



Appeal Decision

Site visit made on 23 March 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2021

Appeal Ref: APP/N4205/C/20/3262939

Land at 7 Hodgkinsons Farm, Boot Lane, Bolton BL1 5ST

- 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 Ms Franca Laverdino against an enforcement notice issued by Bolton Metropolitan Borough Council.
- The enforcement notice was issued on 23 October 2020.
- The breach of planning control alleged in the notice is failure to comply with condition No 19 of a planning permission Ref 57251/00 granted on 8 September 2000.
- The development to which the permission relates is Conversion of existing barn to form 4 dwellings and erection of 4 double garages, including landscaping and parking provisions. The condition in question is No 19 which states that: *"Notwithstanding the provisions of Schedule 2 Part 1 of the Town and Country Planning General Permitted Development Order 1995 (or any order amending or replacing that Order) no extensions, porches, garages, outbuildings, sheds, greenhouses, oil tanks, or hardstandings shall be erected within the curtilage of (any of) the approved dwellinghouse(s), other than those expressly authorised by this permission."* The notice alleges that the condition has not been complied with in that a timber outbuilding has been erected within the curtilage of the dwellinghouse.
- The requirements of the notice are i) Demolish the timber outbuilding shown for identification purposes in photograph A attached to this notice; and ii) Permanently remove from the land all materials and rubble arising from compliance with requirements (i) above.
- The period for compliance with the requirements is 90 days.
- The appeal is made on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matter

1. Part of the appellant's case is that the alleged development is not captured by the aforementioned restrictive condition because it is situated on land that was outside the original planning application boundary, and which has only become part of the curtilage since the original grant of planning permission.
2. The appellant acknowledges that the parties have obtained differing legal opinions on this matter which support their respective cases. Whilst the appeal is made on ground (a) only, the appellant is also in effect arguing that there has not been a breach of planning control.
3. In the interests of fairness I therefore need to deal with this point as a 'hidden' ground (c) appeal. I am satisfied that this can be done without resulting in injustice to the parties.

The appeal on ground (c)

4. The appeal on ground (c) is that the matter alleged does not constitute a breach of planning control. The main issue in this regard is whether the development would be granted planning permission by Article 3, Schedule 2, Part 1, Class E(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
5. Under Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development, subject to various provisos. However the effect of Condition No 19, imposed in relation to the provisions of the previous version of the GPDO, as set out above, was to remove such permitted development rights, meaning that the development of any such incidental buildings within the curtilage would require express planning permission.
6. There is no dispute that the site of the outbuilding, subject to this enforcement action, is outside the boundary of the successful planning application to convert the barn. Since that permission was granted, it appears that the appellant has made a successful lawful development certificate application for the use of land in her ownership as an extended garden.
7. The appeal building is situated on this extended garden area. The appellant argues that as such, the original condition (No 19), the subject of the notice, fails to 'bite' with respect to the development of the building.
8. The Council however argue that this position is erroneous because under the provisions of section 72(1)(a) of the Act, conditions may be imposed for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made).
9. There would appear to be no dispute that the extended area of garden now also forms part of the curtilage of the property. In the absence of any evidence to the contrary, I am persuaded that the extension of the curtilage would effectively bring the appeal site within the control of the terms of the planning condition. Therefore express planning permission would have been required from the Council for the development. No such permission was obtained and therefore the ground (c) appeal fails.
10. It is not clear from the evidence before me and from my visit that the outbuilding would comply with the physical limitations set out in paragraph E.1. of Class E. If it does not do so this would be a further reason for the outbuilding requiring express planning permission from the Council. However due to my findings above, there is no need for me to consider this issue any further.

