
Appeal Decision

Site visit made on 16 September 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref A: APP/T3725/C/20/3250958

Appeal Ref B: APP/T3725/C/20/3250959

Old Folly Barn, Kites Nest Lane, Beausale, Warwick CV35 7PB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Steven Rawden and Appeal B is made by Jacqueline Rawden against an enforcement notice issued by Warwick County Council.
 - The enforcement notice was issued on 5 March 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of the Unauthorised Structure.
 - The requirements of the notice are
 - i. Permanently remove from the Land the Unauthorised Structure.
 - ii. Permanently remove from the Land all resulting waste and materials.
 - The period for compliance with the requirements is 6 months
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (the Act) as amended. Since the prescribed fees have been paid within the specified period with regard to ground (a) for Appeal A the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be decided. Appeal B is proceeding on ground (g) only.
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Decision

1. It is directed that the enforcement notice is corrected by removing the word "Permanently" from the first and second requirement of the notice.
2. Subject to these corrections, the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused for the application deemed to have been made under Section 177(5) of the Act as amended.

Procedural Matters

3. The requirements of the notice include the word "Permanently." However, the requirements of any notice run with the land and "Permanently" is therefore unnecessary. I shall correct the notice by removing the word from the requirements. I do not consider that injustice is caused to any party as a result of this correction.
4. The enforcement notice was served following the refusal by the Council of two applications¹ for firstly, planning permission for the retention of the carport, the subject of the notice and a shed and secondly, an application which sought the retention and an extension to the existing carport and the demolition of the shed. The appellants indicate that they were in the process of appealing the

¹ W/19/1254 and W/19/2007

second refusal when the enforcement notice was served. This appeal, however, relates only to the existing car port.

Main Issues

5. The main issues are:

- whether the development is 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 development on the character and appearance of the area
- whether the harm by reason of inappropriateness, and any other harm, would clearly be outweighed by other considerations and, if so, does it amount to the very special circumstances necessary to justify the development.

The appeal under ground (a) and the deemed planning application

Reasons

Whether the development would be inappropriate development within the Green Belt

6. Old Folly Barn was originally an agricultural building that was granted planning permission for conversion to a dwelling in a series of permissions. The planning permission that was implemented was subject to a condition removing permitted development rights for development within the curtilage of the dwellinghouse. Whilst, I note that the appellants state that the reason for imposing the condition did not relate to openness, the condition does mean that there is no fall-back position for ancillary building such as garages.
7. Policy DS18 of the Warwick District Local Plan 2011-2029 Adopted September 2017 (the Local Plan) states that the Council will apply national planning policy to proposals within the Green Belt. Paragraph 143 of the Framework establishes that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 states that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
8. Paragraph 145 of the Framework regards the construction of new buildings in the Green Belt as inappropriate subject to listed exceptions. The Framework does not make any specific reference to ancillary buildings. The appellant therefore seeks to rely upon the listed exception at Paragraph 145 c) of the Framework namely that the extension or alteration of a building does not result in disproportionate additions over and above the size of the original building. The Council disagrees and considers that the car port is a separate building which does not fall within any of the stated exceptions in the Framework and is therefore inappropriate development.
9. The appellant seeks to rely upon the case of *Seven Oaks District Council v SOS and DAWE* 1997 (the DAWE judgement) where it was found that a domestic adjunct such as a garage could be regarded as an extension to the dwelling in the absence of any physical attachment between the two buildings. However,

this does not mean that all domestic adjuncts can be considered to be extensions. As the appellant states the domestic adjunct “test” is concerned with the role of the building and its relationship to the main building both functionally and visually. As stated in the DAWE judgement, whether or not a domestic adjunct can be considered to be an extension is “a matter of fact and degree in every case.”

