
Appeal Decision

Site visit made on 28 May 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 08 August 2019

Appeal Ref: APP/R1845/W/19/3223931

Hobro Chalet, Hobro Lane, Wolverley DY11 5SZ

- 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 Mrs Patricia Payne against the decision of Wyre Forest District Council.
 - The application Ref 18/0566/FULL dated 30 August 2018 was refused by notice dated 24 October 2018.
 - The development proposed is replacement chalet and associated works including cellular mesh to driveway.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A revised National Planning Policy Framework (the Framework) was published in February 2019 after the issue of the Council's decision. However, as any policies that are material to this decision have not fundamentally changed in the Framework, I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.
3. For the sake of clarity, I have deleted the extra wording from the description of the application that does not describe the development.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development within the Green Belt;
 - The effect of the development on openness of the Green Belt and the purposes of including land within it;
 - The effect of the appeal proposal on the character and appearance of the area and
 - If it 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 the development.

5. The appeal site is a field off Hobro Lane which has a modest chalet located on the western part of the field with hedgerow and trees behind it on that boundary. The surrounding area is largely open countryside. There is a gated access from the road in the south east corner of this site.

Reasons

Whether Inappropriate Development in the Green Belt

6. The Framework identifies that the fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open. It states that inappropriate development is harmful and should not be approved except in very special circumstances.
7. Paragraph 145 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions. The appellant seeks to rely upon the exception contained in Paragraph 145 d) which refers to the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces.
8. Policy SAL.UP1 of the Site Allocations and Policies Local Plan Adopted July 2013 (the Local Plan) states that development within the Green Belt will not be permitted except in very special circumstances unless one of the listed exceptions applies. The exceptions include the replacement of a building, provided that the new building is in the same use and not materially larger than the building it replaces. As the policy mirrors Paragraph 145 d) of the Framework, I can therefore attach significant weight to it. Policy SAL.DPL2 of the Local Plan contains similar wording but for countryside development outside the Green Belt.
9. As the location of the proposed chalet would be very similar to the existing chalet and the increase in size would be a modest 30 square metres as compared to the existing 25 square metres, the new building would comply with the "not materially larger" element of the relevant exception.
10. However, the proposed use would be as a dwelling and the Council is of the view that the chalet has been abandoned. Abandonment describes circumstances in which rights to resume a use that may have been lawfully carried out in the past has been lost because of the cessation of that use. In *Hartley*¹, Lord Denning found that if a building or land remains "unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use has been abandoned then the Tribunal may hold it to have been abandoned."
11. In *Castell y Mynach*² the court established four criteria for assessing whether a use has been abandoned. These are (1) the physical condition of the property, (2) whether or not there has been any other use, (3) the intention of the parties and (4) the period of non-use.
12. In *Hughes*³, the Court of Appeal held on the authority of *Hartley*, that the test of the owner's intentions should be objective and not subjective. The intention

¹ *Hartley v HMHLG* (1970) 1 QB 413

² *The Trustees of Castell-y-Mynach Estate v Taff-Ely* (1985) JPL 40

³ *Hughes v SSETRE & South Holland DC* (2000) JPL 826

of the appellant although relevant could not be decisive because the test to be applied was the view of "a reasonable man with knowledge of all of the circumstances."