The appeal on ground (a)

Main Issues

11. The appeal on ground (a) is that planning permission should be granted. The main issues are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- The effect of the development on the openness of the Green Belt;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

'Inappropriate' Development

12. Paragraph 133 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 134 notes that the Green Belt has five purposes which include to assist in safeguarding the countryside from encroachment. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
13. Paragraph 145 of the Framework establishes that new buildings within the Green Belt are 'inappropriate' unless the type of building falls within a limited number of exceptions. These exceptions include buildings for agriculture and forestry; the provision of appropriate facilities for outdoor sport or recreation so long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it; or the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
14. Policy CG7AP of Bolton's Allocations Plan 2014 (AP) states that inappropriate development in the Green Belt will not be permitted.
15. The outbuilding the subject of the notice comprises a storage shed with veranda, constructed using an adapted shipping container with timber cladding and an apex roof. Whilst the appellant states that the building replaces an earlier outbuilding of similar size and in a similar location, which has now been removed but leaving remnants of the base, I have not been provided with any further details. I am therefore unable to conclude that the outbuilding, as constructed, is not materially larger than the one it is said to have replaced. Furthermore no indication is given as to whether that former building was itself lawfully constructed.
16. The appellant does not explicitly seek to argue that the outbuilding complies with any exceptions other than building replacement. For the aforementioned reasons I conclude that the outbuilding constitutes inappropriate development in the Green Belt.

Openness

17. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific

assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area. I note that the appellant concedes within her statement that the development results in moderate harm to the openness of the Green Belt.

18. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect¹. Aside from taking up space, it was apparent from my visit that the outbuilding is visible from several locations in the surrounding area.
19. The appeal site is in a countryside location characterised by open fields. The outbuilding, which comprises a substantial storage structure with veranda, is located immediately adjacent to a public right of way running along the eastern boundary of the site. When considering the presence of a high hedge on the opposite side of this right of way, I am in no doubt that the outbuilding results in a sense of greater enclosure, when approaching and passing the site, albeit that the structure would be passed relatively quickly.
20. Notwithstanding this, the presence of the outbuilding does result in the obstruction of some long-distance views from positions on the right of way close to the building, resulting in harm to openness. The outbuilding is also visible at greater distance in views from around the entrance to Boot Lane, and to a degree from the main road (Old Kiln Lane) to the west. Overall I consider that the development results in a sense of encroachment into the open countryside. Taking the above factors into account, including its relatively limited scale in the wider landscape, I conclude that the outbuilding causes moderate harm to the openness of the Green Belt.
21. The appellant has stated that the structure is situated partially on the base of a former glass house. It is unclear if it is being argued here that the development would not be inappropriate development on the basis that it would constitute partial re-development of previously developed land. Even if the site of the outbuilding could be defined as previously developed land, and there is insufficient evidence to persuade me that this is the case here, it would nevertheless still be inappropriate development in relation to this criteria on the basis that I have found there to be greater impact on the openness of the Green Belt, based on the evidence before me.

Other Considerations

22. I have had regard to the appellant's representations in support of the appeal. It is stated that the outbuilding does not harm the rural character and appearance of the area and is compatible physically, functionally and visually with the garden.
23. I have already found above that the development results in harm to openness. Whilst I would agree that the scale and appearance of the building does not appear incongruous in its rural setting and would be compatible with the use of the garden, the lack of harm in this specific regard is a neutral consideration. It therefore attracts no positive weight in the overall planning balance.

¹ *Turner v SSCLG & East Dorset Council* [2016]

Green Belt balance

24. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application, substantial weight should be given to any harm to the Green Belt.
25. With regard to the outbuilding I have found harm to the Green Belt by way of inappropriateness and to its openness.
26. I have balanced the harm to the Green Belt against the other considerations referred to above. However for the reasons given, having also had regard to all other points raised by the appellant, they do not clearly outweigh the harm identified.
27. The very special circumstances necessary to justify the development have not therefore been demonstrated. Consequently the outbuilding conflicts with the Green Belt protection aims of the Framework and with Policy CG7AP of the AP. The ground (a) appeal therefore fails.

Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

29. The appeal is 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.

Roy Merrett

INSPECTOR