10. The dwelling at Old Folly Barn is situated to the rear of the appeal site approximately 30 metres from the road and is set down below ground level with a retaining wall. The detached oak framed two bay car port with a pitched roof is sited towards the side of the appeal site and further forward within the appeal site than the dwelling. The shortest distance between the dwelling and the car port is in the region of 6 metres to 7.2 metres as the parties do not agree on the distance. Nevertheless, I was able to view the gap as part of my site visit observations and the extent of the gap can also be seen on submitted photographs and plans. The car port is situated beyond the retaining wall that surrounds the dwelling and the grassed border that runs along the front of the dwelling.
11. I note that the appellants consider that the car port location is an obvious and practical one and as close to the dwelling as it can be in view of the retaining walls. Nevertheless, having regard to the Dawes judgment, whilst the two buildings have a functional relationship, as a matter of fact and degree, I do not consider that the visual relationship is sufficient for the car port to be considered to be an extension. The dwelling and the car port are visually two distinct, separate buildings on different levels with the car port being prominent and clearly read as a separate building with it being further forward in the appeal site than the dwelling. As I do not consider that the car port is an extension, it therefore falls outside the exception contained in Paragraph 145 c) of the Framework which relates to extensions.
12. The appellants seek to rely upon a number of previous Inspectors’ decisions where development has been allowed to support their case. Nevertheless, the circumstances in each case will be different and each decision is made upon its own merits having regard to each Council’s policies as well as national policy and site specifics including the location and size of the proposal. I do not have details of all the circumstances of each case before me such as the visual relationship between respective buildings and any other factors that were taken into account in reaching a determination such as any fall back arguments. I do not, therefore, find the decisions to be comparable with this case.
13. Similar considerations apply to the Merlin House decision² as I do not have all the information that was before that Inspector which informed that decision that would lead me to conclude that the decision was comparable with this site. There is also limited information with regard to distances in that decision and it is unclear for example as to why Policy H14 of the Local Plan which applies to Extensions to Dwellings in the Open Countryside was not relied upon by the parties in assessing proportionality.
14. As I consider the development to be a separate building rather than an extension, proportionality is not a matter for my consideration in this case. As a separate building, the development does not fall within the exception relied

² APP/T3735/D/18/3197089

upon in Paragraph 145 c) of the Framework and is therefore inappropriate development.

Openness

15. The fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open. The essential characteristics thereof being openness and permanence. Openness has both a visual and spatial aspect. The car port involves development in an area where development did not previously exist which has a spatial impact. The appeal site as identified on the red line plan apart from the car port consists of the appeal dwelling and a timber shed close to the front boundary. The appeal site is therefore largely undeveloped and there are extensive views of the open countryside from the site particularly to the rear of the appeal dwelling.
16. There is a mix of fencing and hedging together with access gates to the front of the appeal site. However, there are some views of the development particularly of the roof from the lane as shown in the appellants' photographs. The combination of spatial and visual harm means that the car port does, in my view, result in a small degree of additional harm to openness.

Character and Appearance

17. The Council's reasons for refusal refer to the position of the car port forward of the principal elevation of the dwelling and the general building line of this part of Kites Nest Lane which is not in keeping with the established pattern of development in the locality. However, there is no evidence before me to indicate what the established pattern of development is. From my site visit observations, Kites Nest Lane is not untypical of similar country lanes which are largely lined with mature vegetation and trees with sporadic pockets of development. The nearest dwellings to the appeal site are Chellow Dene and Bojangles which are closer to the lane than Old Folly Barn. Equally, there is development along Kites Nest Lane which is set back some distance from the lane. There is therefore limited evidence of what the established pattern of development is in the locality.
18. I therefore do not consider that the development does cause unacceptable harm to the character and appearance of the area. It would therefore not conflict with Policy BE1 of the Local Plan which, amongst other things, states that new development will be permitted where it positively contributes to the character and quality of its environment through good layout and design.

Other Considerations and Green Belt Balance

19. The Government attaches great importance to Green Belts. Paragraph 143 of the Framework states that inappropriate development is by definition harmful and should not be approved except in very special circumstances. Paragraph 144 of the Framework states that substantial weight should be given to any harm in the Green Belt. I have found the development to be inappropriate development in the Green Belt with a small degree of additional harm to openness.
20. Whilst, I have found that the development would not cause unacceptable harm to the character and appearance of the area, an absence of harm is not a positive consideration in favour of development or capable of outweighing harm to the Green Belt.

21. I therefore conclude that other considerations raised in this case do not clearly outweigh the harm that I have identified. Consequently, very special circumstances necessary to justify the development therefore do not exist. Consequently, the development does conflict with the Green Belt Policy set out in Policy DS18 of the Local Plan and the Framework. The appeal under ground (a) therefore fails.

The appeal under ground (g)

22. This ground relates to the period for compliance with the notice. The appellants have stated that the 6 months given for compliance is not reasonable given the existing Covid 19 pandemic and has asked for 18 months. The Council states that it has extended a usual 3 month period to 6 months to allow for the Covid 19 pandemic. I note that the work would involve demolition only and the removal of materials. The development is a separate structure which is likely to mean that distance could be maintained between the occupiers of Old Folly Barn and workmen whilst the car port is dismantled. Given the nature of the work, I do consider that 6 months is a reasonable compliance period. However, the Council does have powers under Section 173A of the Act which would enable it to consider extending the period for compliance provided that the Council was satisfied that justifiable reasons existed. The appeal under ground (g) therefore fails.

Overall Conclusion

23. For the reasons set out above, I therefore conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected and refuse to grant planning permission on the deemed application made under Section 177(5) of the Act as amended.

E. Griffin

INSPECTOR