
Appeal Decisions

Site visit made on 9 June 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2020

Appeal A: APP/Z4718/C/19/3242525

Appeal B: APP/Z4718/C/19/3242526

52 Heator Lane, Upper Cumberworth, Huddersfield HD8 8XJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr G Formisano (Appeal A) and Mrs F Formisano (Appeal B) against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 28 October 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a building (hatched black on the plan).
 - The requirements of the notice are to wholly demolish the building (hatched in black on the plan).
 - The period for compliance with the requirements is within 6 months of the date the notice takes effect.
 - Appeals A and B are proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Appeals A and B - Decision

1. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeals on ground (a)

Main Issues

2. The common main issues are:
 - Whether the proposal is inappropriate development in the Green Belt having regard to the revised Framework¹ and any relevant development plan policies.
 - The effect on the openness of the Green Belt.
 - 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 required to justify the proposal.

¹ The National Planning Policy Framework, updated 19 February 2019

Reasons

Whether the proposal is inappropriate development

3. The site is within designated Green Belt, in a small enclave of housing beyond the limits of any settlement and surrounded by agricultural land. The building is partly used for business purposes, although this is not mentioned in the notice, and the deemed planning application is made on the basis that the business will relocate, after which the building would be used solely for domestic purposes. As the building appears separate from the house in public views, the argument is that the outbuilding for ancillary residential use replaces previous structures.
4. New buildings are inappropriate development in the Green Belt unless an exception applies. One exception is a replacement building in the same use as, and not materially larger than, the building it replaced. The plans approved by the Council in 2016² (the 2016 scheme) indicate the former outbuildings had a noticeably smaller combined footprint and a photographic image from 2009 confirms that they had much lower roof lines. However, the evidence indicates those outbuildings were wholly demolished to make way for the 2016 scheme, which was then not implemented, so it is not certain that the building now existing is a true replacement. Even if it were viewed as a replacement, it is materially larger and therefore, either way, it is inappropriate development.
5. The building is within a residential garden but is not within a built-up area, so I agree that it is not excluded from the definition of previously developed land in Annex 2 to the Framework. Kirklees Local Plan policy LP59 provides for infilling within existing brownfield sites, or previously developed land, in the Green Belt. However, comparison with the drawings submitted as part of the 2016 scheme indicates that the northern part of the building is beyond the footprint of the former outbuildings, so it was not built in a small gap between existing buildings on the site, which is how policy LP59 defines infilling. Therefore, it does not constitute infilling as allowed by the development plan.
6. For all of the above reasons, I find that the development constitutes inappropriate development in the Green Belt.

The effect on the openness of the Green Belt

7. While the appellants consider the building to be subservient to the house, I do not agree, primarily due to its height. This, and the size of the building's footprint, result in a significant built form, comparable to an additional dwelling in views from Carr Lane, Birk House Lane and the public footpaths in the field across Heator Lane. Accordingly, and being inappropriate development, the building has a material and detrimental effect on the openness of the Green Belt in spatial and visual terms.

Whether very special circumstances justify the development

8. The use of the building has allowed the appellants' business to thrive and provide local employment, but the deemed planning application is for a wholly domestic use of the building.

² 2016/62/90090/E, granted 7 March 2016

9. Although the appellants state the building arose as a variation to the 2016 scheme, a comparison of the plans shows it is further away from the house and closer to the road, has a slightly enlarged footprint, and is significantly higher. While the appellants contend that the Council must have considered the 2016 scheme to benefit from an exception to the normal presumption against inappropriate development in the Green Belt, a fresh assessment must be made in respect of the building that has been constructed instead.
10. Details of the garage building proposed in 2014³ but refused by the Council are not before me. However, I do not doubt the appellants' advice that it would have been higher than what has been built. However, the building now in place must be considered on its merits rather than in comparison with that proposal.
11. The building is constructed to a high standard. Its materials, fenestration and rainwater goods complement the house, its landscaping, and the character of the rural setting, thus meeting some design objectives of Kirklees Local Plan policy LP24 and the Framework. I do not doubt the appellants' view that it is better designed than the former outbuildings, that it causes no harm to the living conditions of neighbours and that it would, following relocation of the business, be ancillary to the residential occupation of the house.
12. However, while the appellants contend that the building respects the pattern of development in the area, I do not agree. I have noted that it is not subservient to the house and for that reason it does not follow the prevailing relationship between houses and their outbuildings found in the area.
13. It is not disputed that the building accords with Kirklees Local Plan policies LP21, LP22 and LP30 in terms of highways, parking and biodiversity. Furthermore, the notice does not require removal of the parking and turning area, which allows vehicles to enter and leave the site in forward gear.

Conclusion on ground (a)

14. The development constitutes inappropriate development and causes harm to openness of the Green Belt. This is a matter to which substantial weight is given. The development represents encroachment conflicting with at least one purpose for designating land inside the Green Belt, which is a serious planning objection. As cited above, there is conflict with local and national planning policy.
15. On the other side of the scales, I attach very little, if any, weight to the relocation argument and limited weight to the previous planning permission arguments. The development does not harm the rural character or neighbours' living conditions, but this is neutral in the overall balance and neither goes for or against. The advanced considerations in support do not, individually or cumulatively, on balance, clearly outweigh the substantial weight to Green Belt harm. There are no very special circumstances to justify the development.
16. Accordingly, the appeals on ground (a) should not succeed.

The appeals on ground (f)

17. For the appeals to succeed on this ground, it must be demonstrated that the steps required to comply with the notice are excessive and that lesser steps

³ 2014/90615

could overcome the breach of planning control alleged in the notice, which is the erection of the building without planning permission.

18. The appellants suggest the building could be lowered in height but do not state by how much and no details of what the resulting building would look like are before me. Varying the requirements of the notice in this way would therefore make it imprecise and create unacceptable uncertainty. I have considered whether the plans from the 2016 scheme could be used to illustrate compliance with a varied notice. However, the building is materially different in terms of its footprint and siting, so the 2016 scheme was not commenced and the period for doing so has now lapsed. Consequently, this would not result in a building with planning permission and therefore would not overcome the breach alleged in the notice.
19. The requirement to demolish the building is therefore the only identified and precise means by which the erection of the building without planning permission, which is the breach of planning control, can be ended. The requirements of the notice are therefore not excessive and the appeals on ground (f) should not succeed.

The appeals on ground (g)

20. While the appellants consider 6 months is insufficient time to demolish the building because of its proximity to the house and in view of upheaval and cost in terms of car and bike parking and housing domestic items, no further detail has been provided. Accordingly, I can only give these matters limited weight.
21. Following a recent meeting between the appellants' architects and Council officers to discuss possible ways forward, a drawing is being prepared for the Council's consideration. The compliance period of 6 months is a reasonable period to progress this and any subsequent planning application.
22. The appellants' business has proved successful and further expansion will require a move to larger premises in due course, regardless of the enforcement notice. While the deemed planning application seeks to retain the building for domestic purposes only, the livelihood of the appellants and their employees could be affected if the business were forced to relocate before suitable alternative premises are secured.
23. There has been dialogue with the Council with the aim of finding suitable premises locally and the appellants suggest a variation of the period for compliance to 18 months to allow relocation to be completed. I recognise this would benefit the appellants, their employees, and the local economy. However, 18 months is an exceptionally long period, tantamount to a temporary permission, and inconsistent with my findings on the main issues. Details of the search for alternative premises and why it might take more than 6 months to relocate have not been presented and, in the absence of such justification, 6 months is a reasonable period to comply with the notice.
24. Nevertheless, the search and relocation may be delayed by the Covid-19 outbreak and it would be possible for the Council to keep the matter under review through continuation of the dialogue. Section 173A(1)(b) of the 1990 Act as amended affords it discretion to waive or relax any requirement of an enforcement notice, including extending the compliance period; however, that would be entirely a matter for the Council.

25. For these reasons the appeals on ground (g) should not succeed.

Conclusion

26. For the reasons given above, I conclude that the appeals should not succeed. I have upheld the enforcement notice and refused to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Mark Harbottle

INSPECTOR