
Appeal Decision

Site visit made on 28 September 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2021

Appeal Ref: APP/B1930/C/20/3264101

Land at Tullochside, Hemel Hempstead Road, Redbourn, Hertfordshire

- 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 Mr Ned Stanley against an enforcement notice issued by St Albans City & District Council.
 - The enforcement notice was issued on 23 October 2020.
 - The breach of planning control as alleged in the notice is the erection of brick built structure shown edged blue on the attached plan.
 - The requirements of the notice are:
 - (1) Demolish and remove the brick built structure and reinstate the land to grass.
 - (2) Remove all rubble and building materials resulting from compliance with step (1) above.
 - The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. On 20 July 2021 the Government published its revised National Planning Policy Framework (the revised Framework). The revised Framework replaces the previous version published in February 2019. Policies within the revised Framework are material considerations which should be taken into account for decision-making from the day of its publication.
3. I have given the main parties the opportunity to make comments on the relevance of the revised Framework to the matters which have been raised by the appeal. Consequently, neither party would be prejudiced if I take the revised Framework into account in making my decision.

Ground (a) and the Deemed Planning Application (DPA)

4. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

5. The Council says in its statement that the design of the building is compatible with its surroundings, therefore the main issues are:
 - Whether or not the development is inappropriate development in the Green Belt having regard to the revised Framework, including any relevant effects on the openness of the Green Belt, and with regard to any relevant development plan policies.
 - If the development is inappropriate, 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 required to justify the proposal.

Reasons

Whether Inappropriate Development/effect on openness

6. There is no dispute between the parties that the site lies within the Green Belt. Policy 1 Metropolitan Green Belt of the City and District of St Albans District Local Plan Review (1994) (the Local Plan Review) establishes that within the Green Belt, except for development in Green Belt settlements, or in very special circumstances, permission will not be given for purposes other than those which are identified in Policy 1. The site is not within a Green Belt settlement.
7. Policy 1 is broadly in accordance with the restrictive approach adopted by the revised Framework. However, it is not entirely consistent with the revised Framework which establishes current policy with regard to the construction of new buildings in the Green Belt. Consequently, given this lack of consistency, I have accorded Policy 1 limited weight.
8. The appellant explains that the structure which is the subject of the notice is used for storage of his traditional gypsy caravans. During the site visit, which was attended by the Council, he said that he intends to store two such caravans in the building, but one was currently being repainted off site. The building has a full height door to the front to enable the caravans to enter the building and a pedestrian door. There was space for two caravans and other storage was taking place.
9. On the basis of the particular design, form and function of the building it can be described as being in use for storage specifically for the storage of traditional gypsy caravans (vardo). The point at issue between the parties is whether or not it is within the curtilage of a dwelling and thus to be regarded as an outbuilding for the purposes of planning policy.
10. In this regard Policy 13 of the Local Plan Review allows for extensions to houses in the Green Belt, which include garages and outbuildings, unless they are of a scale or visual impact which would create a building of larger or different character. Policy 13 is broadly in accordance with the revised

Framework which identifies the extension or alteration of a building as an exception to the construction of buildings that are inappropriate in the Green Belt, provided that it does not result in a disproportionate addition.

11. The appellant considers that the building falls within the curtilage either of Tullochside which is a detached house close to Little Revel End Lane or what he describes as a detached residential annexe. On the other hand, the Council describes the structure as having been built on land adjacent to the rear of Tullochside within the farmland and outside the residential curtilage.
12. There is no all-encompassing, authoritative definition of the term 'curtilage' and whether or not land forms part of the curtilage of a dwelling is a matter of judgement. The physical layout of the land and its ownership and use, both past and present are all matters which are relevant to this judgment.
13. I have limited information before me in relation to the ownership of the appeal site and other land surrounding it. The Council refers to a retrospective planning application for the building being submitted by a company which could point towards a different ownership. However, this information is not conclusive, and in any event, ownership alone is not a precursor for the land being regarded as curtilage.
14. The current layout and use of buildings and land surrounding the appeal building is such that there is a shared driveway running past Tullochside, the detached annexe and the appeal building. On the opposite side of the driveway is a caravan site. The driveway is served by the vehicular accesses off Hemel Hempstead Road and Little Revel End. The appellant occupies a mobile home between Tullochside and Little Revel End and the dwelling itself is unoccupied but undergoing refurbishment.
15. The aerial photograph for 2020 provided by the appellant shows that at that time there were two parking areas associated with Tullochside and that it has a rear and side garden. I was able to confirm this remains the case at the site visit. Based on this layout and use these features form part of the curtilage of Tullochside.
16. The detached annexe building has its entrance door facing one of the parking areas and there is a gap in the garden hedge which provides access to a grassed area behind the building from Tullochside. There are the remains of a paved area against the annexe but no means by which this could be accessed directly from the building. The appellant mentioned that the grassed area had been used in the past for play equipment but there was no evidence of this on the ground or on the submitted aerial photographs for the period 2000 to 2020.
17. The lawfulness of the annexe as a separate dwelling is only a matter before me in as much as the appellant is arguing that the annexe has its own curtilage and that the appeal building falls within it. The Council points out that the appellant has not sought to establish the creation of a separate annexe through the submission of an application and the appellant has provided me with very little information regarding the use of the annexe save for its description.
18. Given my own observations of the annexe relative to Tullochside and the limited evidence to show how the annexe has been used, I am unable to conclude that the annexe is a separate dwelling in its own right. It follows that

I do not regard any land associated with the annexe as being part of its curtilage independent of the curtilage of Tullochside.

