



Appeal Decisions

Site visit made on 25 February 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2020

Appeal A Ref: APP/P0119/X/19/3237917

Little Normeads, Golden Valley Lane, Bitton, Bristol BS30 6NZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jon House against South Gloucestershire Council.
 - The application (Ref. P19/8826/CLE) is dated 11 July 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as use of land as residential garden forming the residential curtilage of Little Normeads.
-

Appeal B Ref: APP/P0119/W/19/3242075

Little Normeads, Golden Valley Lane, Bitton, Bristol BS30 6NZ

- 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 Jon House against the decision of South Gloucestershire Council.
 - The application Ref P19/1157/F, dated 31 January 2019, was refused by notice dated 30 May 2019.
 - The development proposed is a new two storey house with detached double garage and associated landscaping to replace an existing dwelling.
-

Decisions

Appeal A

1. The appeal is dismissed and the application for a certificate of lawful use is refused.

Appeal B

2. The appeal is dismissed.

Application for costs

3. An application for costs was made by Mr Jon House against South Gloucestershire Council in respect of Appeal A. This application is the subject of a separate Decision.

Appeal A – the certificate of lawful use

Procedural matters

4. The application seeks to certify the use “as residential garden forming the residential curtilage of Little Normeads”. “Curtilage” is not a use of land, and I shall therefore confine the scope of the application to the use of the land as a residential garden of Little Normeads.

Reasons

5. The application site comprises the house known as Little Normeads, a lawned area to the east and west of the house, a track which leads from the main road and loops around the east of the application site, and bisects it to the north, linking to the road again, and two open areas of land, the larger of which has two wooden buildings used as a car port/sheep pen and a chicken house. A polytunnel also lies to the north of these buildings. On the north side of the northern access loop is a penned area used for housing emus.
6. The large open field has a pond with a duckhouse on an island in the middle. Some 10 ducks and 10 geese range over the field. There is a small vegetable plot next to the polytunnel, used for growing a small quantity of vegetables including cabbages, leeks and beans, and a raised herb table next to it. The polytunnel houses a number of planted beds and planting tables, as well as tables and chairs and horticultural equipment. A large trampoline and a plastic garden table and six chairs are also sited within the field.
7. Whilst the keeping of livestock and the growing of vegetables may constitute an agricultural activity, the scale and nature of these activities on the appeal site are clearly not currently part of a commercial business and have all the characteristics of activities undertaken for the enjoyment of the occupiers, typical of the way in which large gardens are often used. The trampoline, garden table and chairs, polytunnel and vegetable beds also reinforce the domestic character of the use of the land.
8. I am in no doubt that the land in question is now used as a residential garden in connection with the occupation of Little Normeads. The key question is now whether that use commenced more than 10 years prior to the date of the application, i.e. 11 July 2009.
9. The appellant has submitted four statutory declarations, all of which say that the land in question has been used as a residential garden for at least 10 years. However, only two of the these say anything about the way in which the land was actually used. Mr House says that as a child he saw children playing on swings, and a washing line. Mr Hooper says he helped a previous owner with the garden, whilst Mr Clark says that, when passing, he would see that owner tending his garden.
10. These declarations provide no information about exactly how the land was used as a garden, over what area and to what degree of intensity. Children playing on swings may be immaterial in terms of a material change in the use of the land, as might the presence of a washing line. Despite the clear statements that the land has been used as a garden, on the balance of probability, the appellant’s evidence is not sufficiently precise and unambiguous to justify the grant of a certificate for the use as a residential garden.

11. The Council's only evidence relies on satellite photographs from Google Maps. The photograph dated 2006 shows the land in question as forming a field prior to the creation of the duck pond, or the erection of the car port or polytunnel, and shows none of the paraphernalia current in evidence on the site. There is no indication of any gardening activity or anything to suggest that the land is being used as a garden. Of more relevance is the photograph dated 2009, around the beginning of the 10 year period in question. That appears to show the field divided by some form of demarcation running from north to south through the middle of the field, and another demarcation on the western side of the field, running east-west, just south of the duck pond which appears for the first time in this photograph. The area south of the duck pond appears as rough grassland. The polytunnel, car port and sheep shed have been erected, north of which there are a number of strips of bare earth, consistent with planted beds. There is no indication of any use of the land to the north of the northernmost access link, currently occupied by the emu pen.
12. The next photograph is dated 2014, when the internal demarcations within the field appear to have disappeared and much of the field south of the duckpond appears to be mown, and the trampoline is in the position it currently occupies. A hedge appears to separate the field from the access adjacent the dwelling. Again, there is no evidence of any use of the land forming the current emu enclosure.
13. Whilst the photographs offer some support to the appellant's case, they represent only a snapshot in time, and the key evidence about the nature and extent of the use as residential garden over the whole of the application site is insufficiently precise and unambiguous.
14. The Council's online website map shows that most of the site (excluding the "emu pen" area) is covered by Policy PSP7, which relates to development in the Green Belt within the curtilage of a dwelling. However, this cannot be used to establish the lawfulness of any use and is of little evidential value.

Conclusion on Appeal A

15. I therefore consider that the appeal should fail, and that a certificate of lawful use should not be granted.

Appeal B – the planning application

Procedural matter

16. Whilst the proposal indicates that the new dwelling would replace the existing dwelling, it is not proposed to demolish the existing dwelling. Rather it would replace the function of the existing dwelling as it is intended to use the existing dwelling as holiday lets in accordance with planning permission granted by the Council in 2019 (Ref: P19/09496/F).

Main Issues

17. The main issues are:
 - i) whether the proposal would be inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan policies;
 - ii) the effect on the openness of the Green Belt;

- iii) the effect of the proposal on the character and appearance of the area;
- iv) whether the proposal would accord with the Council's housing strategy for the area;
- v) whether occupiers of the proposed dwelling would have satisfactory access to services and facilities, and
- vi) whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriateness

18. The site lies in the Bristol and Bath Green Belt to which Policy PSP7 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (PSPP) (adopted November 2017) applies. It repeats national policy set out in the Revised National Planning Policy Framework saying that inappropriate development is harmful to the Green Belt and will not be acceptable unless very special circumstances can be demonstrated that clearly outweigh the harm to the Green Belt, and any other harm. The policy explains how national policy in relation to three specific kinds of development is to be treated, but these do not apply to the proposal. It says that national policy is to be applied in respect of other development.
19. The National Planning Policy Framework (the Framework) says that the Government attaches great importance to Green Belts. It provides 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 should be regarded as inappropriate. It provides exceptions to this premise, but in my view, none are applicable here.
20. One of those exceptions is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. However, here it is not intended to replace the existing dwelling, but to leave it as holiday accommodation. This is clearly not a replacement dwelling, nor does it follow the spirit of the policy, as the clear aim of the policy is to ensure that there is no material increase in the size of built development on the site. That it would replace the function of the existing dwelling is of little consequence to the application of this exception.
21. A further exception is the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than does the existing development. The Framework defines previously developed land as being land which is or was occupied by a permanent structure, including the curtilage of the developed land. Notwithstanding my finding on the linked s.195 appeal, it is unnecessary for me to decide whether or not the application site falls within the definition of previously developed land, as, for the reasons described below, the proposal

would have a significantly greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

22. I therefore find that the proposal amounts to inappropriate development, which is harmful by definition, and conflicts with Policy PSP7 as well as with Core Strategy (CS) Policies CS5 and CS34 which include the aim of preventing inappropriate development in the Green Belt.

Openness

23. The new dwelling would be a two-storey, four-bedroom dwelling, with generously proportioned rooms, amounting to 270m² in floorspace (excluding the cellar). The house would have a pitched roof and would be linked to a hipped roof double garage by a wall perforated by three openings lining one side of a courtyard. Cumulatively, these buildings would have a substantial bulk, and would be sited in a field with little built development in it. They would extend built development into the largely undeveloped countryside and would significantly reduce openness.
24. Although the site is screened from the road by conifers, they cannot be relied upon to hide the buildings in perpetuity, particularly as they are already of some age. Moreover, the buildings would be glimpsed from the road beneath the branches, and even more clearly in winter when approaching along Golden Valley Lane from the north. The site would also be seen from part of the well-used public footpath which leads from Golden Valley Lane close to the northern boundary of the site, and potentially from further afield as illustrated by the appellant's plan showing the Zone of Theoretical Visibility, although much would depend on the time of year and whether existing tree screening remains.
25. I have had regard to the appellant's contention that openness is not a characteristic of the landscape in the vicinity of the site. However, that assessment ignores that the fundamental aim of Green Belt policy, as set out in the Framework, is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence.
26. I therefore conclude on this issue that the proposal would result in material harm to the openness of the Green Belt, and would conflict with the fundamental aim of Green Belt policy referred to above. I afford significant weight to this harm.

Character and appearance

27. The site is currently well screened from public view by trees, both within the site and further afield. Whilst the proposal would be seen, it would not be prominent. The site sits in a valley floor which is not characterised by extensive views, and I am satisfied that subject to the landscaping proposed, it would not result in material harm to the wider landscape quality of the area. However, at a more localised level, the dwelling and garage would be well separated from the built-up limits of Bitton and would result in the consolidation of sporadic built development in the open countryside. This would cause some harm to the rural character of the area.
28. The building would be of contemporary design, using a palette of materials which are found on houses in the locality. It would not replicate a typical traditional farmhouse or farm workers' cottage, but I consider that as there are

no strong rural vernacular cues nearby, the design, whilst striking, would not be harmful to the rural character of the area.

29. Whilst the sporadically sited houses in the area outside of the core of Bitton display little uniformity, they are generally sited close to the road, as is the case with Little Normeads. The proposal, in contrast, would be well set back from Golden Valley Lane and this atypical siting would, together with the large size of the dwelling, and its contemporary design, result in a prominent and discordant building. This would result in moderate harm to the character and appearance of the surrounding area and would conflict with CS Policy CS34, which, amongst other things, seeks to protect the unique and valuable setting provided by the rural areas to the urban areas and other settlements in South Gloucestershire.

Housing strategy

30. The Council's locational development strategy is set out in Core Strategy CS5, which aims to direct new development to the most sustainable locations. In the Green Belt, only limited development will be permitted, none of which applies to the proposal. PSPP Policy PSP40 deals with residential development in the open countryside and provides that new residential development outside the settlement boundaries as defined in the Policy Map, will be acceptable in specific circumstances, none of which apply to the proposal. The explanatory text to the policy defines the open countryside as all land outside of the main urban areas and settlement boundaries as defined on the Policies Map.
31. Whilst I recognise that the proposal would not amount to the development of an isolated home, which paragraph 79 of the Framework warns should be avoided, this does not alter the conflict with the development plan policies to which I have referred.
32. The proposal would therefore conflict with the Council's housing strategy and would conflict with the policies referred to above.

Accessibility to services, facilities etc

33. The proposed dwelling would be at some 600m distance from the nearest facilities in the village of Bitton, which includes bus stops, a convenience shop and a public house. Whilst this distance is within reasonable walking distance of the appeal site, the road to Bitton along Golden Valley Lane is unlit and lacks a footpath. At the time of my visit, after heavy rain, large puddles of water lay on either side of the road. I consider that it would not be attractive to use for either cycling or walking except in good weather and in daylight. This would be likely to preclude its use for day to day shopping and to reach employment or evening entertainment.
34. I therefore find that the location of the proposed dwelling would be likely to require a high level of dependence on the private car for travel and would result in a degree of social isolation for those without access to a car. Accordingly, the proposal would conflict with CS Policy CS8 which gives priority to providing the users of new development with a range of travel options other than private car and will not support development which is car dependent. One additional dwelling would not generate a large number of movements, and journeys to Bitton would be short. The harm that would be caused by disbenefits of the location would therefore be moderate.

Other matters and the Green Belt balance

35. There is no dispute that the Council can demonstrate a 5 year supply of housing land, and the latest Housing Delivery Test indicates that the number of houses delivered in the last 3 years exceeds the housing needs by some margin. Even so, the proposal would avoid the loss of a dwelling from the district's housing stock which, given the Framework's emphasis on increasing the number of new homes, attracts some modest weight, given that only one dwelling is proposed.
36. There would be short-term job creation and economic benefits to the local economy resulting from the construction of the new dwelling. The proposal would also facilitate the creation of the two holiday lets, which would provide economic gains both for the appellant and for the wider community through conversion work, spending in shops, restaurants, tourist attractions and so on. Even so, there is no suggestion that the holiday let conversion could not go ahead without the replacement dwelling on the site. I accept that it might be convenient to have someone living on hand to oversee the management of the holiday lets, but it is not essential to do so. But even if this were not the case, given the importance that is attached by the Government to protecting the Green Belt, the cumulative benefits of the proposal do not clearly outweigh the harm that would be caused to the Green Belt by virtue of inappropriateness and through loss of openness, along with the harm to character and appearance and the conflict with the Council's housing strategy, and the disbenefits of the site's location.
37. Accordingly, very special circumstances do not exist in this case to justify the development.

Conclusion on Appeal B

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

JP Roberts

INSPECTOR