
Appeal Decision

Site visit made on 28 January 2020

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2020

Appeal Ref: APP/C3620/D/19/3240078

Greenleigh, Patchesham Park, Leatherhead KT22 0DJ

- 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 V Gorbachev against the decision of Mole Valley District Council.
 - The application Ref MO/2019/1509/PLAH, dated 22 August 2019, was refused by notice dated 21 October 2019.
 - The development proposed is described as the 'erection of a Banya (sauna) for personal use'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr V Gorbachev against Mole Valley District Council. This application is the subject of a separate Decision.

Procedural matters

3. At the time of my site visit I saw that the development was substantially complete. I also note that the application has been submitted retrospectively. I have dealt with the appeal on that basis.
4. It is beyond the scope of an appeal under section 78 of the Town and Country Planning Act 1990 (the Act) to determine the lawfulness of the development. The appellant can apply for such a determination under sections 191/192 of the Act and this Appeal Decision shall not prejudice the outcome of any such application.

Main issues

5. The main issues are:
 - i) whether the proposal is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework and development plan policy;
 - ii) the effect of the proposal on the openness of the Green Belt; and
 - iii) if the development is inappropriate, 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.
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Reasons

Whether the proposal would be inappropriate development in the Green Belt

6. The proposal is located in the flat and verdant rear garden of a large detached dwelling. This is situated within a private residential development, with a golf course beyond the rear boundary. It is within a designated Green Belt.
7. Policy CS1 of the Mole Valley Local Development Framework Core Strategy – Adopted October 2009 (CS) sets out that in locations such as this that development will be considered in light of the provisions of PPG2 ‘Green Belts’. However, PPG2 has been superseded by the National Planning Policy Framework (the Framework) and this now forms the main policy consideration.
8. Paragraph 143 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 sets out that the construction of new buildings is inappropriate save for the exceptions listed at a) to g), inclusive. The Council have considered these and conclude that none are applicable in this case. The appellant has made brief reference to the exemption c). This allows for the extension or alteration of a building provided that it does not result in a disproportionate addition over and above the size of the original building. However, I have noted the distance between the dwelling and the outbuilding, and I consider that the two are not closely associated either visually, or spatially. Based on the evidence and my own site observations I have no reason to contradict the Council’s position.
9. Therefore, on the first main issue I find that the proposal is inappropriate development within the Green Belt for the purposes of the Framework and development plan policy. The proposal is contrary to Policy CS1 of the CS and Section 13 of the Framework which seek to protect the Green Belt from inappropriate development. The Framework directs that substantial weight is given to such harm.

The effect on the openness of the Green Belt

10. The proposal is sited within the large rear garden of a dwelling. Prior to the erection of the building I understand that the space was open. The area between the house and the outbuilding appears more manicured, whereas the building is located towards the rear of the garden where the external timber materials assimilate with the more sylvan context. The building is single storey and set in from either side boundary affording a degree of space around its mass. Furthermore, it is not prominent from any public vantage points.
11. The external materials and discrete location, combined with the landscaped and spacious garden context, mitigate the visual impacts of the proposal to a degree. However, it is a substantial building of great mass. As such it continues to have a visual impact. Moreover, there is no mitigation for the impact of the proposal on the spatial dimensions of openness.
12. Accordingly, on the second main issue I find that the proposal would harm the openness of Green Belt contrary to Section 13 of the Framework. This seeks to ensure that Green Belt land is kept permanently open. I attribute substantial weight to the effect of the proposal on the openness at this point.

Other considerations

13. The appellant points out that retrospective planning permission has only been sought because of the existing veranda and the Council's concerns over the facilities contained within the outbuilding. They consider that otherwise the proposal would have been permitted development under the provisions of the Town and Country Planning (General Permitted Development) Order.
14. However, the parties do not agree on what exactly would constitute a lawful fall-back position. In particular, they do not agree on what level of facilities can be provided whilst remaining incidental to the main dwelling. In this regard, for example, I note that the Council has considered the original planning approval for the dwelling. This included a sauna within the approved basement. However, it is clear from my site visit, and as stated by the appellant, that no basement has been constructed. Furthermore, whilst theoretically possible, based on the appellant's evidence it appears unlikely that the permitted basement would ever be created. Therefore, the Council's view that the house could provide the facilities now within an outbuilding is undermined.
15. I note that the appellant does not argue that permitted development rights would have a greater impact than the proposal. Therefore, even if a structure akin to that proposed is considered to be permitted development it would not have a greater effect, but a similar one. Based on the evidence before me I find that there is a comparable, reasonable and realistic fall-back position under permitted development, but the weight I afford this is tempered by the lack of any certificate of lawfulness. However, I still attribute this significant weight in any balance.
16. The appellant highlights that the outbuilding houses a traditional Russian Banya. As such, it provides them with opportunity to engage with their cultural heritage. However, I afford this limited weight given that I have no evidence that this cannot be achieved similarly with less harm to the Green Belt.
17. The parties have had regard to other development plan policies including Policies RUD9, ENV22 and ENV23 of the Mole Valley Local Plan – Adopted 12 October 2000. The parties agree that the proposals are not in conflict with these policies. The appellant argues that such compliance should be afforded weight in favour of the proposal. However, these Policies do not relate directly to consideration of the Green Belt. The proposal's compliance with such development plan policies is a neutral factor.
18. Furthermore, the appellant has referred to the grant of a planning permission¹ within the same Green Belt in 2018 nearby to the appeal site. This was for an ancillary pool building. However, I have not been provided with full details and so I afford this very limited weight.
19. In conclusion, I find that a reasonable fall-back position exists, and I afford this significant weight. Furthermore, I find additional other considerations that weigh in favour of the proposal. However, paragraph 144 of the Framework states that any harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, should be 'clearly outweighed' by other considerations. I have found harm to the Green Belt and afford this substantial weight. Therefore, on the final main issue I find that the harm by reason of

¹ LPA ref: MO/2018/1657/PLAH

inappropriateness, and any other harm, is not clearly outweighed by other considerations, even taken cumulatively, so as to amount to the very special circumstances necessary to justify the development.

Conclusion

20. For the reasons given above I conclude that the appeal should be dismissed.

James Taylor

INSPECTOR