19. Turning to the question of whether the grassed area adjacent to the annexe falls within the curtilage of Tullochside. There is very limited evidence of the use of the grassed area in connection with Tullochside. In terms of its functionality relative to the annexe this is precluded by the lack of direct access to it from the annexe. Access to the land is via a narrow gap between the wall of the annexe and the hedge enclosing the rear garden of Tullochside, thus in terms of its layout it does not form part of the rear garden serving the dwelling. Drawing all of these points together I do not find that the grassed area forms part of the curtilage of Tullochside.
20. The side wall of the appeal building forms the boundary with the grassed area, and the rear and opposite side wall abut pasture land. The front wall of the appeal building which contains the entrance doors faces the access driveway. The appeal building is separated from the curtilage of Tullochside by the grassed area adjacent to the annexe.
21. Given the conclusions which I have reached on the extent of the curtilage of Tullochside and the grassed area separating the appeal building from the rear garden of Tullochside, it follows that the building does not fall within the curtilage of a dwelling. That being the case the development does not fall to be considered under Policy 13 of the Local Plan Review.
22. The appellant argues that as the government has not chosen to remove or limit householder development in the Green Belt it follows that the erection of domestic outbuildings is not inappropriate in the Green Belt. However, as I have found that the appeal building does not fall within the curtilage of a dwelling, it follows that it does not amount to householder development.
23. The appellant has not pointed to the appeal building falling within any of the exceptions to new buildings which should be regarded as inappropriate development in the Green Belt, which are set out in the revised Framework.
24. Drawing all of these strands together I find that the appeal building constitutes inappropriate development in the Green Belt.
25. In terms of the impact of the development on the openness of the Green Belt, it has been established that openness has both a spatial and a visual aspect. In this case the appeal building introduces built form onto a space which, it has been demonstrated by the appellant's photographs, was previously open. As such the development has an adverse spatial impact.
26. Whilst the building is screened by intervening buildings from Little Revel Lane it is clearly visible from Hemel Hempstead Road between trees. I was able to see during my site visit that the building is visually prominent given the gaps in the tree screen. Also, the trees are generally deciduous in nature, therefore the building will be even more visible in the winter months when the trees are not in leaf. Consequently, the building also has a harmful visual effect on openness.
27. The appellant also contends that the building would only be seen in the context of existing urbanising development. Even if I were to accept that the adjacent land has been urbanised through the introduction of the caravan site, which is to be extended, and Tullochside itself, the building leads to an expansion and

consolidation of built form in the area. In itself, this has a harmful effect on openness.

28. The appellant also raises the question of fall-back. He says that he could erect a garage in the position occupied by the appeal building under permitted development rights set out in Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, Class E only applies to the provision of a building in the curtilage of a dwellinghouse. It will be seen from the foregoing that I have concluded that the site of the appeal building does not form part of the curtilage of a dwelling. Therefore, the erection of a building as permitted development under Class E is not an option which is open to the appellant and it does not represent a viable fall-back position.
29. I conclude that the development is inappropriate development in the Green Belt having regard to the revised Framework and its effects on the openness of the Green Belt. Thus, the development is contrary to Policy 1 of the Local Plan Review.

Other Considerations

30. The appellant refers to Planning Policy for Travellers Sites. However, he does not show how this is applicable to the appeal scheme.
31. The appellant, who is a Romany Gypsy, says that his ability to store the vardoes is an important link with his travelling tradition and there is no information before me to suggest that this is not the case. Romany Gypsies are ethnic minorities and thus have the protected characteristic of race. With this in mind I attach significant weight to the importance which the appellant places on providing suitable, weather-proof storage for his vardoes.
32. The appellant also cites an appeal (Appeal Ref. APP/B1930/W/19/3233651) (the 2019 appeal) which relates to another part of the land identified in the notice. The appeal was allowed, and planning permission was granted for a residential caravan park. In that case there were a number of factors which the Inspector weighed in favour of the appeal proposal, which are not relevant in this case. Thus, the 2019 appeal decision is not directly comparable and does not attract weight in favour of the appeal which is before me.

Green Belt Balance

33. The revised Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In this case while the need for the appellant to store his vardoes is an important aspect of his gypsy heritage, it does not clearly outweigh the harm to the Green Belt by reason of inappropriateness. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.

Overall planning balance

- 34.** The appeal building is contrary to the development plan and to the revised Framework which is a material consideration. Other material considerations are not of such weight as to indicate that permission should be granted in this instance.

Conclusion

- 35.** 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 application deemed to have been made under section 177(5) of the 1990 Act as amended

Sarah Dyer

Inspector