13. The physical condition of the chalet both outside and inside can be seen in photographs in the ecological report. The chalet is not watertight with a number of holes in the timber particularly where the floor meets the timber walls. The chalet has no gas or electricity or bathroom or kitchen facilities. The physical condition of the chalet is very poor.
14. The appellant indicates that whilst not having ever lived in the chalet, she always intended to live in it. No details of when the appellant purchased the chalet have been provided or details of any kind of maintenance work or repairs of having been carried out to the chalet. No Council tax is being paid and it is not known when Council tax was last paid. There is no documentary evidence in the form of statutory declarations or photographs to support any use since 1965 by any occupiers or family members.
15. It is agreed between the parties that the chalet has had no other use other than as residential and that the last permanent occupation of the chalet was in 1965. However, limited information is provided about the chalet's use since 1965 other than the design and access statement referring to the chalet being used as a weekend retreat during the 1980s and 1990s. The appellant states that the site continues to be used for occasional weekends. The Parish Council have commented that local residents indicate that the chalet has not been used as a holiday chalet or weekend retreat for over 30 years.
16. The appellant believes that minor repairs would bring the chalet back into use, and that the chalet has not been abandoned as the walls and roof covering are present and that the chalet is still used. However, from my site visit observations, the current condition of the chalet makes it difficult to envisage even occasional use.
17. With limited evidence before me of any permanent use after 1965 or holiday use beyond the 1990's, I consider it likely that the residential use has been abandoned. In order to fall within the relevant exception, the proposed use would need to be the same. With the residential use likely to have been abandoned, the proposed residential use would not be the same. I therefore find that the appeal proposal does not fall within the exception contained in paragraph 145 d) and would therefore be inappropriate development in the Green Belt.

Green Belt Openness and Purposes

18. The chalet element of the proposal would have a minimal impact upon the openness of the site as the slight change in location to allow more space between the chalet and a large tree would not be significant. However, the appeal proposal includes a track of around 50 metres long and 2.5 metres wide leading from the gated access in the south eastern corner of the appeal site across the field to the replacement chalet. Two car parking spaces would also be created just in front of the chalet. There is currently no evidence of access across to the chalet and no built development in the field apart from the chalet.

19. The appellant has referred to the use of cellular mesh for the track in the application description and on the proposed plan, but the Council has referred to a stone track. Although, mesh could be screened by grass, cars using the access and parked cars in the parking area would be visible and this use would alter the nature of the site and impact upon the existing openness of the site.
20. Whilst the overall effect would not be great, it would not preserve Green Belt openness and does not accord with the Green Belt purpose of safeguarding the countryside from encroachment as set out in the Framework.

Character and appearance

21. Any form of stone surface or hardstanding is likely to have a greater impact on the landscape. Although cellular mesh is proposed, the Council has, however, requested a condition that 5m of the access from the carriageway be in bound materials.
22. From the proposed plan, it is not clear where the boundary falls or how far into the appeal site that would be or how that would work with the cellular mesh. There is also limited information about the nature or frequency of the proposed use as the images of cellular mesh refer to occasional parking as the grass may not reappear through the mesh if use is extensive. The appellant refers to the reversibility of its effects but it would appear that the mesh is intended to be a permanent feature.
23. Accordingly, on the limited evidence before me, the appeal proposal would harm the character and appearance of the area. It would therefore not comply with Policy SAL.UP12 of the Local Plan which, amongst other things, states that replacement of a chalet will only be allowed where the development would not result in a reduction in the visual impact on the landscape. It would also not comply with Policy CP12 of the Wyre Forest District Council Core Strategy (2006-2026) Adopted December 2010 which, amongst other things, states that development must protect and where possible enhance the unique character of the landscape.

Other Considerations

24. The appeal proposal is said to be an opportunity to upgrade the basic two bedroom unit to a one bed unit with full bath and cooking facilities to a more general holiday let. The appellant refers to overnight tourists being a target market for this facility which has easy access to nearby attractions. However, whilst there may be policy support to support the local tourism industry, any proposal would still need to satisfy other policy requirements such as Green Belt and not causing adverse impacts on the surrounding environment. I therefore consider this factor to be of limited weight.
25. The appellant has referred to the economic and social benefits of the appeal proposal. Whilst tourism is to be encouraged generally, the addition of a single more energy efficient chalet would be of very modest benefit in economic and social terms. I attribute limited weight to these benefits.

Conclusion

26. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There would be loss of openness and substantial weight should

be given to any harm to the Green Belt. I have also found harm to the character and appearance of the area. The other considerations which arise do not clearly outweigh the totality of the harm. Consequently, very special circumstances do not exist and as such the proposed development would also conflict with Policy SAL.UP1 of the Local Plan.

27. For all the reasons given, I conclude that the appeal is dismissed.

E Griffin

INSPECTOR