The Planning Inspectorate

Appeal Decision

Site visit made on 17 September 2019

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2019

Appeal Ref: APP/W0530/W/19/3224319
40 Oakington Road, Dry Drayton, Cambridge, Cambridgeshire CB23 8DD

- 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 Patel against the decision of South Cambridgeshire District Council.
- The application Ref S/4592/18/FL, dated 14 December 2018, was refused by notice dated 7 February 2019.
- The development is change of use from agricultural to garden land.

Decision

1. The appeal is dismissed.

Procedural Matter

2. It is clear from the evidence provided and my site visit that the change of use from agricultural to garden land has already taken place and I have considered the appeal on this basis accordingly.

Main Issues

3. The main issues are:

   (i) whether the change of use would constitute inappropriate development and the effect of the development on the openness of the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;

   (ii) the effect of the development on the character and appearance of the area; and

   (iii) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the appeal scheme.

Reasons

4. The appeal site relates to an open parcel of land used as a garden area to the rear of 40 Oakington Road (No.40), a two-storey detached dwelling on the edge of the village of Dry Drayton. The countryside surrounding the village lies within the Cambridge Green Belt. The existing dwelling at No. 40, together with

its associated approved garden area immediately to the north-east of the property, lie within the Development Framework Boundary for the village.

5. The appeal scheme relates to a much larger curtilage extending eastwards and southward beyond the original small curtilage. The appeal site consists of a small blocked paved area, lawn with flower beds and a shed immediately adjacent to the existing dwellinghouse, together with a larger area of mowed lawn interspersed with trees and shrubs. The extended area is enclosed by a mix of close boarded and chain linked fencing and mature landscaping.

Whether inappropriate development in the Green Belt

6. The appeal site is within the Green Belt and the National Planning Policy Framework 2019 (the Framework) states at paragraph 143 that inappropriate development in the Green Belt is harmful by definition and should not be approved except in very special circumstances.

7. Policy NH/8 of the South Cambridgeshire Local Plan September 2018 (LP) sets out the Green Belt Policy for the plan area. The policy, amongst other things, states any development proposals within the Green Belt must be located and designed so that they do not have an adverse effect on the rural character and openness of the Green Belt.

8. Paragraph 146 of the Framework states that certain other forms of development, such as material changes of use of land (such as change of use for outdoor recreation), are not inappropriate in the Green Belt provided they would preserve its openness and not conflict with the purposes of including land within it. The change of use of land to garden land is not specifically mentioned as an exception, so on the basis that paragraph 146 is a closed list as established by case law[1], such a change of use would be inappropriate.

9. Given this situation and in the absence of any convincing evidence to the contrary, I consider that the appeal scheme does not qualify under this exception. Consequently, the change of use constitutes inappropriate development in the Green Belt that is, by definition, harmful to the Green Belt and should not be permitted except in very special circumstances. It conflicts with the aims of the Framework and LP Policy NH/8. In accordance with the Framework, I attach substantial weight to the harm arising due to the inappropriate nature of the development in this location.

Openness of the Green Belt

10. The fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open. Paragraph 133 of the Framework advises that openness and their permanence are essential characteristics of Green Belts.

11. The area of land associated with the extended garden is not small in scale and involves a significantly greater use of Green Belt land than the original small curtilage. The enclosure of what was previously open farmland some time ago has had some impact on openness. There is also a perception of encroachment into the countryside from the enclosure of the land. Moreover, it seems likely that the residential character of the use would become more firmly established with the passage of time. This might, for example, include further domestic paraphernalia, garden outbuildings and structures which would all have some

[1] Fordent Holdings Ltd v SSCLG & Cheshire West and Chester Council [2013]

impact on openness and increase the sense of encroachment of residential development into the Green Belt.

12. Although permitted development rights could be removed to prevent further buildings on the land, other domestication of the land could take place which would not represent development and could not be reasonably controlled by a planning condition once a garden use had been established. The extent that the land is visible from the public domain is not a significant factor in considering impacts on Green Belt openness and encroachment.

13. Consequently, I conclude that the appeal scheme results in harm to the openness of the Green Belt and as such conflicts with the aims of the Framework and LP Policy NH/8 which seek to preserve the openness of the Green Belt. I give substantial weight to that harm.

Character and appearance

14. The appeal site is outside the Development Framework Boundary and in an area designated, in policy terms, as countryside. LP Policy S/7 permits only certain categories of development, including those with an essential need in agriculture or forestry and other uses which need to be located in the countryside. The appeal scheme does not fall within any of the categories of development resulting in a conflict with the policy.

15. The appeal site is located immediately adjacent to the dwelling and garden of No. 40 and the residential properties along Oakington Road that forms the existing edge of the village. Where garden areas exist behind the adjacent properties, they are generally smaller in scale than the appeal scheme and clearly subsidiary. Aside from the residential properties immediately to the north, north-west and south of the site, the appeal site is surrounded by open countryside, which gives the area an open and rural character and appearance.

16. A main objective of the Framework is to take into account the character of different areas, recognising the intrinsic character and beauty of the countryside. It is clear from the evidence and from my observations during my site visit that, given the enclosed nature and the topography of the site and immediate surroundings, the appeal site would not be highly visible in the wider landscape. Nonetheless, on a more local level, given the scale of the extended garden area, it represents a significant enclosure of the land on the village edge and a garden area out of proportion with the house its serves.

17. The consequential harm would not in my view be sufficiently resolved by the limited effect of the change of use of the land on the street scene. Whilst I recognise that the boundary treatment and vegetation provide some visual containment, the degree of visibility will vary according to the seasons. The appeal site can be viewed from the rear of the surrounding properties and a public footpath running along the southern boundary of the site. I therefore consider that the change of use to residential garden and the enclosure of the land harms the open nature of the site which contributes to the character and appearance of the area.

18. It is evident from the information provided that the appellants see the land as having no useful purpose other than as extra recreation space. The appellants consider that the use would be low key with little impact on the surroundings. However, if the appeal were allowed, planning permission would run with the

land. The land falls within the defined countryside outside the Development Framework Boundary, which the national and local plan policies seek to protect from inappropriate development.

19. Moreover, it is evident that the current use as a residential garden has introduced a domestic formality into the countryside location. The land, even with the low-level residential use evident during my site visit, does not reflect the less formally maintained adjacent fields and countryside. The introduction of additional domestic paraphernalia over time would add further to the incongruity of the use against the appearance of the adjacent fields and countryside. As such, I consider the change of use does adversely harm rather than positively contribute to the area's open and rural character and appearance.

20. Consequently, I conclude that the development has a harmful effect on the character and appearance of the area. The development conflicts with LP Policy NH/8 that, amongst other things, states any developments within the Green Belt must be located and designed so that they do not have an adverse effect on the rural character of the Green Belt. It also conflict with LP Policy S/7 for the reasons set out above.

Other Matters

21. I note the appellants comments regarding the extensive planning history and that the land has not been in active agricultural use for some time. However, it is not for me, under a Section 78 Appeal to determine the lawful use of the land. To that end it is open to the appellants to apply for a determination under section 191/192 of the Town and Country Planning Act 1990.

22. I have considered the appellants comments regarding the existing rear garden and the close proximity of the Green Belt designation to the rear wall of the existing property. Whilst this maybe so, this does not set a precedent for such an inappropriate development in this location and as such, is a matter to which I can attach only limited weight in making this decision.

23. I have noted the appellants comments regarding the Green Belt boundary and the approach taken to the delineation of the Development Framework Boundary for the village being arbitrarily drawn. However, the Green Belt and the Development Framework Boundaries are determined through plan-making process and are not matters for my consideration under this appeal. As such these are not material considerations to which I can attach significant weight.

24. I have considered the main parties arguments on whether or not the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission on these grounds in this case. I also note the appellants comments regarding the lack of formal objections from third parties to the appeal scheme. Whilst this maybe so, this does not preclude the proper planning assessment of the impact of the development on the area and is not a determinative factor on its own. I therefore accord these matters limited weight.

Very Special Circumstances

25. I have concluded that the change of use constitutes inappropriate development and therefore, by definition, is harmful to the Green Belt. I have also concluded that the development harms the openness of the Green Belt. Paragraph 144 of the Framework states that substantial weight should be given to any harm to the Green Belt. I have concluded the development causes harm to the character and appearance of the area to which I attach significant weight.

26. Having considered all of the matters raised in support of the development, I conclude that, collectively, they do not outweigh the totality of the harm I have identified in relation to the Green Belt. I am not satisfied that any material considerations have been put forward of sufficient weight to outweigh the very strong public interest in protecting the Green Belt from inappropriate development. Accordingly, very special circumstances do not exist and the development is contrary to LP Policy NH/8 and the Framework.

Conclusion

27. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR