
Appeal Decision

Site visit made on 18 October 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2022

Appeal Ref: APP/K0425/C/21/3283625

Land to the south of 7 Grayling Close, Marlow, Buckinghamshire SL7 2BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ben Cottman against an enforcement notice issued by Buckinghamshire Council.
 - The notice was issued on 5 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use of the land to residential garden, together with the undertaking of engineering operations to level the land, and the erection of decking, fencing, BBQ shelter and retaining walls.
 - The requirements of the notice are: 1. Cease the use of the land for residential purposes; 2. Dismantle the decking; 3. Demolish the retaining walls; 4. Remove the fencing; 5. Demolish the BBQ shelter; 6. Remove all materials and debris resulting from carrying out steps 2 to 5 of this notice from the land.
 - The period for compliance with the requirements is three 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 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.

Application for Costs

2. An application for costs was made by Buckinghamshire Council against Mr Ben Cottman. This application is the subject of a separate Decision.

Preliminary Matter

3. The Council confirmed that following the receipt of further information from the appellant, its objection to the matters alleged in the enforcement notice on the grounds of an increase in the risk of flooding has been withdrawn.

Ground (a) appeal

Main Issues

4. The appeal site is located within the Metropolitan Green Belt. Therefore, the main issues in this appeal are:

- Whether the material change of use to residential garden and the operations including construction of a retaining wall, fencing, decking and barbecue shelter constitutes inappropriate development having regard to the National Planning Policy Framework (the Framework) and the Development Plan, including the effect on the openness and purposes of the Green Belt.
- Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify granting permission for the development that has been carried out.

Reasons

Whether inappropriate development

5. The site consists of a relatively short, narrow strip of land which has been incorporated into the rear garden of a substantial detached dwelling. The previously sloping ground has been raised to an even level, similar to that of the rest of the appellant's garden. The outer boundaries of the site are marked by a timber sleeper retaining wall topped with post and rail fencing, with close boarded fencing at the sides. The site is mostly occupied by timber decking, on which a barbecue shelter as well as some items including a table have been placed. Land to the south of the site is beyond the built-up area, being predominantly overgrown with scrub and forming part of an expansive area of open land stretching towards the river Thames.
6. At paragraph 149, the Framework advises that the construction of new buildings should, with certain exceptions, be regarded as inappropriate in the Green Belt. The retaining wall, fencing, decking and barbecue shelter are buildings as defined in s336 of the Act. As none of the exceptions listed in paragraph 149 apply, erecting these structures amounts to inappropriate development.
7. Paragraph 150 of the Framework advises that material changes of use and engineering operations are not inappropriate development in the Green Belt where they preserve its openness and do not conflict with the purposes of including land within it. The change of use to residential garden has been facilitated by the operational development, including construction of the retaining wall, fencing and decking. Those operations are integral to and part and parcel of the change of use, making the site useable as residential garden and separating it physically as well as functionally from adjoining open land. Consequently, the effect of the change of use on Green Belt openness is largely bound together with the effect on openness of the operational development.
8. The Planning Practice Guidance points out that openness is capable of having both a spatial and a visual aspect¹. Constructing the retaining wall and fencing has enclosed the site with solid man-made features. There is little firm evidence of the site having been previously enclosed in a similar fashion. In addition, the decking covers most of the site surface. There is little to indicate that the site was other than vegetated open land prior to the decking being installed. Although the built features are of modest scale, the resulting physical change to the site is not insignificant and it is permanent. Adjoining

¹ Paragraph: 001 Reference ID: 64-001-20190722.

open land now sits alongside solid man-made features, where none existed previously. This has all led to an erosion, albeit to a modest degree, of openness in a spatial sense.

9. The site protrudes noticeably and appreciably into what was previously open land beyond most established residential garden fence boundaries in the vicinity. The retaining wall and fencing are obviously residential built features which contrast unfavourably with the wild greenery of adjoining open land. The wall and fencing together with the decking, barbecue shelter and items of domestic paraphernalia at the site impart an appreciable sense of urban intrusion beyond the built-up area. These factors have all contributed to a modest erosion of openness in a visual sense. The likely level of additional activity associated with the residential use, including for example the appellant and family members using the decking, also contributes negatively in this respect. The visual consequences are limited given the modest size of the site and the built features, with few public views being available due to the local topography and maturing planting. Even so, that is not the same thing as an absence of a perceptible erosion of openness.
10. Therefore, I find that the change of use does not preserve Green Belt openness. At paragraph 137, the Framework advises that openness is an essential characteristic of Green Belts. Moreover, by extending residential use and activity beyond the built-up area there has been encroachment into the countryside. This conflicts with one of the purposes of including land within the Green Belt, set out in the Framework at paragraph 138.
11. The failure to preserve Green Belt openness and the conflict with one of the purposes of including land within the Green Belt, together with the undertaking of operations which do not fall within any of the listed exceptions, constitutes inappropriate development in the Green Belt, being inconsistent with the Framework at paragraphs 149 and 150, as well as failing to accord with Policy CP8 of the Wycombe District Local Plan (LP) and LP Policy DM42. At paragraph 147, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Other considerations

12. The Council did not object to the development on grounds other than those set out above and there are no sound reasons why I should conclude otherwise. However, the absence of other planning harm is a neutral factor which weighs neither in favour nor against granting approval.
13. Reference was made to incidences of possible unauthorised development in the locality which the appellant regarded as similar to what has taken place at the site. However, that does not represent a good reason for approving unacceptable development. In any event, I have to determine the deemed application arising from the ground (a) appeal on the basis of its individual planning merits.

Planning balance

14. The change of use to residential garden and the associated operations constitutes inappropriate development in the Green Belt which fails to preserve openness and encroaches into the countryside. I attach substantial weight to

the harm to the Green Belt, in accordance with the Framework at paragraph 148. There are no other considerations that would clearly outweigh the totality of the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify granting approval for the development do not exist.

Conclusion

15. 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.

Stephen Hawkins

INSPECTOR