
Appeal Decision

Site visit made on 6 July 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2020

Appeal Ref: APP/K2230/C/19/3239111

Land adjacent to Dawes Cottage, Northfleet Green, Gravesend, Kent DA13 9PN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr P Martin against an enforcement notice issued by Gravesham Borough Council.
 - The enforcement notice was issued on 16 September 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a single storey building in use for leisure purposes including a games room.
 - The requirements of the notice are:
 - (a) Demolish the unauthorised building in its entirety; and
 - (b) Remove from the Land all rubble and debris arising from compliance with requirements a) above.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be:
 - varied by deleting the words "six months" within section 6 (Time for Compliance) and its replacement with "twelve months".
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) appeal and the Deemed Planning Application

Main Issues

3. The main issues are:
 - whether the development amounts to inappropriate development in the Green Belt;
 - the effect of the development on the openness of the Green Belt;

- the effect of the development on the character and appearance of the area; and
- if the development is inappropriate, whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify the development.

Reasons

Whether inappropriate development

4. The appeal site relates to an area of primarily open land of approximately 1 acre¹, within the open countryside with scattered buildings, and within the designated Green Belt. The development relates to a single storey log cabin style structure used for leisure purposes, including a games room in connection with the use of the land adjacent to the site at Dawes Cottage.
5. National policy on Green Belt development is set out in Part 13 of the National Planning Policy Framework 2019 (Framework). Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Of particular relevance to this appeal is Paragraph 145 which states that the construction of new buildings is inappropriate development in the Green Belt subject to a number of exceptions. Reference has also been made to Policy CS02 of the Gravesham Local Plan Core Strategy, 2014 (LP), which is consistent with the Framework and states that development will be supported where it is compatible with national policies for protecting the Green Belt. Accordingly, I have assessed this appeal based upon the Green Belt policies contained in the LP and the Framework.
6. The appellant considers the development would fall within the exceptions listed under Paragraph 145 b), c) and d) of the Framework, which I shall consider in turn. Exception b) of paragraph 145 relates to the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
7. My attention has been drawn to a recent appeal decision² for the games room which was dismissed. In that case, the Inspector considered the previous planning permission³ for the keeping of horses and livestock on the land. In particular, an informative added to that permission highlighted that permission was for "*leisure and recreational use only and shall not be construed as granting planning permission for the extension of the residential curtilage of dwelling*". Furthermore, the conditions attached to that decision also clearly state that the use of the land shall be for the keeping of horses and livestock only and shall not be used for any other purpose. However, the Inspector also noted that the games room used in connection with, and ancillary to, the

¹ Measurement taken from appellant's appeal statement.

² Appeal Ref: APP/K2230/W/19/3232367, dismissed on 3 December 2019.

³ Application reference: 20140450 for the continued use of the land for the keeping of horses and livestock including the erection of a hay barn and block of 2 stables with tack room, retention of vehicular access onto Northfleet Green Road and associated concrete hard standing and retention of 2m high close boarded fence to western boundary.

residential use of Dawes Cottage has no functional relationship with the use of the land for the keeping of chickens and horses.

8. Indeed, the building contains a kitchen, a bar, display units, a wc and a separate playroom on one side of the building, containing various arcade and game machines. There is nothing to suggest that this building is required in conjunction with the use of the land for horses and livestock. Furthermore, the appellant also states that the games room is required for their disabled son, who resides in the adjacent site at Dawes Cottage. As such, I agree with the previous Inspector's findings and remain unconvinced that it constitutes an appropriate facility in connection with the lawful use of the land.
9. Furthermore, paragraph 145 b) also requires that facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The appellant acknowledges that the new building is located on land occupying a gap between the previous permitted buildings. Additionally, there is no evidence to demonstrate that there was a former lawful building on the same site. The appeal building has a relatively low pitched roof and the land is surrounded by high timber close boarded fence. Nevertheless, the new building is still visible from surrounding land and the nearest residential property and has a greater impact on the openness of the Green Belt than the pre-existing development on this site. Therefore, the development does not fall within the exception listed under paragraph 145 b) of the Framework.
10. Exception c) of paragraph 145 refers to the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. However, the current games room building does not form part of an extension or alteration to a building, and the appellant states it replaced a previous outbuilding which existed within the residential grounds of Dawes Cottage. Consequently, I am not convinced that the development falls within the exception c) of paragraph 145, and insufficient evidence has been submitted in support of this claim.
11. Exception d) of paragraph 145 relates to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Whilst the appellant refers to a previous outbuilding within the grounds of Dawes Cottage, this has since been demolished and no specific details regarding the pre-existing structure (for example, size/volume), and whether it was a lawful building, have been provided. Based on this limited information, I am unable to determine whether or not it was larger than the current building and therefore I can only attach very limited weight to this former structure. Furthermore, the appeal site is located outside of the residential grounds of Dawes Cottage on land in a separate use. As stated above, there is no evidence to demonstrate that there was a former lawful building in the same position as the current appeal development. Based on this, the appeal building does not constitute a replacement building and does not fall as an exception within paragraph 145 d).
12. In conclusion, the development would not satisfy any of the other exceptions in paragraphs 145 and 146 of the Framework, and Policy CS02 of the LP, which seek the aforesaid aims. As such the development amounts to inappropriate development in the Green Belt. In reaching this conclusion, it is of note that paragraph 144 of the Framework states that substantial weight should be given to any harm to the Green Belt.

13. The development does not safeguard the countryside from encroachment and does not assist in urban regeneration. As such the development therefore conflicts with the purposes of the Green Belt, contrary to paragraph 134 of the Framework.

Effect on the openness of the Green Belt

14. Paragraph 133 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The Courts have held that openness includes both visual and spatial dimensions.
15. The building has a low pitched roof and is situated on land between two existing buildings. I also acknowledge that the site is surrounded by a high timber close boarded fence. However, as noted above, the building is still visible from neighbouring land. Furthermore, the building occupies part of the site which was previously devoid of any buildings and hence in spatial terms there is a reduction in openness of the site and hence this part of the Green Belt.
16. Whilst the appellant states the current building replaced a building on land within the grounds of Dawes Cottage, that building was on a separate parcel of land, functionally and physically separate from the appeal site. I therefore agree with the previous Inspector, that in both spatial and visual terms, the development affects the openness of the green belt. Overall, I consider that the harm caused to the openness of the Green Belt would be a limited one.

Character and appearance

17. The site is located within the Istead Arable Farmlands designated landscape character area (LCA). The Gravesham Landscape Character Assessment, 2009 (GLCA) explains that the key characteristics of the LCA include gently undulating topography with open arable fields. The GLCA also provides guidelines for the LCA are to restore distinctive features and patterns of the landscape, whilst creating landscape elements that support the landscape character. These guidelines also include the creation of design standards in keeping with local character for new developments within the area.
18. The site is located a within the open countryside dominated by open agricultural land with scattered buildings, divided by tracks and roads. The appellant states that the building, owing to its log cabin appearance has little impact on the surrounding area, and that the modest overall height of the building means it would not be highly visible from public views. However, the overall size and scale of the building introduces further built development on a site that has previously been granted permission to be used for open recreation. In addition, buildings have already been permitted on this site in connection with the lawful use of this site. The building, ancillary to the residential property at Dawes Cottage, introduces a further domestic building within the countryside, which has an urbanising effect on the open rural landscape, harming the character and appearance of the area.
19. In this respect the development conflicts with the guidelines contained within the GLCA, and is contrary to Policy CS12 of the LP, which amongst other things, requires that the overall landscape character and valued landscapes will be conserved, restored and enhanced.

Other considerations

20. The Council has raised no objection to the development on the basis of its effect on the living conditions of nearby residents or highway safety. I find no reason to disagree with this professional assessment. However, these aforementioned matters are of neutral consequence in the overall planning balance.
21. The appellant advises that games room building was constructed to provide safe place for his disabled son, who has complex and challenging medical needs. The building allows the appellant's son to feel safe and secure and provides a safe environment for the extended family to visit him. The appellant also advises that the building was placed outside of the grounds of Dawes Cottage, to ensure that a large grassed area remained within the garden for their son. Consequently, the provision of the games room is in the appellant's son's best interests; The best interest of the child is of a primary consideration.
22. Furthermore, in light of the enforcement notice I recognise that the failure of this appeal would result in the demolition of the games room building used by the appellant's family and son. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998.
23. I have considerable sympathy with the appellant's personal circumstances and can fully appreciate why he would wish to retain the building for his family members. Nevertheless, Dawes Cottage is a detached two storey dwelling set within spacious grounds, and I have not been provided with any substantive evidence to explain why a suitable ancillary building could not be accommodated within the curtilage of Dawes Cottage. Indeed, the Council have advised they have no objection to the principle of such a games room building within the grounds of Dawes Cottage, which complies with the Town and Country Planning (General Permitted Development) Order 2015 (GPD0).
24. Furthermore, the evidence submitted does not explain why the leisure/games room needs to be of the size constructed, and why it needs to contain the range of facilities provided which includes an open plan kitchen/ living area in addition to the playroom.
25. Due to the above factors, there is limited evidence before me to suggest that the removal of the building would have a disproportionate effect on the best interests of the appellant's son when weighed against the planning harm set out above. As a result, I can only give the appellant's personal circumstances modest weight in my decision.

Planning balance and conclusion on ground (a) and the Deemed Planning Application

26. I have found that the development would amount to inappropriate development in the Green Belt. This is a matter to which I afford substantial weight. In addition, I have found that limited harm would be caused to the openness of the Green Belt, and the character and appearance of the area. The adverse impacts need to be weighed against the identified other considerations, noting that there would not be significant benefits.

27. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 (EA). The EA sets out the relevant protected characteristics which includes disability. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the EA. Nevertheless, having regard to the legitimate and well-established planning policy aims to protect the Green Belt and harm to the character and appearance of the area, in this case I consider that greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the appellant's family.
28. In conclusion, the substantial weight to be given to Green Belt harm, and the other identified harm arising from the development, is not clearly outweighed by the other identified considerations sufficient to demonstrate very special circumstances.
29. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

30. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
31. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
32. The appellant states that the development could be reduced in size to that of the stable building previously approved on the site. However, no approved drawings of this earlier scheme have been submitted, and therefore I am unable to determine what the proposed building would look like, or whether it would form part of the development alleged. Furthermore, the approved scheme was for stables, a use that was found to not be inappropriate in the green belt and which is not part of the development before me. Indeed, it is open to the appellant to submit a planning application to the Council for this revised scheme if they so wish.
33. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
34. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

35. This ground of appeal is that the time given to comply with the notice is too short. The period for compliance stated in the Enforcement Notice is 6 months. However, the time for completing the requirements should be what is

reasonably considered necessary to complete the requirements. In light of Government policy regarding Covid-19 and restriction of social contact, I consider that this period needs to be prolonged by a further 6 months to obtain quotations, appoint a contractor and carry out the works.

36. In my opinion, the 12 months suggested by the appellant would strike a more reasonable and proportionate balance in light of the current pandemic. This would also provide the appellant with additional time to explore the possibility of providing a replacement facility within the residential grounds of Dawes Cottage under permitted development, as he has suggested.
37. To this extent, the ground (g) appeal succeeds and I will vary the notice accordingly.

Conclusion

38. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR