



Appeal Decision

Site Visit made on 9 November 2020

by Alison Partington BA(Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th November 2020

Appeal Ref: APP/M1005/W/20/3256064

3 Britany Cottages Butterley Park, Ripley, DE5 3QW

- 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 Mr T Wragg against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2020/0197, dated 5 March 2020, was refused by notice dated 28 May 2020.
 - The development proposed is a workshop and hobby room.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - Whether or not the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the *National Planning Policy Framework* (the Framework);
 - the effect of the proposal on the openness of the Green Belt;
 - If the proposal 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 it.

Reasons

Whether inappropriate development and openness

3. The appeal site is located within the Green Belt as defined by the *Amber Valley Borough Local Plan (adopted 2006)* (LP). Policy EN2 indicates that within the Green Belt development will only be permitted if it meets one of a limited number of criteria. The Council have accepted that this policy is not fully consistent with the Framework. As a result, the proposal needs to be considered against the Framework. Paragraph 145 of the Framework indicates that new buildings in the Green Belt are inappropriate unless they are for one of a limited number of exceptions.
4. The appeal scheme proposes a new building in the rear garden of the host property. The appellant has stated that this would be used to store and maintain 2 tractors and other agricultural equipment used in connection with a

field he farms to the front of the dwelling as well as providing space to restore collectable motorbikes which is his hobby.

5. The appellant has suggested that as the building would be used to store tractors and agricultural equipment it would be in accordance with paragraph 145 (a). However, it is clear that the building is not solely for this purpose but also for the storage and restoration of motorbikes. I have been provided with no information about how the field to the front of the dwelling is farmed and whether it accords with the definition of agriculture given in Section 336 of the Town and Country Planning Act 1990. Moreover, there is no evidence that the appellant runs an established and/or viable enterprise as opposed to being just hobby farming. In the absence of such information, I am not satisfied that the proposal would be an agricultural building and so it would not fall within the paragraph 145 (a) exception.
6. The Council has considered the proposal under paragraph 145 (c) which allows 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. I have not been made aware of whether the LP provides any guidance of when a detached outbuilding may be considered to form part of a dwelling. The proposed building would be located at the far end of the rear garden which is T-shaped and would be positioned to the rear of No 4. Bearing in mind its position and distance from the host property, I do not consider it is reasonable to regard the proposed building as an extension to the host property.
7. However, even if this were not the case, to fall within this exception the proposal must not be a disproportionate addition. I have been provided with no details as to the floor area or volume of the original house, just the floor area of the proposed building. Nor have any details been provided as to whether the house has already benefitted from extensions and, if so, the size of these. As such I have determined the appeal on the basis of the plans before me and what I saw on my site visit.
8. The Framework does not provide a definition of what constitutes a disproportionate addition, and I have not been informed that the LP does either. As such, it is a matter of judgement for the decision maker. The host property is a two storey semi-detached house with accommodation in the roof space. The proposed building would have a floor area of approximately 46 sqm and a ridge height of 5.75m. Whilst the height of the proposed building would be less than the house, its footprint would be similar to it. Given this, the proposal would, in my view, represent a disproportionate addition. As a result, even if it could be considered to be an extension to the main dwelling, the proposal would not be a paragraph 145 (c) exception.
9. It has also been suggested by the appellant that the proposal could be considered under paragraph 145 (d) which allows the replacement of a building, provided it is in the same use and not materially larger than the one it replaces. The rear garden contains a number of buildings and structures including a prefabricated garage, a greenhouse, a lorry trailer and a garden shed all of which the appellant states will be removed as part of the proposal.
10. Whilst a number of these are used for storage purposes and for working on the motorbikes, the majority of these are structures rather than permanent buildings. Even if they were all buildings, the appellant's evidence is that their combined footprint is 29.7 sqm. As the proposed building would be 46 sqm, it

would be materially larger than these other buildings and structures. Consequently, the proposal would not accord with paragraph 145 (d) either.

11. The appellant has also stated that the scheme could be considered under paragraph 145 (g) of the Framework which concerns the limited infilling, or the partial or complete redevelopment, of previously developed land. It is argued that as the definition of previously developed land given in Annex 2 of the Framework only excludes private residential gardens in built up areas, the appeal site is previously developed land. This has not been disputed by the Council. Whilst the dwelling forms part of a small collection of buildings, these are surrounded by open fields and are separate from the settlement of Ripley. I therefore agree that it is not in a built up area, and so can be considered previously developed land.
12. However, to fall within this exception, as well as being previously developed land, the development must also not have a greater impact on the openness of the Green Belt than the existing development.
13. Openness is an essential characteristic of the Green Belt. At present the area where the building would be located is occupied by a lorry trailer and a greenhouse, as well as being used for the open storage of various garden and building materials. It is also indicated that the prefabricated garage and a garden shed would be removed. However, with the exception of the garage, these are lightweight temporary structures. In addition, the floorspace that would be created by the development would be greater than all the structures that would be removed and it would be significantly taller than any of them.
14. Moreover, whilst a condition could be used to ensure the removal of these buildings, there is no guarantee that replacement structures such as a new greenhouse or shed would not be erected elsewhere in the garden.
15. Therefore, whilst the proposed development may give the site a less cluttered appearance, I consider that the development of a larger, taller building, with a solid and permanent character, would have a significantly greater impact on openness than the current outbuildings and structures. Therefore, the proposal would not fall within the paragraph 145 (g) exception.
16. In the light of the above, the proposal would result in a new building that does not accord with any of the exceptions given in paragraph 145 of the Framework. It would therefore be inappropriate development, which according to paragraph 143 of the Framework is, by definition, harmful to the Green Belt. In addition, there would be a degree of harm arising from the loss of openness.

Other Considerations

17. The proposed building is well designed and reflects, and is sympathetic to, the industrial heritage of the local area. It would also utilise a number of reclaimed materials that are currently stored on the site which would also be sympathetic to the local area.
18. To the east of the site lies a large commercial building which I understand forms part of a former Victorian engineering complex. It is not disputed that the appeal building would be much smaller than this. As such, the appellant argues that it would have a much less profound impact on the Green Belt. However, the commercial building is an existing building that probably pre-dated the designation of the Green Belt. In contrast, this is a new building

which would result in a reduction in the openness of the Green Belt. Moreover, the Framework does not indicate that proposals are acceptable if they are smaller than other nearby buildings.

19. The appellant has suggested that if the ridge height was lowered then the proposal would be permitted development. However, no certificate of lawful development has been provided to clarify that this is the case. However, even if this was the case then the scale and mass of the building would not be as great as is proposed and so its impact on the openness of the Green Belt would not be as significant. Furthermore, the appellant has indicated that the height of the building is dictated by the need to provide appropriate headroom for the tractors. Thus, there is no substantive evidence to suggest that a smaller building would be constructed should this appeal be dismissed. As such, I only give this limited weight.

Planning Balance and Conclusion

20. The proposal would be inappropriate development in the Green Belt which is harmful by definition. In addition, there is a degree of harm arising from the loss of openness. In accordance with paragraph 144 of the Framework, I attach substantial weight to the harm to the Green Belt. Overall, I consider that the benefits cited in the scheme's favour do not clearly outweigh the harm it would cause. Consequently, the very special circumstances necessary to justify the development do not exist. As a result, it would be contrary to Policy EN2 of the LP and the Framework.
21. The Council have indicated that as Policy EN2 of the LP is not fully consistent with the Framework, it is out of date. This is the most important policy in determining the application. In such circumstances paragraph 11 (d) indicates that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Footnote 6 indicates that this includes policies relating to land designated as Green Belt. Given I have concluded that the scheme would be contrary to the policies in the Framework relating to Green Belts, this is the case here.
22. For the reason set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR