around the main dwelling to the outbuilding. Car

- parking for at least four vehicles is available on the relatively large front driveway. The development is not visible from the streetscene but is visible to neighbours.
16. Although the Framework does not make any specific reference to ancillary outbuildings within the curtilage of a dwelling given that an outbuilding is a building I have applied paragraph 145 of the Framework. Paragraph 145 provides that the construction of new buildings is inappropriate development in the Green Belt unless it falls within one of the specified exceptions. One of the exceptions is that the development is not inappropriate development if it does not result in a disproportionate addition over and above the size of the original building.
 17. The outbuilding and decking is of modest size and some distance from neighbouring properties and the main dwellinghouse. It is not widely visible from the streetscene due to its rear garden location and in the context of the main dwelling is not a dominant feature. Its footprint is not excessive in the context of the planning unit and the main dwelling. It is not a disproportionate addition.
 18. I consider that as a matter of fact and degree the development is not a disproportionate addition and satisfies the paragraph 145 exception. The development does not conflict with the purposes of including land within the Green Belt. I conclude that it is not inappropriate development for the purposes of the Framework.
 19. The development plan (including the Sevenoaks Allocations and Development Management Plan (the ADMP)) mirrors the Framework by confirming the presumption against inappropriate development in the Green Belt. Policy GB3 of the ADMP provides that outbuildings located more than 5 m from the existing dwelling will be permitted where the building, including the cumulative impact on other outbuildings and extension within the curtilage of the dwelling, would be ancillary to the main dwelling in terms of function and design and would not materially harm the openness of the Green Belt through excessive bulk or visual intrusion. Policy EN1 of the ADMP states that all development should be designed to a high quality and respect the character of the area. I have also taken into account as a material planning consideration the Sevenoaks Development in the Green Belt Supplementary Planning Document (the SPD). The SPD provides that the Council will seek to restrict any outbuilding to a limit of 40 sqm measured externally.
 20. The outbuilding is of modest size and some distance from neighbouring properties. Whilst I recognise that the decking is raised it is not out of keeping in its domestic setting. It is not widely visible from the streetscene due to its rear garden location and in the context of the main dwelling does not cause visual intrusion to neighbours. I find as a matter of fact and degree that the development is ancillary to the main dwelling in terms of function and design. It does not materially harm the openness of the Green Belt through excessive bulk or visual intrusion. Its design and scale respect the residential character of the area.
 21. I conclude that the development satisfies relevant policies in the development plan including policy GB3 and EN1 of the ADMP. Its dimensions do not materially exceed those set out in the SPD. There are no material

considerations before me that suggest that the appeals should be determined other than in accordance with the development plan.

22. The Appellant complains that conflicting advice has been received from the Council. But this is not a ground of appeal and not a matter to which I have attached weight in making this determination. My attention is drawn to other properties used for home working in the locality. I do not know the circumstances of those sites and have determined these appeals on their own particular facts. I have also noted matters including compliance with building regulations raised by objectors but these are not matter within my remit and there is no evidence from the Council that drainage or flooding is a main issue in the determination of this appeal.

Conclusions

23. The Framework provides that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and that 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.
24. The development is not inappropriate development in the Green Belt. It is therefore not necessary to consider whether very special circumstances exist.
25. The development accords with the development plan and there are no material considerations before me that indicate that the development should not be determined in accordance with the development plan.
26. I have taken into account the Planning Practice Guidance. I agree with the Council that conditions requiring appropriate landscaping, boundary treatment and materials would be reasonable and necessary to protect the character and appearance of the area. I also agree that a condition concerning approved plans is reasonable. In addition I consider it necessary to impose a condition to ensure that the development is not used for non- ancillary purposes.
27. For the reasons given above I conclude that the appeals should succeed. Planning permission will be granted. The appeals under ground (f) and (g) for Appeal A do not therefore need to be considered.

Formal Decisions

Appeal A

28. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out namely the erection of a building for purposes ancillary to the residential use of the main dwelling and decking on land at Wild Wood, 15 Green Court Road, Crockenhill, Swanley, Kent, BR8 8JG referred to in the notice subject to the following conditions:

- 1) within 2 months of the date of this decision full details of the materials for the decking/raised platform shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details;
- 2) within 2 months of the date of this decision full details of a soft landscaping scheme shall be submitted to and approved in writing by the local planning authority. The landscaping shall be carried out in accordance with the approved details within the next planting season following the approval of the landscaping scheme;
- 3) within 2 months of the date of this decision, details of the fence/wall/enclosure and gate to be installed between the flank elevation of the dwelling and the northern boundary (as shown on drawing 01 Rev B) shall be submitted to and approved in writing by the local planning authority. The details shall include the type of enclosure, its height and timescale for it being installed. The development shall be carried out in accordance with the approved details and maintained as such thereafter;
- 4) the development hereby permitted shall be carried out in accordance with the following approved plan – drawing 01 Rev B;
- 5) The development hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as 15 Green Court Road.

Appeal B

29. The appeal is allowed and planning permission is granted for raised decking (0.45m above ground level) and outbuilding to be used as a summer house at Wild Wood, 15 Green Court Road, Crockenhill, Swanley, Kent, BR8 8JG in accordance with the terms of the application, Ref, SE/18/01149/HOUSE dated 10 April 2018 , and subject to the following conditions:

- 1) within 2 months of the date of this decision full details of the materials for the decking/raised platform shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details;
- 2) within 2 months of the date of this decision full details of a soft landscaping scheme shall be submitted to and approved in writing by the local planning authority. The landscaping shall be carried out in accordance with the approved details within the next planting season following the approval of the landscaping scheme;

- 3) within 2 months of the date of this decision, details of the fence/wall/enclosure and gate to be installed between the flank elevation of the dwelling and the northern boundary (as shown on drawing 01 Rev B) shall be submitted to and approved in writing by the local planning authority. The details shall include the type of enclosure, its height and timescale for it being installed. The development shall be carried out in accordance with the approved details and maintained as such thereafter;
- 4) the development hereby permitted shall be carried out in accordance with the following approved plan – drawing 01 Rev B;
- 5) The development hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as 15 Green Court Road.

S. Prail

Inspector