
Appeal Decision

Site visit made on 8 October 2020

by J D Westbrook BSc(hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2020

Appeal Ref: APP/G2245/W/20/3248348

Sevenoaks Preparatory School, Park Lane, Sevenoaks, TN15 0JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Sevenoaks Preparatory School against the decision of Sevenoaks District Council.
 - The application Ref 19/03034/CONVAR, dated 24 October 2019, was refused by notice dated 20 December 2019.
 - The application sought planning permission for the erection of a sports changing room pavilion without complying with a condition attached to planning permission Ref: SE/16/01634/FUL, dated 9 August 2016.
 - The condition in dispute is No 6 which states that: *Within five years of the construction of the pavilion hereby approved, the existing changing block to the South of the pre prep building and the North of the car park shall be fully demolished, all resultant materials shall be removed from the site and confirmation of the demolition of the building shall be submitted in writing to the Local Planning Authority.*
 - The reason given for the conditions is: *To prevent unacceptable harm to the openness of the Green Belt in accordance with the NPPF.*
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect on the Green Belt if the pavilion permitted is constructed without compliance with Condition 6 of the original permission.

Reasons

3. The appeal relates to a new sports' changing pavilion constructed at Sevenoaks Preparatory School following a permission granted in 2016. The permission included a condition No 6 which required the demolition of the existing changing block within 5 years of the construction of the new pavilion. The new pavilion has been erected and the appellants have now appealed contending that permission should be granted without compliance with that condition. The appellants contend that the condition is unnecessary, unenforceable and not reasonable in all respects. The site is within the Green Belt.
4. Paragraph 143 of the National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Paragraph 144 goes on to add that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Moreover, very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

5. Paragraph 145 of the Framework indicates that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt, with certain exceptions. One of these stated exceptions relates to the provision of appropriate facilities for outdoor sport and outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. In this case, it is necessary at this stage to determine whether or not the new pavilion should be considered as inappropriate development in the Green Belt and, if so, whether there are other considerations that clearly outweigh the harm to the Green Belt and any other harm, such that very special circumstances might apply.

Whether the condition is necessary

6. It would appear that there is agreement between the parties that the pavilion falls into the category of an appropriate facility for outdoor sport and outdoor recreation, and I concur with that view. It is therefore necessary to consider whether it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The purposes of including land in the Green Belt include to check the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment.
7. Recent court cases have concluded that the effect of a development on the openness of the Green Belt can potentially have both spatial and visual elements. In this case, the new pavilion is a relatively small building, but it is sited to the west of the existing school buildings and effectively extends the built component of the school further into what is otherwise an open area comprising playing fields, with woodland and open countryside beyond. It is also readily visible across the school car park from Park Lane, which runs alongside the school. Although it has a backdrop of trees, visually it forms an extension to the built form of the rest of this part of the school further into the open areas beyond.
8. In these respects, I find that the pavilion does not preserve the openness of the Green Belt and that it represents an element of sprawl and an encroachment into the countryside, albeit on a small scale. The requirement to demolish the original pavilion was to balance out the harmful effect on openness of the new pavilion, and was, therefore, necessary to assist in clearly outweighing that harm.
9. The appellants have made reference to a recent court case (Ref: R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)), in paragraph 22 of which the judge, Lord Carnwath, comments that openness does not "imply freedom from any form of development", and that Paragraph 90 of the 2012 version of the Framework "shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness".

10. However, this case specifically relates to an extension to a large quarry and the judge goes on to state that "a large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land". This would not apply in the current case.
11. The appellants refer further to a case from the Court of Appeal (Ref: R (on the application of Lee Valley RPA) v Epping Forest District Council [2016]) where it is stated that "considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of building or structures but include their purpose". In this case, the purpose of the building is as a sports pavilion, and I have dealt with it as such. The Framework makes it clear that such a purpose is only not inappropriate if it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. Lord Carnwath, in the Samuel Smith court case referred to above, concluded that "the matters relevant to openness in any particular case are a matter of planning judgement, not law". I have concluded above that, in this case, the development would not meet the exception criteria, and I have given my reasons for reaching that conclusion.

Enforceability

12. The appellants make reference to the government's Planning Practice Guidance Notes (PPG) where in section ID 21a-009-20140306 it states that "Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability". It goes on to state that "Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission".
13. The appellants note that they did not and do not own the original changing room block, and that the entirety of the school is owned by the Sackville Trust and Knole Estate, on whom notice was served. On this basis they contend that the condition is unenforceable and that the landowner has confirmed to the appellant that it would not allow the removal of the building. However, there is no written evidence before me to support that assertion.
14. From the information before me, it would appear that the school received planning permission in 2012 for the erection of a similar sports pavilion to the one now built under the terms of the latest permission in 2016. The 2012 permission also contained a condition that the original changing room block should be demolished as part of the permission. It would also appear that the plans approved as part of that permission showed the block as to be demolished, and that demolition was indicated at the time by the appellants as being part of the development applied for. On this basis it would seem reasonable to assume that the landowner was notified of the proposal, including the demolition, and that no objections were raised. Since the 2016 permission is similar in many respects and contains a similar condition to that of the earlier permission, I have no evidence to give me reason to assume that the landowner would necessarily raise any objection to it.
15. In the light of the above, there is therefore a prospect that the demolition could take place within the time-limit imposed and that the condition could be enforced. Certainly, it would seem reasonable for the Council to pursue the

same course of action as it did with regard to the earlier application, which had not been questioned at the time, and indeed had apparently been proposed by the appellants themselves.

16. There is also an issue raised by the appellant regarding the fact that wider parts of the site were outlined with a blue line on application plans. This would have led to the reasonable conclusion by the Council that the land was in the control of the appellants. The School now indicates that not to be the case, and that the Council should have reasonably satisfied itself that the condition was enforceable in planning terms.
17. Paragraph 024 of the PPG, Reference ID: 14-024-20140306, states that "the application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development..... A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site". In my opinion, there must be at least some responsibility on an applicant to provide accurate information on submitted plans regarding such matters as control over land, and that a Council should not be expected always to have to check this.
18. In conclusion on the matter of enforceability, from the information before me, I conclude that there is no evidence to suggest that there is no prospect of demolition taking place within the time-limit imposed. On that basis, the condition could therefore be enforced. Furthermore, I do not consider that that it was unreasonable for the Council to expect the blue line drawn on the submitted plan to represent an area of land over which the appellants had some control, particularly given the history of planning applications and permissions on the site.

Reasonableness

19. The appellants contend that the original changing building is capable of being reused and adapted for educational use or other ancillary use which would support with the functioning of the school. Moreover, they point out that Paragraph 94 of the Framework requires local planning authorities to give 'great weight' to the need to alter schools and to work with school bodies to identify and resolve key planning issues before applications are submitted.
20. The school has recently received planning permission from the local planning authority for extensive new buildings to the east of the new pavilion. At the time of my site visit, these buildings were completed and appeared to be in full use. There would not appear to be any remaining key planning issues to be resolved at this stage. There is no evidence before me that the original changing room block formed any effective part of the planned development involved with this new development, which included provision for new classrooms, landscaping and car parking. Currently it would appear to be spare space with no designated purpose and no clear role in the functioning of the school. I do not, therefore, consider that the demolition required by Condition 6 would necessarily result in any significant harm to the ongoing development of the school, which has, in any case, had new development planned, permitted and constructed since the 2016 decision was issued.

Other matter

21. The appellants have indicated that the disputed condition is not sufficiently clearly worded regarding the building to be demolished. However, there is only one building situated to the north of the car park and south of the pre-prep building. Furthermore, that building was, at the time, in use as a changing block. The building is, therefore, clearly identifiable and I do not consider that this description is insufficiently clearly worded.

Conclusion

22. I conclude that the disputed condition is necessary, enforceable and reasonable in all other respects. It is necessary for preserving the openness of the Green Belt and to ensure that the development does not conflict with the purposes of including land within it; enforceable by virtue of its clarity and the potential for compliance with it; and otherwise reasonable by virtue of its lack of a clear role in the future functioning of the school, which has very recently had new buildings planned, permitted by the local planning authority, and constructed. Accordingly, I dismiss the appeal.

J D Westbrook

INSPECTOR