



Appeal Decision

Site visit made on 2 June 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2020

Appeal Ref: APP/D1265/W/20/3245921

Misty Meadows, 147 Ringwood Road, Ferndown, Dorset BH22 9AB

- 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 Mrs Vicky Philips against the decision of Dorset Council.
 - The application Ref 3/19/1015/FUL, dated 15 April 2019, was refused by notice dated 13 November 2019.
 - The development proposed is described as "to retain open store".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form describes the proposed development as "to retain open store" and this description is used by the appellant on the appeal form. The Council, however, describe the proposal in their report and in their decision notice as "to reconstruct shed back to original use as a storage unit for agricultural and equestrian use (Part retrospective)".
3. The box is ticked on the application form to confirm that the building, work or change of use has not already started. The appellant's statement indicates the wish to alter and reduce the existing building, an outbuilding on agricultural land to its previous form of a 'Shed'. The Council explain in their report that in effect, the proposal involves demolishing the existing, unauthorised building on the site and re-constructing what was previously constructed on the site – an open fronted shed for storage – without the benefit of planning permission.
4. At the final comments stage, the appellant has included photographs of the previous store building, together with other information, and seeks to persuade me that the structure on the site is long standing and therefore a lawful building upon which to base the considerations for this decision. However, the purpose of a section 78 appeal is not to determine the lawfulness of a structure or use. It would be necessary to submit a certificate of lawful use to establish the basis of the lawful position in respect of the present building.
5. This leaves an unresolved situation between the Council and the appellant as to the lawfulness of the existing building. This clearly does not help with determining the appeal and nothing that I will say on this matter would prejudice or prevent the appellant making the case with regard to lawfulness in the form of a Certificate application in the future.

6. Looking at the information before me, it seems that there was in the past an open fronted shed on the site. This was a simple timber clad and open fronted building. At my site visit, I saw a building with what appeared to be more solid and enclosed walls to all elevations, albeit timber clad, domestic like windows and doors, and internally subdivided into rooms including an area for a kitchen and a separate bathroom. Although I have limited information on the previous store, this present structure appears to be materially different in appearance and form to the timber structure that was in this similar position such that it could be considered that the works that generated the present building were not a conversion but a new build.
7. If this was to be the case, then the timber store building would no longer exist and a new building would now be in its place, for which I am not aware that any planning permission has been granted. On this basis, then there would be no lawful building on this part of the site.
8. The proposal seeks a store building. The appellant makes the case that the works would alter and reduce the existing building to its previous form as a shed. However, I have no detailed explanation or methodology as to how the existing structure could be amended to form the proposed storage building. It seems to me that substantial works would be required that would significantly alter its appearance and construction such that the works, in all likelihood, may go beyond a conversion.
9. In any case, as the earlier shed could be considered to have been removed, and on the basis of the Council's case that the present building is unauthorised, the resulting structure would effectively be a new building on the site regardless of whether the present structure is altered to form the shed or the works are to such an extent that they form a new building in itself. I have come to this view based on the information which has been presented and I will determine the appeal accordingly. However, I repeat this would not appear to prevent the appellant submitting a certificate application and making the case that the present building on the site is lawful.
10. I am also considering other appeals¹ on the wider site and these are the subject of separate decisions.

Main Issues

11. As the site lies within the South East Dorset Green Belt and, therefore, the main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies,
 - the effect of the proposal on the openness of the Green Belt, and
 - if the appeal development is 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 the proposal.

¹ APP/D1265/W/19/3243507 and APP/D1265/W/19/3246404

Reasons

Whether or not inappropriate development

12. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 145 of the Framework.
13. Policy KS3 of the Christchurch and East Dorset Local Plan Part 1 Core Strategy (2014) (the Core Strategy) seeks to contain development within the Green Belt although the policy does not specify the types of development which are not inappropriate.
14. The case is made that the proposal would meet with two of the exceptions for the construction of a new building in the Green Belt, namely in respect of paragraph 145(c) the extension or alteration of a building provided it does not result in disproportionate additions over and above the size of the original building and in respect of paragraph 145(a) concerning buildings for agricultural and forestry. Only one exception would need to be met for the proposal to be considered not inappropriate development.
15. In respect of the extension or alteration of a building, on the basis of the analysis above, there would appear to be no lawful building on the site to extend or alter. Consequently, I am not satisfied that the proposal would comply with this exception.
16. In respect of the argument that the building would meet the exception for an agricultural or forestry building, the original appeal statement indicated that the building would be for agricultural and possibly equestrian use. Such a mixed use would not meet with the use of a building solely for agricultural (or forestry) purposes as required by the exception.
17. Most of the surrounding fields have a lawful equestrian use and appear to be used for such purposes. The information indicates there are equestrian buildings that can serve this use on the wider holding.
18. There is an adjoining parcel of land that falls outside the equestrian area. This and some other parcels of land are indicated to have no permitted use other than being able to be used agriculturally. The appellant argues that no matter to what degree the amount of agriculture takes place on the land, there are always ongoing maintenance issues, for example repairing boundary fences etc. It is said that the appellant is following the guidelines to use the proposed shed for wood storage which would be used in the maintenance of the agricultural areas (which includes the wooden boundary fences).
19. However, my attention has not been drawn to any clear and documented agricultural activity that is taking place on these parcels of land that would fall within the definition of agriculture within the Town and Country Planning Act 1990 (as amended). At my site visit, for instance, I noted that the parcel of land adjoining the site is overgrown and I could see no discernible agricultural activity taking place. In these circumstances, I am led to the conclusion that the land is not being used agriculturally.

20. Maintaining the boundary fencing and the related storage of the wood could not be incidental to any agricultural activity as no such activity appears to be taking place. The storage of wood would therefore be a storage use in its own right. Indeed, the application form states that the proposed floorspace would be used for storage and distribution use, and does not indicate agricultural use.
21. It follows from this analysis that the proposed building would not be a building for agriculture and therefore would not meet the exception in paragraph 145(a) of the Framework.
22. Accordingly, as the proposal would not meet with any of the exceptions in paragraph 145 of the Framework, I conclude that the proposal would constitute inappropriate development within the Green Belt.

Openness

23. While there was a previous storage building in this location, for the reasons explained, this building appears to be no longer present and based on the information before me the present building has not been demonstrated to be lawful. As a consequence, until such time that the case has been demonstrated otherwise, I consider that the site should be considered as containing no lawful building and effectively is open land for the purposes of this analysis.
24. The proposal would therefore introduce a building where it appears that no lawful building is present. While not prominent in the wider landscape, nevertheless, on that site itself the new building would have a volume and a presence and therefore there would be both a spatial and a visual reduction to the openness of the site compared to the lawful situation. I conclude that the proposal would therefore harm, albeit to a minor extent, the openness of the Green Belt. In coming to this conclusion, I have had regard to the advice on this matter in the Planning Practice Guidance.
25. Furthermore, as the proposed building would extend built development further from the general grouping of other buildings on the site, the proposal would not assist in safeguarding the countryside from encroachment. It would therefore not accord with one of the purposes of the Green Belt.

Other considerations

26. The appellant makes the case that there has been a storage building on this site in the past and that visually there would be no change to this past use. I have noted all the submissions from the appellant on this issue and the maps and information which show that a building has stood on this location in the past. However, this does not necessarily mean that the building on the site is the same one as before. This background is noted, and I have analysed this information above. In the absence of a certificate of lawful use application and confirmation of the lawfulness of the building or otherwise, I can only attribute this matter limited weight.
27. The justification for the use of the proposed building is not extensive in relation to the needs of the holding and therefore I attribute this matter limited weight.

If the appeal development is 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 the proposal

28. Paragraph 143 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have found that the proposed development would be inappropriate in the Green Belt and, furthermore, it would lead to a reduction in openness, albeit to a minor extent, and fail to meet one of the purposes for including land within the Green Belt. Paragraph 144 of the Framework makes clear that substantial weight should be given to any harm to the Green Belt.
29. Cumulatively, the other considerations put forward in support of the proposed development have limited weight. They do not clearly outweigh the harm to the Green Belt that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

30. The proposal would constitute inappropriate development in the Green Belt and no very special circumstances have been demonstrated. It follows that the scheme would also not comply with Policy KS3 of the Core Strategy. The importance of this matter is such that the development would not accord with the development plan when considered as a whole and there are no considerations which would outweigh this harm.
31. For the above reasons, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR