



Appeal Decision

Site visit made on 27 July 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th August 2021

Appeal Ref: APP/V1260/C/21/3274172

**Land at Amberwood Cottage, St Catherines Hill Lane, Christchurch
BH23 2NL**

- 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 Mrs T Wiltshire against an enforcement notice issued by Bournemouth, Christchurch and Poole Council.
- The enforcement notice was issued on 1 April 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building.
- The requirements of the notice are: (a) Demolish the building including all its footings/foundations; (b) Remove all resulting materials from the land affected following compliance with (a) above.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

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

Procedural Matter

1. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeal. The main parties have been given the opportunity to comment on the implications of the revised Framework on the appeal and I have also taken it into account in my decision.

Ground (a) appeal

2. The appeal site is in the South East Dorset Green Belt. In dismissing a recent planning appeal¹, the Inspector concluded that the building attacked by the enforcement notice represented inappropriate development in the Green Belt and that it had a moderate adverse impact on openness, spatially and visually.
3. National policy in the revised Framework concerning development in the Green Belt is materially unchanged from the previous version. The main parties agreed that the appeal building represented inappropriate development in the Green Belt and I concur. As a result, there is no sound reason why I should not share the previous Inspector's conclusions concerning the harm to the Green Belt, the consequent failure to accord with Policy KS3 of the Christchurch and East Dorset Local Plan Core Strategy and the conflict with national policy.

¹ Ref: APP/V1260/D/20/3265478.

Main Issue

4. The main issue in this ground of appeal is therefore whether the harm to the Green Belt by reason of inappropriateness and the harm to openness would be clearly outweighed by other considerations and if so, whether this would amount to the very special circumstances required to justify granting planning permission for the appeal building.

Reasons

5. The site contains a single storey cottage with cob walls and a thatched roof, set in generous grounds. The appeal building is sited forward of the principal elevation of the cottage adjacent to Marsh Lane, from which vehicular access is obtained. The appeal building is constructed of brick and tiles and is described variously by the appellant as a garage and as a store and workshop.
6. The appellant argued that a 'fallback' position existed; in the event of the appeal being dismissed and the notice upheld, the appeal building would be carefully dismantled and the materials salvaged to erect a replacement outbuilding of similar scale elsewhere within the curtilage of the cottage. A plan supplied showed the footprint of a replacement outbuilding sited behind the cottage. The provision within its curtilage of a building required for purposes incidental to the enjoyment of the cottage would be granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at Article 3, Schedule 2, Part 1, Class E, provided the relevant size and locational limitations in that Class at paragraph E.1 were all met. The appellant suggested that the replacement outbuilding would meet the relevant limitations in paragraph E.1. There is nothing before me to indicate otherwise.
7. The cottage is locally listed as a building of importance. Having regard to the probable limited scale of the replacement outbuilding, the distance it would be set back behind the principal elevation and the proximity of later additions, there is unlikely to be an adverse effect on the setting of the cottage. Therefore, the significance of the non-designated heritage asset is unlikely to be eroded by the replacement outbuilding. Also, compared with the appeal building the overall effect of the replacement outbuilding on openness is likely to be neutral; any spatial effects arising from associated driveway works would be offset by the reduced visual presence. Therefore, the replacement outbuilding would have no adverse effects in respect of the above matters.
8. The replacement outbuilding would be sited near the shared boundary with an adjoining residential property 'The Rest', a Grade II listed building. Unlike the appeal building, the replacement outbuilding would not be separated from the listed building by substantial intervening structures, other than a boundary wall. The replacement outbuilding would introduce a modern built form albeit probably of relatively modest scale, where none had existed previously, closer to the listed building and creating a more built-up feel. Therefore, the 'fallback' position is likely to have a minor adverse effect on the setting of the listed building. This would equate to 'less than substantial harm' to the significance of the designated heritage asset. It follows that the appeal building offers an advantage in terms of its effect on the setting of the listed building, when compared with the replacement outbuilding. The revised Framework advises that great weight should be given to the conservation of a designated heritage asset.

9. Nevertheless, the replacement outbuilding would occupy a not insignificant portion of the private garden of the cottage. In doing so, from a householder's perspective the replacement outbuilding is highly likely to result in an appreciable erosion of the sense of spaciousness in the garden and of its useability, as well as to a degree impinging on the outlook currently available from the cottage. Given the distance from the principal elevation of the cottage, the replacement outbuilding would also probably be relatively inconvenient to access if used as a garage. In addition, there was no indication of the feasibility of constructing a driveway to the replacement outbuilding from either the primary or secondary access points. It is not unreasonable to expect that a householder would erect an outbuilding only where the enjoyment of their property was not adversely affected and the structure was practical and convenient to use.
10. Furthermore, I am mindful of the likely considerable costs involved in erecting the replacement outbuilding and the associated driveway works following demolition of the appeal building. There was little indication of the likely financing of such works. Additionally, although the appellant argued that a requirement for a structure similar to the appeal building would continue, little information was provided which might indicate that the replacement outbuilding would be required for a purpose incidental to the enjoyment of the cottage. Therefore, I cannot be reasonably assured that any replacement for the appeal building would be permitted by the GPDO Part 1, Class E in any event. Similar issues to those set out above are likely to be relevant to a replacement outbuilding elsewhere within the curtilage where the GPDO Part 1, Class E might apply.
11. A 'fallback' position must be realistic i.e., more than just a theoretical possibility; there must be a reasonable prospect of the replacement outbuilding or a similar structure being erected in the event the appeal is dismissed and the notice upheld. Given all of the above factors, on the balance of probability I am not persuaded of the possibility in practice of the replacement outbuilding, or a similar structure sited elsewhere within the curtilage, being erected. Consequently, in my view the case advanced by the appellant does not represent a realistic 'fallback' position.
12. Imposing a planning condition removing permitted development rights in the GPDO at Part 1, Class E would not overcome the harm to the Green Belt. In any event, in the absence of a realistic 'fallback' position I am not convinced that there is clear justification for such a condition, which would therefore conflict with the advice in the revised Framework at paragraph 54.

Green Belt Balance

13. The appeal building constitutes inappropriate development, adversely affecting the openness of the Green Belt. The other considerations do not clearly outweigh the totality of the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify granting planning permission for the appeal building do not exist.

Conclusion on Ground (a)

14. The appeal building does not accord with the Development Plan and conflicts with the revised Framework. There are no very special circumstances. Therefore, I conclude that the ground (a) appeal should not succeed.

Ground (g) appeal

15. The ground of appeal is that the time for complying with the requirements of the notice is unreasonably short.
16. Given its modest size, the relative simplicity of construction and having regard to the apparent absence of internal fittings, the careful dismantling of the appeal building is likely to be a reasonably small-scale and largely straightforward operation for any competent builder. In my estimation, it would not take much longer than a month or so to take down the appeal building and dig out the foundations, whilst salvaging as much of the construction materials as possible for re-use elsewhere. Such works are unlikely to be disproportionately costly or be significantly affected by adverse weather conditions. No firm evidence was provided which would suggest that there is an acute shortage of contractors with suitable knowledge and experience of undertaking such works, or that the waiting time for such a contractor to become available might be unusually lengthy.
17. As a result, to my mind four months strikes an appropriate balance between remedying the harm to the Green Belt in a reasonable timeframe, whilst also providing ample time for the appellant to arrange any necessary finance, source a suitable contractor and have the remedial works undertaken. It follows that extending the time for compliance to twelve months would perpetuate the breach and its associated planning harm.
18. Therefore, the specified period for compliance is not unreasonably short and the ground (g) appeal also fails.

Conclusion

19. 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

20. 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 Act as amended.

Stephen Hawkins

INSPECTOR