



Appeal Decision

Site visit made on 17 July 2019

by Martin H Seddon BSc MPhil DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2019

Appeal Ref: APP/C3620/D/19/3229382

Brackendene, Mark Oak Lane, Fetcham, KT22 9SL

- 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 & Mrs R Tholet against the decision of Mole Valley District Council.
 - The application Ref: MO/2019/0041/PLAH, dated 8 January 2019, was refused by notice dated 28 February 2019.
 - The development proposed is erection of a single storey replacement outbuilding following the demolition of the existing outbuilding (part retrospective), consisting of minor alterations to previously approved planning application reference MO/2018/1264.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The building subject to the appeal had been constructed prior to the application to the Council. The appellants' appeal statement advises that the application was for the following matters:
 - addition of internal walls within the building itself, and
 - proposed use being "broadly for ancillary accommodation" serving the main dwelling.
3. The appellants' appeal statement indicates that removal of the following conditions was sought "by way of a new consent":
 - Condition 2: the outbuilding hereby approved shall only be used as an art studio ancillary to the main dwelling and shall not be used for any other purpose;
 - Condition 3: no part of the outbuilding hereby permitted shall be used for habitable accommodation, and
 - Condition 4: within 2 months of the date of the decision notice the internal walls shall be removed so the outbuilding is completed in accordance with submitted drawing P18/30/S/110 to enable the use of the building as an art studio.

4. Although approval ref: MO/2018/1264 and its conditions is a material consideration, I have determined this appeal based upon the individual merits of the proposal, having regard to relevant development plan policies and all other material considerations.

Main Issues

5. The main issues are:

- whether the proposal is 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 and character and appearance of the rural landscape, and
- if the development 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.

Reasons

Whether inappropriate development

6. The site is within the Metropolitan Green Belt, outside any settlement boundary and within the open countryside. The national policy advice in the Framework has to be read together with the relevant development plan which in this case includes the Mole Valley Core Strategy and Mole Valley Local Plan. Core Strategy policy CS1 indicates that in the countryside development will be considered in the light of other policies within the Core Strategy and the provisions of PPG2 'Green Belts'. This policy is out of date insofar as advice on Green Belts in PPG2 has been replaced by the Green Belt objectives of the Framework.
7. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 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 resulting from the proposal, is clearly outweighed by other considerations.
8. The construction of new buildings is to be regarded as inappropriate development in the Green Belt, subject to certain exceptions, including, criterion (d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
9. The building subject to this appeal is similar to the building approved by the Council under planning reference MO/2018/1264, although it has additional internal walls. In that application, the Council concluded that the replacement building was not materially larger than the one it replaced and would be used as an art studio. An art studio was considered to be a use ancillary to the main house and so would comply with criterion (d) of the Framework. The building

is now proposed for use as residential accommodation “broadly” ancillary to the main dwelling. That would be a different use when compared with the permitted use as an art studio. On that basis the proposal conflicts with criterion (d) of the Framework and constitutes inappropriate development in the Green Belt.

Effect on openness, character and appearance

10. The building has no additional adverse impact of the openness of the Green Belt when compared with that approved for use as an art studio. However, an improved driveway and grounds have been created which has introduced a more domestic setting and change to the character and appearance of the countryside location. Such a change is contrary to Core Strategy policy CS 13 which requires that new development must respect and, where appropriate, enhance the character and distinctiveness of the landscape character area in which it is proposed.

Other Considerations

11. The appellants indicate in their statement of appeal that no part of the refused application applied for the outbuilding to be used as a separate dwelling. They refer to the historic use of the outbuilding as ancillary accommodation and submit evidence to support their case in the form of photographs, sales particulars and a statutory declaration.
12. The photographs in appendix A show the original building having a kitchenette and a stove, but little evidence of any unbroken residential or ancillary residential occupation over a ten year period to establish such a use. The sale particulars from Knight Frank LLP state that in the grounds there is secondary annex accommodation (comprising of bedroom, kitchen/living room and shower room) towards the rear of the garden, which can offer flexible use. However, the statement advises that: “You should not rely on statements by Knight Frank LLP in the particulars or by word of mouth or in writing (“information”) as being factually accurate about the property, its condition or its value”. The sale particulars may therefore only be accorded very limited weight.
13. The solemn declaration by Mr Crawford dated 20 November 2013 may be given significant weight. It indicates that the former outbuilding was only used as a self-contained office/gym ancillary to Brackendene, with no reference to ancillary use as habitable accommodation. I accept the Council’s view that it would have been reasonable to have a kitchenette and wood burning stove within a gym/office building and that would not confirm any ancillary residential use. I conclude that there is no compelling evidence before me to support the contention that the building was used as ancillary residential accommodation for the main house.
14. According to the Council the building is around 82 metres from the main house. It is approached by its own driveway, with gated access. Together with its grounds, parking space and internal facilities, and from its minimal physical and functional connections to the main dwelling, I consider that the proposed use would be tantamount to the creation of a new dwelling in the countryside. The Council has cited case law from *Uttlesford DC v SSE & White* [1992] JPL 171 and *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207 to support

the view that the building has its own curtilage and no functional tie with the main dwelling. The case law has not been challenged by the appellants.

15. From the above assessment, I find that the proposal would conflict with criteria in Local Plan policy RUD9 because it would be readily capable of conversion to separate residential accommodation. Its circumstances including the distance from the main dwelling and lack of a functional tie also indicate that it would not be for ancillary domestic purposes only. The proposal is outside any settlement boundary and within the open countryside and would also conflict with Core Strategy policy CS 2.

Conclusion

16. The appellants have not made reference to very special circumstances. Their submissions rely on considerations of the historic use of the original outbuilding and their view that the proposal would constitute habitable accommodation ancillary to the main house.
17. Substantial weight must be given to the harm to the Green Belt by reason of inappropriateness. I find that the harm by reason of inappropriateness, harm to the character and appearance of the countryside, and conflict with development plan policies is not clearly outweighed by these other considerations, so as to amount to the very special circumstances necessary to justify the development and the appeal should be dismissed.

Martin H Seddon

INSPECTOR