



Appeal Decision

Site visit made on 2 December 2019 by Darren Ellis MPlan

Decision by V Lucas LLB (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2020

Appeal Ref: APP/R1010/D/19/3238421

37 Low Common, Barlborough, S21 3WG

- 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 Craig Brownell against the decision of Bolsover District Council.
 - The application Ref 19/00411/FUL, dated 15 July 2019, was refused by notice dated 5 September 2019.
 - The development proposed is a tree house together with a pergola.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. The tree house that forms part of this appeal has already been constructed. I have dealt with the appeal on that basis.
4. The description of the development on the application form referred to the retention of the tree house. The 'retention of' is not a form of development, and consequently I have amended the description of the development in the heading above to "a tree house together with a pergola."

Main Issues

5. The appeal site is within the Green Belt. As such the main issues are:
 - whether the appeal scheme would be inappropriate development for the purposes of development plan policy and the National Planning Policy Framework;
 - the effect of the scheme on the openness of the Green Belt;
 - if the scheme would be 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 it; and
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- the effect of the scheme on the living conditions of the occupiers of the neighbouring property, with regards to privacy and noise.

Reasons for the Recommendation

Whether the appeal scheme would be inappropriate development

6. The appeal property is a semi-detached property within the Green Belt. There are existing outbuildings and a high-level platform in the rear garden. The appeal scheme is a tree house that has replaced a previous tree house that was granted planning permission¹ in 2015, and for the construction of a pergola that would be sited adjacent to the existing games room.
7. Policy GEN9 of the Bolsover Local Plan 2000 (LP) sets out where development could be acceptable in the Green Belt. While the LP predates the National Planning Policy Framework (the Framework), policy GEN9 is broadly aligned with the aims of the relevant paragraphs in the Framework on development in the Green Belt.
8. Policy GEN9 and the Framework both state that new buildings in the Green Belt are inappropriate except in certain circumstances that are set out in the policy and in paragraphs 145 and 146 of the Framework. There is no exception specifically relating to domestic outbuildings.
9. One such exception is for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. The new tree house has replaced a previous tree house and has the same use as the previous structure. The new tree house is of a larger size, with a higher ridge to the roof and the walls moved outwards to incorporate the former walkways around two sides of the previous tree house, and also includes a dormer window to the northern roof slope. While the Framework provides no definition of the term 'materially larger', due to the scale of the increase in size I consider the new tree house to be materially larger than the previous tree house. As such, the new tree house does not meet the exception for a replacement building, and consequently the tree house is deemed to be inappropriate development in the Green Belt.
10. It is argued that the proposed pergola would constitute an extension to the dwelling, and as such would meet the exception that would allow the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. However, given the distance of the proposed pergola from the main dwelling and the lack of integration with the existing games room, the pergola would not reasonably constitute an extension to the dwelling or outbuilding and would instead be deemed a new building. The pergola would not meet any of the exceptions set out in policy GEN9 or the Framework, and consequently the construction of a new building is also inappropriate development in the Green Belt.
11. The scheme would therefore be inappropriate development which is, by definition, harmful to the Green Belt. As such the appeal scheme conflicts with Policy GEN2, which requires developments to not cause any material harm to the local environment, and Policy GEN9 of the LP, and paragraphs 145 and 146 of the Framework.

¹ Planning application ref. 14/00495/FUL

Openness

12. Openness is an essential characteristic of the Green Belt, and openness has both a visual and spatial dimension. As a result of the elevated garden and the high-level position of the tree house, during my site visit I could observe the tree house at distance from Sheffield Road to the north and Barbers Row to the west. Whilst I acknowledge that the building is of a limited size, it is larger than the previous tree house and in terms of its spatial and visual impact the structure causes increased harm to the openness of the Green Belt.
13. I acknowledge that the hedges and landscaping would provide screening of the tree house at certain times of the year, however this screening would not be permanent as was apparent during my visit. Furthermore, landscaping could be cut down in size, removed completely or die off at any time, which would further reduce any screening of the appeal scheme. A condition requiring the hedges to be maintained at a specific height would not be reasonable or enforceable for the same reasons. Consequently, the screening provided by the landscaping does not mitigate against the harm caused to the openness of the Green Belt.
14. Whilst the proposed pergola would not be readily visible from the same distances as the tree house, the pergola would be a three-dimensional structure and as such would cause a reduction in the spatial aspect of the openness of the Green Belt. Whilst I note that the outbuilding would be positioned adjacent to the existing games room, it would nevertheless be sited on an area of land that has not been developed. As such the pergola would contribute, in addition to the existing outbuildings, to the cumulative reduction in the visual openness of the Green Belt. Given the relatively small scale of the building, the loss of openness would cause limited harm to the openness of the Green Belt considered as a whole.
15. Overall, the appeal scheme would cause limited harm to the openness of the Green Belt. Substantial weight is given to this harm in accordance with paragraph 144 of the Framework, and is in addition to the harm caused by reason of its inappropriateness.

Other Considerations

16. The appellant considers that the proposed pergola would accord with the requirements of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) in terms of size if it were to be located further from the boundary of the property. This matter is not for me to determine in the context of a s78 appeal although I acknowledge that it is possible in certain circumstances for outbuildings to be constructed within the Green Belt without the need for planning permission. However, no details have been submitted of any proposed siting for a pergola that could be erected under permitted development. Accordingly, the fall-back position is afforded moderate weight in support of the scheme.

Effect on the occupiers of the neighbouring property

17. The new tree house has four obscure-glazed windows to the west elevation which ensures that no overlooking of the neighbouring property occurs from these windows. The steps and platform outside the door to the tree house provides the opportunity for overlooking, however the previous tree house had

an external walkway along the northern and western sides that allowed wide views of the neighbouring property. Consequently, the new tree house causes no greater loss of privacy compared to the previous tree house.

18. The use of the tree house would result in some noise and disturbance, although this would not be significantly more or less than any noise from the use of the previous tree house. Similarly, any noise from the use of the area in and around the proposed pergola would not be significantly greater than noise that results from the use of the existing garden.
19. The pergola would be located adjacent to the boundary with the neighbouring property and would be open on the side elevation that faces towards the rear garden of the neighbouring property. While this would lead to overlooking when the pergola is being used, the overlooking would not be significantly greater than the existing situation.
20. The pergola would be at an elevated position in relation to the neighbouring land, however it would be partially screened by an adjacent outbuilding in the neighbours' garden and would be a sufficient distance from the house to prevent any significant overbearing impact or over-dominance. Overall, for these reasons this element of the scheme would not cause harm to the living conditions of the occupiers of the neighbouring property.
21. Accordingly, I conclude that the appeal scheme would not be harmful to the living conditions of neighbouring occupants, with particular regard to privacy and noise. The scheme would therefore not conflict with policy GEN2 of the LP with regard to the living conditions of adjoining and nearby properties.

Planning Balance and Conclusion

22. The appeal scheme constitutes inappropriate development in the Green Belt. In addition, the scheme causes harm to the openness of the Green Belt. The Framework establishes that substantial weight should be given to any harm to the Green Belt.
23. The scheme would not cause harm to the living conditions of the occupiers of the neighbouring property, and would not conflict with policy GEN2 in this respect, however this does not mitigate against the harm identified above.
24. The Framework states that development should not be approved unless the harm to the Green Belt is clearly outweighed by other considerations. Moderate weight is attached to the other considerations that are raised by the appellant, and subsequently they do not clearly outweigh the totality of the harm I have identified, harm which carries substantial weight. Consequently, very special circumstances do not exist.
25. As such, the appeal scheme is contrary to policies GEN2, which requires development to cause no material harm to the local environment unless outweighed by the benefits of the scheme, GEN9 of the LP, and paragraphs 143-146 of the Framework. Therefore, for the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

D Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

26. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

V Lucas

INSPECTOR