
Appeal Decision

Site visit made on 7 January 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 18th February 2020

Appeal Ref: APP/G2245/W/19/3235751

Farm Cottage, Oakdale Lane, Crockham Hill TN8 6RL

- 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 Michael Smart against the decision of Sevenoaks District Council.
 - The application Ref 19/01366/FUL, dated 7 May 2019, was refused by notice dated 17 July 2019.
 - The development proposed is retention of curtilage outbuilding, curtilage extension and construct outdoor swimming pool.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description above is taken from the application form. It includes reference to extension of the curtilage of the dwelling, however 'curtilage' is not a use of land in planning terms. From the evidence before me it is apparent the appeal includes the change of use of an area of field to garden for ancillary residential use associated with Farm Cottage. That is how the Council considered the proposal and the basis on which I have dealt with this appeal.
3. At the time of my site visit I saw that the outbuilding had been erected. The appellant confirms that the change of use has already occurred and I observed at my site visit that the area in question appeared to have been incorporated into the garden and was separated from the adjoining field by a fence. Therefore, I have determined the appeal on the basis that these aspects of development have already occurred. The swimming pool and associated engineering works have not commenced.
4. The appellant seeks to withdraw the proposed swimming pool and associated works from the appeal proposal. The Procedural Guide¹ sets out in paragraph M.2.1 that, 'If an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'. However, the proposed swimming pool and associated works are clearly severable from the remainder of the scheme, as evidenced by the fact that the change of use has occurred without these works commencing. Therefore, although the proposed amendment would be a material alteration to the nature of the appeal, it would reduce the extent of

¹ Procedural Guide: Planning appeals – England, January 2020

what is proposed. In these circumstances I do not consider that interested parties would be prejudiced by this amendment. Accordingly, I have decided the appeal on the basis of the change of use and outbuilding only.

Application for costs

5. An application for costs was made by Mr Michael Smart against Sevenoaks District Council. This application is the subject of a separate decision.

Main Issues

6. The main issues are:
 - i) whether the proposals would be inappropriate development in the Green Belt having regard to national and local policies;
 - ii) the effect of the proposals on the openness of the Green Belt and the purposes of including land within it; and
 - iii) whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal.

Reasons

Whether inappropriate development, openness and purposes

7. The National Planning Policy Framework (the Framework) attaches great importance to Green Belts. Paragraph 143 sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 states that substantial weight must be given to any harm to the Green Belt.
8. It has been established that when applying the concept of openness to the particular facts of a case, a number of factors are capable of being relevant, and that openness might have a spatial as well as a visual aspect. The Supreme Court has recently held that a consideration of openness in any given case is a matter for the decision maker and may or may not include a consideration of the visual aspect of openness. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. For the purposes of this appeal, I have considered both the visual and spatial aspects of openness.
9. Farm Cottage is located at the end of a lane on the outskirts of a small village. Other than one neighbour, Stubblefield, it is surrounded by open countryside and there is little other development visible in the vicinity. Land levels drop away from the dwelling, giving extensive views over the fields and woodland beyond.
10. Framework Paragraph 145 states that new buildings are inappropriate in the Green Belt with some exceptions. These exceptions include extensions but not residential outbuildings. However, Policy GB3 of the Allocations and Development Management Plan 2015 (ADMP) specifically allows for residential outbuildings in the Green Belt in certain circumstances. Under that Policy, residential outbuildings within 5 metres of the dwelling are to be treated as

- extensions under ADMP Policy GB1. Those more than 5m away, as in this case, are subject to other criteria.
11. The outbuilding is a small domestic shed, dark in colour and set partially into a hedge. As such, it is ancillary to the existing dwelling in its design, as well as in its proposed function as a plant room. Irrespective of whether it is within the original garden, the outbuilding is clearly visible from the garden and driveway despite the shrubs in front. It is seen at the end of a line of outbuildings stretching away from the dwelling. Therefore, it extends built form further from the dwelling than previously.
 12. Seen in isolation the outbuilding is small, and even in combination with the other outbuildings is not disproportionately or excessively bulky in relation to the dwelling. Together with the other outbuildings however, it results in a degree of visual intrusion into what is otherwise a relatively undeveloped area. The outbuilding has thus had a slight, but nonetheless material, harmful impact on the openness of the Green Belt both visually and spatially. It therefore conflicts with ADMP Policy GB3.
 13. While the existing evergreen planting will grow, it would not screen the end elevation of the outbuilding. Furthermore, tall evergreen shrubs in this location a few metres out from the field hedge would appear somewhat artificial and as such would draw attention to the building behind. Consequently, the shrubs themselves would harm openness and would not satisfactorily mitigate the impact of the outbuilding.
 14. The appellant contends that the outbuilding should be considered as an extension under Framework paragraph 145c). There is no definition of extension in the Framework. Although it has been held that in some cases detached buildings can be considered as part of the dwelling, it is a matter of fact and degree in every case². As the outbuilding is approximately 25 metres from the dwelling it is not an extension as defined by the development plan. Given this considerable physical separation and the presence of intervening outbuildings I find that although the outbuilding is to be used for domestic purposes it is not part of the dwelling. It is not therefore an exception under Framework paragraph 145c) and consequently is inappropriate development in the Green Belt.
 15. Turning now to the change of use, I have not been directed to any development plan policy relating to the change of use of land to garden in the Green Belt. The Council's 'Development in the Green Belt' Supplementary Planning Document 2015 (SPD) sets out that such development can detrimentally impact on the openness of the Green Belt, cumulatively leading to suburbanisation and urban sprawl. For these reasons, the SPD states that garden extensions in the Green Belt are considered inappropriate development. The SPD predates the publication of the revised Framework however, and is no longer wholly consistent with it. Therefore, I cannot accord it full weight in this appeal.
 16. Framework paragraph 146 e) introduced the exception that material changes in the use of land are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The Council suggests that the inclusion of engineering operations for the

² Sevenoaks District Council v SSE and Dawe [1997]

swimming pool within the area of new garden excludes it from this definition. However, as the change of use has already occurred without any engineering operations taking place it is a separate element of the appeal scheme.

17. The additional garden varies in depth but is a significant enlargement compared to the size of the existing garden. A split rail fence provides a clear physical and visual separation between the two areas and I am advised that it replaced a similar fence on the boundary of the original garden. At my site visit I observed that there was a clear distinction between the field and the garden area. The garden was closely mown and maintained, while the field consisted of longer, unmown grass. The fence is of traditional materials typical of a rural area and on lower ground than the previous fence. While in isolation, simply moving the fence has had no material impact on the openness of the Green Belt, the change of use has resulted in encroachment of domestic garden into the countryside. It therefore conflicts with the purpose of the Green Belt in Framework paragraph 134 c), namely to assist in safeguarding the countryside from encroachment.
18. Furthermore, the use of the land as garden allows for the introduction of domestic paraphernalia such as garden furniture, washing lines or play equipment. Although not currently present, such paraphernalia would have a visual impact and would result in a loss of openness. Because the area is not easily visible from public vantage points the impact would be slight, but nevertheless would not preserve the openness of the Green Belt. Accordingly, the change of use of land to garden does not comply with the exception in Framework paragraph 146 e) and is therefore inappropriate development.

Other considerations

19. The appellant contends that the change of use of land and outbuilding are not inappropriate development. Therefore, they have not sought to make a case that very special circumstances exist to justify the development. Although in the Council's officer report it considered three aspects of the appellant's case as possible 'very special circumstances', those matters relate to whether the elements of the appeal scheme are inappropriate development or not. Therefore, where these relate to the change of use and outbuilding I have addressed them above.
20. Both parties contend that the appeal scheme would not harm the wider landscape, the AONB or Special Landscape Area. From what I have seen on site I have no reason to disagree. The lack of landscape harm is however a neutral impact.
21. The appellant contends that the enlarged garden would be comparable to that of Stubblefield. I have not been provided with the circumstances of that site and as such cannot be sure that they are comparable to that of the appeal scheme, which I have considered on its own merits.
22. The Council cites ADMP Policy GB1 in its reason for refusal. That Policy sets out criteria by which limited extensions to dwellings in the Green Belt will be permitted. I have found that the outbuilding is not an extension to the dwelling and as such, this policy has not been determinative in this appeal. I note that the Council's officer report considers the outbuilding against ADMP Policy GB3 and the other elements against the Framework. Based on the evidence before me, including the development plan policies to which I have been directed by

both parties, I have taken the same approach and have found conflict with both the development plan and the Framework.

Conclusion

23. In conclusion, I have identified that both elements of the appeal scheme would be inappropriate development in the Green Belt as defined by the Framework, and that the outbuilding would also conflict with ADMP Policy GB3. Each element would result in some loss of openness and slight harm to the Green Belt and, taken together, would result in modest harm. In addition, the change of use would also fail to safeguard the countryside from encroachment. The Framework establishes that substantial weight should be given to any such harm. While there would be no wider landscape harm, I find that there are no other considerations in this case to clearly outweigh the Green Belt harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The appeal is therefore dismissed.

L McKay

INSPECTOR