



Appeal Decision

Site visit made on 11 August 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/T0355/W/19/3229741

Pondwood Farm, Pondwood Lane, White Waltham, Maidenhead SL6 3SS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Mick Holdaway against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/00356, dated 6 February 2019, was refused by notice dated 11 April 2019.
 - The development proposed is described on the application form as the 'retention of existing cabin for ancillary residential use for a period of three years'.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The application form sets out that the cabin, a substantial building of simple form set on concrete block piers fitted out to a domestic specification within the grounds of Pondwood Farmhouse, was established as it stands between 15 May 2017 and 2 October 2017. Permission is therefore sought retrospectively. The word 'retention' in the application form may suggest that the cabin has hitherto benefitted from planning permission, or from a certificate of lawfulness under section 191 or 192 of the Town and Country Planning Act 1990 as amended (the '1990 Act'). That is not the case.
3. Notwithstanding the planning history to the site, each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. Noting the emerging Borough Local Plan at examination, in this instance the development plan includes saved policies of the Council's Local Plan (adopted originally in July 1999, incorporating alterations in June 2003, the 'LP') and also of the Hurley and the Walthams Neighbourhood plan (made 12 December 2017, the 'NP'). I have also had regard to various relevant material considerations including the National Planning Policy Framework (updated 19 February 2019, 'NPPF') the Planning Practice Guidance ('PPG') and relevant case law.
4. There is reference to the appellant's willingness, albeit a less preferable option, to accept a condition which would seek the removal of the cabin after a three year period.¹ However, the PPG explains that 'a condition requiring the demolition after a stated period of a building that is clearly intended to be

¹ Appellant statement of case, paragraphs 4.31 to 4.32.

permanent is unlikely to pass the test of reasonableness [set via NPPF paragraph 55]'.² With regard to its scale, method of construction and finish, the cabin appears clearly intended to be permanent. Furthermore that does not appear to be the appellant's intention in applying for a temporary permission on a plain reading of the description of development and the case he has made at appeal. It is his contention that the use of the cabin as some form of ancillary accommodation would likely cease after a temporary period. Thereafter the cabin would be used squarely for purposes 'incidental' to Pondwood Farmhouse (noting the original internal arrangement set out on plan PF FP 002 v. 1.0).

5. Incidental is the term used in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the 'GPDO'), which allows for the provision of certain outbuildings without specific planning permission, subject to various requirements. The appellant has therefore made the case that, as the planning circumstances related to the use of the cabin will likely change in a particular way by the end of a three year period, a temporary permission in respect of use would be justified. I have approached the appeal in that context.

Planning context

6. Nevertheless there is some ambiguity in the evidence before me as to the originally intended, current and proposed future use of the cabin. That is important to settle as it is integral to the planning context in which the development should be assessed. The appellant explains that, by virtue of various personal circumstances, the cabin came to be occupied by members of his family and extended family 'not long' after its construction. There is no indication as to the duration for which the cabin was initially used for 'incidental' purposes.
7. Paragraph 4.29 of the appellant's appeal statement indicates that he has no intention of the cabin becoming an 'independent dwelling'. I do not doubt that, although circumstances may inevitably change over time. The current manner in which the cabin is occupied, however, is described by him as a 'full time annex' or 'ancillary dwelling'. That is of little help. It at once suggests a use connected to Pondwood Farmhouse, but one which is also not necessarily dependent upon it (and therefore a separate entity in its own right).³ By contrast the appellant explains that the cabin was originally intended to be incidental and to provide some entertaining space separate from the main dwelling.
8. Ancillary, accorded its ordinary meaning of providing support to, has developed a specific planning meaning in counterpoint to incidental. The commonly held distinction is that the former may incorporate some elements normally integral to a dwelling, such as bedrooms, whereas that would not be permissible in respect of the latter (which is more indicative of a secondary or subordinate use).⁴ The word ancillary features in model condition 47 in Appendix A to otherwise superseded Circular 11/95: Use of conditions in planning permission.

² Reference ID: 21a-014-20140306.

³ With reference to section 55(2B) of the 1990 Act

⁴ Noting the judgement handed down in *Rambridge v Secretary of State for the Environment and East Hertfordshire District Council* [1997] 74 P&CR.126

Such a condition may be justified where it is necessary to restrict the use or occupation of a building to prevent an independent dwelling from arising.

9. However the distinction between 'incidental' and 'ancillary' is not clear-cut. It may also principally turn on the internal layout of a building,⁵ subtle changes in how a space is used in practice, and the former may, as a generalisation, legitimately become the latter in time without amounting to an independent use.⁶ Consequently a condition requiring that an ancillary use cease after three years and give way to an incidental use would, in my view, be unenforceable (as well as in the face of reality here, as reasoned subsequently).
10. As set out above a condition requiring that a building be used for ancillary purposes may be appropriate in some instances. In that context I note that the description of development given in the application form is as ancillary.⁷ The Council have also acknowledged that, in practice and as occupied by members of the appellant's extended family, there would be some connection between the cabin and Farmhouse.⁸ They now accept that there are no other areas within the appellant's ownership that would be sequentially preferable with regard to risk of flooding.⁹ I also note that the cabin and Farmhouse fall within the same planning unit as shown on the plans.
11. However there comes a point where a condition requiring an ancillary, or incidental, use be maintained would conflict with the nature of development in actuality (and thereby likely be unreasonable and unenforceable). That is a matter of planning judgement forming the first main issue in this case.

Relevant policies and main issues

12. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. By consequence NPPF paragraph 145 explains that the construction of new buildings should be regarded as inappropriate in the Green Belt. Inappropriate development is, inherently, harmful to the openness of the Green Belt (an essential characteristic for which it is designated). Very special circumstances are necessary in order for that to be justified.
13. At a national level current Green Belt policy has clear continuity with previous iterations. In so far as relevant to the circumstances in this case, saved policy GB1 reflects a similar approach at a strategic level. Saved policy GB3 makes specific provision for new residential development in the Green Belt, criterion 3) iii) of which clarifies that the building of a separate detached building within the curtilage of an established dwelling will not be acceptable for occupation as a 'subordinate dwelling'.
14. The main issues here follow one after another. The first is whether or not the cabin is tantamount to an independent dwelling. If so, the second issue is whether or not that would represent inappropriate development in the Green

⁵ Which is not development within the terms of section 55(2) of the 1990 Act.

⁶ With regard to section 55(2)(f) of the 1990 Act.

⁷ With regard to section 75(2) of the 1990 Act.

⁸ Notwithstanding to references at paragraphs 6.6, 6.24 and 6.25 of the supporting officer report to the cabin as a dwelling.

⁹ NPPF paragraphs 157 and 158, thereby no longer seeking to support the second reason for refusal given in their decision notice of 11 April 2019, following the submission of a Flood Risk Assessment undertaken by UK Flood Risk Consultants dated 8 February 2019.

Belt. In the event that the proposal would be inappropriate development in the Green Belt, the third issue is whether or not it has been demonstrated any resultant harm would be clearly outweighed by other considerations.

Whether or not tantamount to an independent dwelling

15. As set out above the nature of the development has been described differently by both main parties. In my view a judgement as to whether or not the cabin is tantamount to an independent dwelling turns on three matters, its scale, its use, and whether it may reasonably be described as required for incidental or ancillary purposes in connection with the Farmhouse.
16. In respect of scale, the appellant contends that the proposal is consistent with the limitations of outbuildings permissible under Schedule 2, Part 1, Class E of the GPDO as permitted development. Such permitted development rights apply in the Green Belt, as opposed to in other landscape designations.¹⁰ It is common ground between the main parties that the ridgeline of the cabin is some 4.7 metres above ground level if that is measured to the base of the concrete piers upon which it sits. At face value that exceeds the maximum permissible height of an outbuilding as permitted development at 4 metres.¹¹
17. Nevertheless the appellant contends that the ground level was lowered by approximately 0.7 metres to allow for the cabin to be erected, and by consequence that its height should be assessed as 4 metres. However there is no robust evidence before me in that respect, such as photographs of the former state of the land or approval for engineering works, notwithstanding indications on the revised plans. It also appeared to me that the concrete piers of the cabin are set on ground which, broadly, is level to the nearest elevation of the Farmhouse and leads out more-or-less level with other elements of the grounds (in which there is established planting likely to have been in place long before mid-2017).
18. A small patch of ground by the north-eastern corner of the cabin is notably higher than elsewhere. The appellant explains that has been reinstated to around its original level. However that seems atypically high; although variable on occasion it is about three brick courses higher than the ground level of the verge immediately on the other side of the boundary wall flanking Pondwood Lane (markedly less than 0.7m). Such a level change would, moreover, have been unusual ground conditions upon which to construct a relatively modern brick wall. On the basis of the evidence before me I am not satisfied that the maximum height of the cabin should be considered as 4 metres, albeit I accept that it may not be fully 4.7 metres given some variance and alteration in ground levels.
19. Moreover the cabin is substantial. The officer report explains that it has a footprint of approximately 112 square metres ('sqm'). Numerically that appears broadly comparable with that of the Farmhouse rather than clearly subservient

¹⁰ There is no indication that permitted development rights have been withdrawn here, for example condition of a previous permission or via direction under Article 4 of the GPDO (which provides a mechanism for such on an area wide basis).

¹¹ Schedule 2, Part 1, Class E(E.1)(e)(i). The cabin also contains an area of raised decking which would be impermissible with the terms of (E.1)(h), albeit that is not integral to my reasoning (given the relative seclusion of the appeal site and little potential for adverse overlooking by the use thereof).

to it.¹² As currently arranged, an arrangement as set in paragraph 9 above which could readily be reverted to, the cabin contains a hallway, four bedrooms, a living/ dining area and a kitchen. Purely by way of illustration the minimum gross internal floor area for a four bedroom property set out in table 1 of the Government's Technical housing standards- nationally described space standards (published March 2015) is 90 sqm.

20. I am told that the cabin is presently occupied by the appellant's son, daughter in law, and three grandchildren. I understand several unfortunate events have transpired in respect of their health and wellbeing which rendered that arrangement a practical stop-gap. I sympathise with those circumstances, to which I will return. Nevertheless in practice the cabin is occupied on a semi-independent basis, being substantial in scale and fitted out with facilities necessary to accommodate day-to-day living.
21. I acknowledge that individuals are free to wander between the cabin and the farmhouse relatively close by. However, in the abstract, many individuals may walk to neighbouring properties which are in similar or closer proximity and which are neither within the same ownership nor otherwise functionally connected. Whilst the Farmhouse and cabin share the same access from Pondwood Lane, it is not uncommon for accesses from rural lanes to serve multiple properties. That is not determinative. Moreover, although I acknowledge this is not intended, independent access and a separate garden area could be provided by virtue of minimal development.¹³ Considered in an alternative sense, the cabin could, in my view, readily be occupied by individuals not within the appellant's extended family given the absence of a clear spatial or functional linkage with the farmhouse.
22. The cabin cannot therefore reasonably be said to be required for a purpose incidental or ancillary to the enjoyment of the dwellinghouse. In respect of 'incidental', that is necessary to accord with that which is permissible under GPDO Class E(a) and, in my view, is relevant also to determining whether the cabin amounts to an independent dwelling (relative to the appellant's fall-back position as to what may be achieved under permitted development). For the above reasons I therefore conclude the cabin is tantamount to an independent dwelling.

Whether or not inappropriate development

23. As set out above, the overarching position is that new buildings are inappropriate in the Green Belt. There are certain exceptions to that position set out in NPPF paragraph 145 and in paragraph 146 (with additional qualifiers in the case of the latter). The appellant contends that the cabin would not be inappropriate development by virtue of representing the type of development specified in NPPF paragraph 145 bullet g), namely limited infilling or redevelopment of previously developed land ('pdl'), albeit that the building would not replace an existing building. It has not been argued that other exemptions would apply here.¹⁴

¹² As illustrated on plan PF LOC 001 V2.

¹³ For example minor operations under Schedule 2, Part 2, Classes A and B of the GPDO as applicable.

¹⁴ The cabin does not relate to agriculture or forestry, provision of community facilities, the extension of an existing building or its replacement, limited infilling in a village, affordable housing for local community needs, or limited infilling or the partial or completed redevelopment of previously developed land.

24. That is with reference to case law reflecting that the current definition of pdl excludes only land in built-up areas such as residential gardens rather than in rural areas such as the appeal site (Dartford BC V SoS & Ors [2017] EWCA Civ. 141., 'Dartford'), and regarding the interaction of spatial and visual dimensions to openness.¹⁵ There is no dispute that the appeal site may be considered as pdl.¹⁶ I accept that any new development in the Green Belt will, by definition, have an effect on openness in a mathematical sense.
25. However that is not to say, as the appellant contends, that 'if the concept of openness were only to be considered on this basis, then most of the development described within the various exceptions set out in paragraph 145 of the NPPF would also automatically fail'. The examples defined in NPPF paragraph 145 are not inappropriate in the Green Belt and have been consciously justified as part of Green Belt policy as a whole (as opposed to inappropriate development).¹⁷ That position is reflected by the qualified support given in NPPF paragraph 146 to certain other types of development 'provided they preserve its [Green Belt] openness'.
26. NPPF paragraph 145, bullet g) has two unnumbered qualifiers, or limbs. The first limb is that limiting infilling or redevelopment of pdl is not inappropriate development in the Green Belt where that 'would not have a greater impact on the openness of the Green Belt than the existing development'. As a point of fact the building does not replace one previously in existence and I have found above that a building of this scale cannot reasonably be said to be required for purposes in connection with the Farmhouse. That renders the relevance of the Dartford judgement somewhat academic; the cabin inherently introduces substantial built development of approximately 112 sqm where none was previously present. Mathematically or theoretically that results in a 'greater impact' on openness within the terms of the first limb of NPPF paragraph 145, bullet g).
27. I acknowledge that Pondwood Lane is a no through-road along which relatively few properties are located. The topography here is also relatively flat, the appeal site enclosed by a brick wall flanking Pondwood Lane referred to above, and the grounds of Pondwood Farm contains some mature planting and other outbuildings. Those features, along with other buildings to the north-west of the Farmhouse, many of which appear to have agricultural origins in connection with the formerly more extensive holding of Pondwood Farm, serve to screen in part or whole views of the cabin and to limit its visual prominence in the landscape.
28. However I saw that the cabin is nevertheless visible from nearby vantage points, particularly to the south-east along Pondwood Lane. That is notably the case in respect of the upper elements of elevations, eaves and roof. The cabin is inevitably seen projecting beyond the farmhouse and now diversified collection of buildings of Pondwood Farm; existing outbuildings to the south-west provide little by way of contextual development in comparison. The cabin

¹⁵ And as otherwise set out in paragraph 4.13 of the appellant's statement of case, noting PPG Reference ID: 64-001-20190722.

¹⁶ Notwithstanding that the definition in the glossary to the NPPF sets out that 'it should not be assumed that the whole of the curtilage should be developed'.

¹⁷ As reflected in Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404.

is also apparent, albeit partially screened, from the access to Middle Lane Farm and from land around it which appeared to be in use in association with Pondwood Fisheries. At the time of my site visit I saw various vehicular movements along this stretch of Pondwood Lane, and although I was not able to discern any nearby public rights of way, the mixed use of the surrounding land will mean that the cabin is visible by individuals here from time-to-time. Inherently and visually the development proposed would reduce openness, albeit that there are factors that would mean the extent of harm in respect of the latter would be comparatively limited.¹⁸ In that context I conclude that the development would be inappropriate development.

Other considerations and planning balance

29. I have reasoned above that the development is inappropriate in the Green Belt, by definition harmful to it, and that some (albeit relatively limited) further harm would result to openness. I have had careful regard to the case made by the appellant regarding the situation of the present occupants of the cabin. Whilst the circumstances in the appeal to which the judgement in *South Bucks District Council & Anor v. Porter* [2004] UKHL 33 ('South Bucks') relates are context specific, personal circumstances may be material. That is the case here; those of the occupants of the cabin are integral to my assessment, with reference to relevant legislative provisions.¹⁹
30. Undoubtedly the cabin provides comfortable accommodation for members of the appellant's extended family who have recently experienced a number of challenges. It is also close to other members of the family who can lend support. I appreciate that dismissing this appeal may lead to some uncertainty or anxiety in that context, and I do not treat that lightly. However South Bucks pre-dated Planning Policy for Traveller Sites published in 2015 ('PPTS'). Paragraph 15 of PPTS sets out that 'subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances'. Whilst no arguments have been made in respect of traveller provision, that position is largely a statement of logic where planning relates principally to the public interest.²⁰
31. There is no robust evidence before me in respect of the current occupants' situation before coming to live in the cabin, or clear iteration of how alternative accommodation arrangements would be unworkable (although I appreciate the appellant has a large family and as such space at the Farmhouse is limited). Similarly there is no substantive evidence before me of the value of such a space to the wellbeing of its occupants, the duration for which that would likely be required, noting that the cabin has now existed for nearly two years, or of the endeavours that have been made to seek alternative accommodation.
32. Whilst I am sympathetic to the position the occupants find themselves in, there is no robust evidence before me to indicate that the cabin is the only, or preferential, means of meeting that need. Consequently, and as a result of the

¹⁸ That development, albeit as reasoned above not of this form, may be undertaken under GPDO Class E, and on account of the reasoning in paragraph 28.

¹⁹ Including with regard to the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, taking account of the best interests of children, and the provisions of the Equality Act 2010.

²⁰ The Government's consultation response preceding that change stated also, para 3.23 that 'this change applies equally to the settled and traveller communities'.

above, there is nothing before me to indicate that some form of suitable alternative accommodation would be unavailable or that refusal of permission would be unacceptably disadvantageous given the legal context to this decision.

33. If considered as for an independent dwelling, the development entails some benefits in respect of representing an addition to housing stock and as occupants bring trade to nearby services and facilities. However the benefits of a single new home are inevitably highly limited, particularly relative to Borough-wide pressures for growth. Moreover neither the support in the development plan, nor in the NPPF, for new housing in general terms is at the expense of ensuring that all is appropriately located and integrates suitably with its surroundings.
34. It has therefore not been demonstrated that the harm resulting from the scheme is clearly outweighed by other considerations. Whilst there is no substantive evidence before me in respect of whether or not the Council are able to demonstrate a five year land supply, with regard to NPPF paragraphs 67 and 73, Green Belt policy nevertheless provides a clear reason for refusal with reference to NPPF paragraph 11(d)(i). The development conflicts with the relevant provisions of LP policies GB1, GB3 and of the NPPF referenced in paragraphs 12 and 13 above, with the other material considerations in favour of the development insufficient to justify allowing the appeal.

Conclusion

35. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR