



Appeal Decision

Site visit made on 7 October 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2019

Appeal Ref: APP/B1550/W/19/3233231

Land south side of, Ethel Road, Rayleigh, Essex SS6 8XH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs R Brooks against the decision of Rochford District Council.
 - The application Ref 18/00965/FUL, dated 12 October 2018, was approved on 16 January 2019 and planning permission was granted subject to a condition.
 - The development permitted is described as 'Erection of building for use as overnight accommodation'.
 - The condition in dispute is No 1 which states that: *The building hereby permitted shall only be used for leisure use and not for use as a separate dwelling.*
 - The reason given for the condition is: *This building is located within the Green Belt and is only considered acceptable development due to the history of the former building on this site which demonstrates a lawful use for leisure. Use of this building as a separate dwelling would be considered unacceptable development within the Green Belt contrary to policy GB1 of the Core Strategy, Policy DM10 of the Development Management Plan and the NPPF. In addition, the proposal has not been assessed as a separate dwelling whereby policies around garden sizes, parking and technical housing standards etc. would be applied. The proposal would not meet the technical housing standard sizing requirement for a 2 bedroomed dwelling. The proposal has the potential to be contrary to policy DM1 and DM3 of the Development Management Plan 2014 without such condition in place to prevent its conversion to a separate residential dwelling.*
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Decision

1. The appeal is allowed and planning permission Ref. 18/00965, dated 16 January 2019, varied by deleting Condition 1.

Main Issues

2. The main issues in this appeal are whether the appeal scheme, without the disputed condition imposed: 1) Amounts to inappropriate development in the Green Belt; and 2) Provides adequate living conditions.

Reasons

Whether the proposal amounts to inappropriate development in the Green Belt

3. During my site visit I observed that the development has taken place and encompasses a detached building with two bedrooms, a bathroom and a living/kitchen area. It is connected to services and has the appearance of a small dwelling house. The building is located within a paddock used for grazing and keeping horses and is accessed from a hard standing used by Mr Brooks to otherwise park vehicles relating to his business.

4. The reason for the disputed conditions refers to Policy GB1 of the CS¹ and Policy DM10 of the DMP². Policy GB1 sets out a broad strategy for development in the Green Belt but does not set out specific criteria to assess whether a proposal would be inappropriate development in the Green Belt. Policy DM10 indicates circumstances when the redevelopment of previously developed land will be permitted in the Green Belt. Neither policy reflects the wording in Paragraph 145 of the National Planning Policy Framework (the 'Framework'). As the scheme is for a replacement building, Paragraph 145 d) of the Framework is instructive in ascertaining whether the proposal would amount to inappropriate development.
5. Paragraph 145 d) states that a replacement building in the Green Belt would not be inappropriate development provided the new building is in the same use and not materially larger than the one it replaces. From the evidence before me, I concur with the Council and the appellants that the existing building is not materially larger than the one it replaced. Accordingly, if the use of the existing building is the same as the one it replaced then the proposal would not be inappropriate development.
6. The statutory declaration of Mr Brooks suggests that the previous building was a chicken shed converted for habitable purposes some time in 1974, with a toilet, kitchen and day/bed room provided. It was then occupied by a Mr Messenger between 1974 and 1997 as his sole dwelling in conjunction with an accompanying caravan and not for ancillary purposes connected to stables. The presence in photographs of a TV aerial, letter box and bins are indicative of a residential use. However, the same photographs of the building demonstrate that it retained the external appearance of a shed and only had one window. It would have been very difficult to dwell in such a structure, which appears in the photographs to be very rudimentary. That said, the previous building had all the accommodation available to function as a dwelling regardless of whether a caravan was present. The building was apparently occupied continuously by Mr Messenger for a period of around twenty-three years.
7. Considering the foregoing, it is therefore inaccurate of the Council to suggest there is no 'proof' the building was used as a dwelling. The point is whether the statutory declaration is accurate on the balance of probabilities. In this respect, there is no contradictory evidence before me. In fact, it is stated in the Officer's delegated report that a recent enforcement investigation has confirmed that the timber building and caravan were used for a primary residential purpose, which in my view is tantamount to a dwelling, by a previous owner (Mr Messenger) between 1973 and 1997. Such a period of continuous use may have been enough to establish immunity from enforcement action. The Officer also suggested that a Lawful Development Certificate would have been granted for use of the building for overnight accommodation if sought. However, there is no clear distinction between Mr Messenger's historic use of the building as primary residential accommodation and overnight accommodation. Thus, the structure was probably a lawful dwelling in 1997.
8. Mrs Lee purchased the appeal site from Mr Messenger in 1997. The statutory declaration explains that she did not reside permanently in the former chicken shed as she lived locally in Rayleigh. The Planning Support Statement explains

¹ Rochford District Council – Local Development Framework Core Strategy 2011

² Rochford District Council Local Development Framework Development Management Plan 2014

- that her use of the previous building was 'mostly in conjunction with the care and enjoyment of her horses'.
9. However, the statutory declaration indicates that Mrs Lee apparently used the previous building as somewhere to stay from time to time for short periods, mainly on weekends. She did not use the caravan. The inference being that this amounted to occasional overnight stays. I have no reasons to doubt this. Such stays can reasonably be considered a continuation of the use of the building as a dwelling, albeit at a much-reduced intensity. The appellant draws a useful parallel with a holiday home, which may not be occupied continuously but is nevertheless still a dwelling.
 10. The appellants purchased the appeal site in 2009 jointly with Mr Brook's parents. They have a separate house nearby and Mr Brook's parents live next door to the appeal site. The statutory declaration explains that the previous building was visited almost daily due to the proximity of the appellants' business, their horses and Mr Brook's parents. There is no contradictory evidence. It states that the building was used in the same manner as Mrs Lee, but more regularly. The building was used as a second/holiday home for overnight stays, weekends away and sleep overs by the appellants' children. The Planning Support Statement submitted with the application explains that the building was used for 'occasional overnight purposes' and such occupation was 'mostly leisure related'.
 11. This reference to leisure in the Planning Support Statement has justifiably resulted in some confusion as the Council has taken the view that the previous building was used for leisure purposes ancillary to the wider equine use. 'Leisure' in this context need not mean a use falling within Class D2 of the Use Classes Order. Instead, a leisure use can be a use of land for pleasure and enjoyment during an owner's leisure time, this can be a *sui generis* use. Such a leisure use can include family gatherings, visits for relaxation and occasional overnight stays and sleep overs. This seems to be what the appellants used the previous building for and how they have been using the existing building.
 12. However, the Council have erred in principally considering the appellants' use of the appeal site separately to the historic use, which resulted in it probably becoming a dwelling during the period of Mr Messengers ownership and occupation. The intensification of this residential use fell during Mrs Lee's ownership and picked up during the appellants', but the evidence before me does not indicate the residential use was ever discontinued. Thus, the appellants' leisure activities have taken place at what is tantamount to their second or holiday home.
 13. I therefore favour the appellant's argument that the appeal scheme is a replacement dwelling and thus in the same use as the building it has replaced. For this reason, and because the new dwelling is not materially larger than the one it replaced, it is not inappropriate development. Accordingly, it is unnecessary to impose Condition 1 in order to prevent inappropriate development occurring. In these circumstances, there is no need to consider the impact upon the openness of the Green Belt.

Whether the appeal building, without the disputed condition imposed, provides adequate living conditions

14. The appeal drawings do not define a residential curtilage around the existing dwelling, and I observed that it sits within a paddock. Accordingly, there is no discernible residential curtilage and therefore the dwelling has no area for parking and no garden/outdoor amenity space. The latter point resulting in inadequate living conditions. Thus, the proposal is at odds with Policies DM1 and DM3 which state that a proposal should be assessed with reference to the impact on residential amenity and that adequate parking should be provided.
15. However, the previous dwelling at the appeal site would not have adhered to Policies DM1 and DM3 of the DMP, as the aerial photographs suggest it had no garden or dedicated parking area. The proposal in this respect retains the status quo. This suggests the application should be considered other than in accordance with the development plan.
16. The dwelling does not adhere to the Nationally Described Space Standards (NDSS) for a two-bedroom home, but I have not been directed to a development plan policy requiring adherence to the NDSS. The Planning Practice Guide³ states that where a local planning authority wishes to require an internal space standard, they should only do so by reference in their Local Plan. Accordingly, the failure to adhere to the NDSS is not determinative, although material. Notwithstanding this, the existing building is larger than the previous one, of a better construction and properly lit by natural light. This provides a notable betterment, which outweighs the modest floor area.
17. Considering the foregoing, Condition 1 is not necessary to make the development acceptable because the proposal either retains the status quo in respect of parking and living conditions or provides some improvement (to the size of the accommodation and the extent of natural light). Thus, there is no need to prevent permanent occupation of the dwelling, the living conditions of which would not be worse than what proceeded it.

Conclusion

18. For the reasons given above I conclude that Condition 1 is not necessary and therefore the appeal should be allowed, and Condition 1 deleted.

Graham Chamberlain

INSPECTOR

³ Paragraph: 018 Reference ID: 56-018-20150327