



Appeal Decision

Site Visit made on 9 November 2021

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2021

Appeal Ref: APP/R3650/W/21/3279535

Oldwicks Copse, Hascombe Road, Godalming GU8 4AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs C Samani against Waverley Borough Council.
 - The application Ref WA/2021/0274, is dated 4 February 2021.
 - The development proposed is the erection of three outbuildings within walled garden (as approved under WA/2020/1233).
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. A revised Framework¹ was published by the Government between the submission of the planning application and the appeal coming before me. I am satisfied that this latest version of the Framework does not raise any new considerations in relation to this appeal. The substantive elements thereof remain the same as the previous iteration in regard to the main issues of this appeal.

Main Issues

3. The main issues are:
 - whether the development is inappropriate development in the Green Belt including the effect upon the openness of the Green Belt; and
 - 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 necessary to justify the development.

Reasons

Whether or not the proposal is inappropriate development in the Green Belt

4. Policy RE2 of the Local Plan² concerns development in the Green Belt. It states that new development in the Green Belt will constitute inappropriate development unless it falls within the list of exceptions identified by the Framework. Paragraph 149 of the Framework lists the exceptions. Exception b)

¹ National Planning Policy Framework (2021)

² Waverley Borough Local Plan Part 1 (2018)

includes the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport and outdoor recreation as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Paragraph 149(g) also allows for the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.

5. The proposed buildings would replace an existing tennis court which is within the residential curtilage of the host dwelling. One building is said to allow for a treatment room and movie and playroom, a second would provide a swimming pool (part of which would be outside). This second building would also accommodate a jacuzzi and sauna, gym and steam room. The third building would house a relaxation area and bar as well as a garden store. The buildings would remain in incidental use to the main dwellinghouse.
6. Having regard to how the buildings are intended to be used, and even if I were able to sufficiently condition any permission to those specific uses, the buildings would, in the main, provide indoor leisure facilities for the appellants, with some more limited areas for outside seating around that part of the pool which remained uncovered. The buildings would not therefore meet the provisions of Paragraph 149(b) of the Framework as they are not facilities for outdoor sport and outdoor recreation.
7. The tennis court could be considered as PDL and thus fall to be considered under paragraph 149(g) of the Framework. The appellants have pointed to a Certificate of Lawful Development (LDC) to erect a 1.8m wall around the perimeter of the existing tennis court, which is intended to create a walled garden. However, this wall has not been erected. The appellants also point me towards two Court decisions and suggest that there will be no views into the site from outside the property and only limited views from within the site and thus there will be no impact on openness. On this basis, it is suggested that the proposal would meet the second limb of the exception with regard to openness.
8. The proposed buildings would cover a significant proportion of the existing tennis court and would be some 4m in height to their ridge. Thus, even if I were to take into account the approved wall around the tennis court, it would not screen the roofs of the buildings and thus both the height and extent of built form would be evident. From the existing dwelling, views of the proposed buildings might be affected by existing trees and planting but the buildings would be visible from some upper floor windows. Elsewhere within the site, given its size and scale, the development would be clearly visible. The land to the south of the tennis court and shown within the red line appeared to be a field rather than part of the curtilage. The proposed buildings would clearly be visible from this field.
9. Given their position and proposed height, the buildings would also be visible when the entrance gates were open and from some vehicles when passing the entrance, even when the gates were closed. Despite their intended incidental nature, the proposed buildings would represent sizable and noticeable built form within the landscape setting of the curtilage. The impact of these buildings would be greater on the openness of the Green Belt than the existing tennis court, even if the tennis court were surrounded by a 1.8m high wall.

Consequently, the buildings would not fall within the exception listed in paragraph 149(g) of the Framework.

10. I therefore conclude that the proposal would be inappropriate development in the Green Belt, contrary to Policy RE2 of the Local Plan and the Framework. By definition, inappropriate development would be harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework states that in considering proposals for development, substantial weight should be given to any harm to the Green Belt.

Other considerations

11. Paragraph 148 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm.
12. The appellant reasons that if I were minded to conclude the proposal is inappropriate development, then there is a permitted development fall-back position which would amount to very special circumstances. LDCs have been approved for two buildings close to the rear of the main dwelling. It is suggested that they represent a more harmful outcome to the Green Belt than the appeal scheme. It is suggested that, whilst the appeal scheme would represent an increase in height of built form, this would be offset through the reduction in the concentration of built form previously proposed in the LDCs and an overall reduction of 14% in floor area. Other factors such as the development being within the existing curtilage and away from the road, existing planting/screening and the proposed 1.8m wall around the tennis court are also cited in support of the proposal.
13. It is said that the appellants are not minded to construct the buildings shown within the LDCs as they are too close to the dwelling and would disrupt the outlook. I have no reason to dispute this, and although it reduces the likelihood of them being built and thus the weight I could attribute to them as a fall-back, there is no mechanism to secure such an outcome. Whilst it is unlikely the appellant would want two swimming pools etc there is nothing to prevent the buildings the subject of the LDCs from being used for other incidental purposes. Fall-back positions usually entail an 'either/or' element but in this case, there appears to be nothing to prevent both sets of buildings being constructed, if this appeal were to be allowed. The weight I could therefore attach to this matter would be limited.
14. I acknowledge that the buildings the subject of this appeal would represent a reduction in floorspace over those buildings approved under the LDCs. However, the appeal proposal would be higher and would be set further away from the main dwelling thus creating more of a sprawl of built form across the site. Even allowing for the potential wall around the appeal buildings and the other factors raised by the appellants, the stated adverse effects of the buildings approved under the LDCs would not be off-set by the current proposals.
15. The development is said to be a highly sustainable form of development with minimum energy usage required. Furthermore, it is said to not affect neighbours, the Area of Outstanding Natural Beauty nor the Area of Great Landscape Value. However, these factors would represent a lack of harm and accordingly would be neutral in any balance.

Conclusion

16. The proposal would constitute inappropriate development in the Green Belt. As such, the Framework requires that the harm by reason of inappropriateness be given substantial weight and that inappropriate development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
17. The weight I give to the considerations cited in support of the proposal is limited and accordingly they do not outweigh the harm the development would cause. The very special circumstances necessary to justify the proposal do not exist.
18. The development is contrary to both the Framework and to the development plan, which seek to protect the Green Belt. I have considered all other matters raised but none outweigh the conclusions I have reached.
19. For the reasons set out above, I refuse planning permission and dismiss the appeal.

Stewart Glassar

INSPECTOR