The Planning Inspectorate

Appeal Decision

Site visit made on 17 November 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

Appeal Ref: APP/D0121/C/22/3302015
Broadoak House, Broadoak Hill, Dundry, BS41 8NB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tony Barry against an enforcement notice issued by North Somerset Council.
- The notice, numbered 21/000106/UAW, was issued on 24 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of land to use as residential garden, including the construction of an enclosed sports pitch with access steps and the regrading of the land.
- The requirements of the notice are:
  1 Cease the use of the land as residential garden.
  2 Remove the enclosed sports pitch and all miscellaneous materials associated with its construction and removal.
  3 Remove the steps which lead to the sports pitch.
  4 Remove all resulting materials from the land.
  5 Re-profile the ground and restore the land to its condition before the breach took place.
- The period for compliance with the requirement is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) 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.

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.

The site and relevant planning history

2. Broadoak House is a two storey detached property situated on sloping land on the side of Broadoak Hill. A number of timber domestic outbuildings and raised decking areas lie to the south of the house. Beyond the outbuildings and further to the south lies the enclosed sports pitch the subject of this appeal. It is enclosed by steel scaffolding posts, timber, netting and fixed advertising hoardings around the perimeter of the pitch. It is accessed from the lower part of the site by a set of steps constructed from scaffolding poles.

3. The appeal site lies outside the settlement boundary for Dundry and is situated within the Green Belt.

4. A retrospective application for the erection of timber outbuildings for use as a games room, summer house, gym, store and WC's incorporating raised decking areas was approved in August 2018 (18/P/4032F).

5. A retrospective application of the construction of an ancillary residential sports pitch to the rear of the garden was refused in December 2021(21/P/2177/FUL). The reasons for refusal were on the grounds of inappropriate development in the Green Belt and the effect on rural character.

The appeal on ground (c)

6. An appeal on this ground is that there has not been a breach of planning control. As a legal ground of appeal it has to be demonstrated on the balance of probabilities that there has not been a breach and the onus of proof rest with the appellant. Although it is accepted by the appellant that the sports pitch and associated works require planning permission, it is argued that the material change of use to use as a residential garden as alleged in the notice has not taken place as it is part of the garden of the dwelling.

7. It is stated that as the appellant has lived in the property for seven years, it cannot be definitively proven that the 10 years required to achieve immunity from enforcement action for the material change of use of land to residential garden has been met. Appendix 2 of the appellant's statement shows the title plan for Broadoak House which shows a large property with a large garden and includes the appeal site. The Council's submitted historical information and more recent aerial photographs clearly show that the house and garden can be distinguished from the parcel of land upon which the sports pitch has been constructed.

8. Curtilage is defined for the purposes of permitted development rights as 'land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area'. It has been held that the relevant factors in determining curtilage include the physical layout; ownership past and present; and use or function past and present[1].

9. The *Blackbushe Airport* case provides a useful commentary on what comprises curtilage where it states, 'The correct question is whether the land falls within the curtilage of the building, and not whether the land together with the building fall within, or comprise, a unit devoted to same or equivalent function or purpose, nor whether the building forms part and parcel of some unit that includes the land'.

10. I concur with the Council's view that the appeal site has two distinct characters, that comprising the dwelling and associated garden and a separate plot of land which can be described as woodland, orchard, or grazing land, field or pastureland. The remnants of a fence appear to have divided the two parts at some point in time. The erection of the sports pitch has led to a material change of use to a residential use.

11. The appellant attaches considerable weight as to whether the use of the land was agriculture and that it would be unreasonable to use the land for agricultural purposes as the appellant does not have a farming business. I consider such arguments to be of little relevance as to whether a material change of use has occurred.

[1] *Sutcliffe v Calderdale BC [1983] JPL 310; Sinclair Lockhart v Central Land Board 1950; Burford v SSCLG [2017] EWHC 1493 (Admin); Lowe v SoS [2003] EWHC 537 Admin; Blackbushe Airport Ltd v Hampshire CC, R On the application of) and Ors [2021] EWCA Civ 398*

12. The appellant argues that even if the land is regarded as agricultural, it is questionable whether it represents a material change of use to residential. Reliance is placed on *East Barnet UDC v British Transport Commission 1962* and *Palsar v Grinling 1948*. The appellant contends that any ancillary residential use would not lead to any discernible change in the definable character or function of the land and would not have any 'significant consequences amounting to a material change of use. This is a matter of fact and degree and it is evident that there has been a change in the character of the use of the land and that this change is significant in its effects on the area.

13. Having regard to relevant caselaw and the submitted evidence I conclude that the land upon which the sports pitch is situated does not form part of the curtilage of the dwelling and that its previous use was probably as woodland, albeit that it may have been regarded as a domestic amenity by the occupants of the house. The appellant has not shown on the balance of probabilities that current use as residential land is lawful or that it has achieved immunity from enforcement action through the passage of time.

14. The appeal on this ground fails.

The appeal on ground (a)

15. An appeal on this ground is that planning permission should be granted for what is alleged in the notice.

16. The main issues are:

    i) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.

    ii) The effect of the proposal on the openness of the Green Belt.

    iii) The effect of the proposal on the character and appearance of the area.

    iv) Whether any 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 the proposal.

17. The Framework at paragraph 149 regards the construction of new buildings in the Green Belt to be inappropriate unless they are for the provision of appropriate facilities (in connection with the existing use of the land or change of use) for outdoor sport and outdoor recreation as long as the facilities preserve the openness of the Green Belt and does not conflict with the purposes of including land within it. Paragraph 150 indicates that material changes in the use of land (such as changes of use for outdoor sport or recreation) not inappropriate development in the Green Belt provided they preserve the openness and do not conflict with the purposes of including land within it. The essential characteristics of Green Belts is their openness and their permanence. and one of the purposes served by Green Belts is to safeguard the countryside from encroachment. Policy DM12 of North Somerset Core Strategy reflects the approach of the Framework.

18. The allegation refers to operational development by way of the construction of the enclosed sports pitch and access steps which come within the scope of a

'building' as defined in s336 and the regrading of land is an engineering operation.

19. Photographs submitted by the Council and from my own observations indicate that the sports pitch and its enclosure are visible from outside the site and from public view such as from the main road to the south. The pitch, enclosure, steps and hoardings represent an intrusive, visually incongruous development that significantly affects the openness of the Green Belt and as such is not appropriate development in the context of the Framework. I attach full weight to this conclusion.

20. The site is within a rural setting which prior to the unauthorised development had a rural character reflecting that of the surrounding countryside and not that of the residential character of the dwelling. The development introduces an urbanising feature harmful to the character and appearance of the area and contrary to policies aimed at development proposals being sensitive to local character and setting. It is also contrary of the North Somerset Landscape Character Assessment SPD as the sports pitch neither conserves nor enhances the landscape character of the area contrary to Policy DM10 of the Sites and Policies Plan, Part 1. I attach considerable weight to the harm caused to the character and appearance of the countryside.

21. The appellant has suggested that a condition for a landscaping scheme could mitigate the visual impact of the development. Whilst such a scheme could achieve this to a limited extent, it would not overcome the harm to the openness of the Green Belt, the character of the land or encroachment of the countryside. I therefore attach limited weight to the suggested condition.

22. It is claimed that the sports pitch is used for the recreation of the appellant's family and friends. Whilst such a use may provide some personal benefit, this does not outweigh the harm to the Green Belt.

23. I conclude that the harm by reason of inappropriateness, and harm to the character and appearance of the area, would not be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal. The development is contrary to the Framework, to Policies CS5, CS6 and CS12 of the North Somerset Core Strategy and Policies DM10, DM12 and DM32 of the North Somerset Sites and Policies Plan (Part 1), and to the advice in the North Somerset Landscape Character Assessment SPD.

24. The appeal on this ground fails.

The appeal on ground (f)

25. An appeal on this ground is that the steps required to comply with the notice are excessive and that lesser steps would overcome the objections.

26. The appellant claims that as prior to the erection of the sports pitch, the land was in use in an ancillary residential capacity and by removing the potential for domestic use restricts the land to an agricultural use in which it has no function or purpose. Notwithstanding this, the appellant fails to indicate what lesser steps would overcome the objections to the development.

27. I have already concluded in the ground (d) appeal regarding the use of the land and that it does not fall within the curtilage of a dwelling. It is also

unnecessary to state how the land should be used except to cease the use as residential garden.

28. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.

29. The appeal on this ground fails.

Conclusion

30. 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.

P N Jarratt

INSPECTOR