



Appeal Decision

Site visit made on 6 December 2022

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/B1550/W/22/3297350

Land adjacent Woodlands, Trinity Wood Road, Hockley, Essex, SS5 5JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs E Chantree against the decision of Rochford District Council.
 - The application Ref 21/01337/FUL, dated 16 December 2021, was refused by notice dated 24 March 2022.
 - The development proposed replacement building (retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The fact that development has been carried out is not in dispute. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine the lawful use of the building. However, I shall consider the evidence as to the use in so far as it is material to this appeal. If the appellant wishes to ascertain the lawful use, they may make an application under section 191 or 192 of the Act.

Main Issues

3. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
 - The effect of the proposal on the openness of the Green Belt.
 - 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.

Reasons

Whether the proposal would be inappropriate development

4. The National Planning Policy Framework July 2021 (the Framework) sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; and the essential characteristics of Green Belts are their openness and their permanence. The Framework goes on to state that inappropriate development is harmful to the Green Belt. The construction of new buildings in the Green Belt should be regarded as inappropriate, and thus should be approved only if very special circumstances

exist, unless they come within one of the categories in the closed list of exceptions in paragraph 149 of the Framework.

5. Of relevance to this appeal is that 'the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces' is listed as an exception in paragraph 149d. The points in dispute in relation to this exception are the use of the building, its size, and whether there was a building to be replaced at the time the workshop was constructed.

Use

6. The building that is the subject of this appeal ('the workshop') is used for painting, writing by a published author and running a business and has a bathroom, but not full kitchen facilities. It was erected in 2019. There is a substantial dwelling at Woodlands located around 130m away. Its garden adjoins the appeal site and it is separated by a fence.
7. The planning statement describes a previous building on the appeal site as being in separate agricultural use, then prior to 1985 used for occupants of Woodlands' (who from 1985 included the appellant and her parents), storage, packing and manufacture of business items as well as for writing and painting. Given the physical proximity, use by the same occupants and nature of the commercial use described, I find this to be an ancillary residential use.
8. The Appellant currently uses the workshop for the purposes previously described, but she no longer lives at Woodlands and so travels to the site to work. The site was sold separately to the main dwelling at Woodlands in 2014. These factors indicate that the building is now a separate commercial unit. I have had regard to *Burdle v SSE* (1972) in so far as it is relevant in coming to these conclusions. The planning statement states that this use has occurred for over 10 years. However, the only detail I have with regard to timings is the date of the sale. As such, based on the evidence before me, this decision is based on the fact that this change of use took place in 2014.
9. Consequently, the use between 1985 and 2014 would have existed for over 10 years and would be immune from enforcement action, whilst a use dating between 2014 and when the workshop was constructed would not. As such an ancillary residential building was replaced with a commercial building.
10. The reference to a normal domestic adjunct from *Sevenoaks District Council v SSE and Dawe* (1997) relates to whether an outbuilding can be considered an extension to a dwelling. This is not a matter before me. However, I have taken into account the distance between the workshop and the dwelling at Woodlands in my considerations.

Size and whether there was a building to be replaced

11. I am provided with drawings of the previous building which are taken from the appellant's description of the dimensions, as measured surveys were not taken prior to its demolition. The drawing does not show a raised floor level with piers below.
12. I am also provided with ariel images and photographs of the site. However, the LPA and the appellant's interpretation of the size of any building and whether these show a building of substantial and permanent construction differ. Even if the images were conclusive that a building existed, the quality of images,

shadows and the extent of vegetation make it difficult to ascertain the extent of built development on site. As such the evidence is not sufficiently precise and unambiguous to satisfy me that there was a building on the site of the dimensions shown in the existing plans immediately prior to the erection of the workshop, and therefore that the replacement is not materially larger than the building that was replaced.

Summary

13. Consequently, the appeal scheme was not the replacement of a building in the same use and not materially larger than the one it replaced. Therefore, for the reasons described above, the appeal scheme is inappropriate development in the Green Belt in the terms of the Framework, the aims of which are set out above. As well as being contrary to Policies GB1 and GB2 of the Core Strategy Adopted Version (2011) (CS) which, amongst other things, prioritise the protection of green belt land based on how it achieves the purposes of the Green Belt with a restrictive approach to Green Belt development.

Openness

14. Openness has both spatial and visual dimensions. I find that the development fails the exception that it is not materially larger than the building that it replaced. Consequently, a larger building results in development of areas which were previously open. As such there is harm to spatial openness. The site is set away from the road and is sloping, nevertheless the workshop is visible from the neighbouring land including Woodlands. As such there is harm to visual openness in this regard.
15. Consequently, for the reasons above, the development would be harmful to the openness of the Green Belt. Therefore, it would be contrary to the Framework and Policies GB1 and GB2 of the CS, the aims of which are set out above.

Other Considerations

16. The appeal scheme provides a business premises for the appellant, however this benefit is mainly private and therefore I afford it minimal weight.

Green Belt Balance

17. The Government attaches great importance to Green Belts. Paragraph 148 of the Framework states that substantial weight should be given to any harm to the Green Belt. I have found harm to the Green Belt by reason of the development's inappropriateness and effect on openness. These issues are not outweighed by the considerations advanced by the appellant. Therefore, the other considerations in this case, do not clearly outweigh the harm identified.
18. The very special circumstances necessary to justify the development therefore do not exist. Consequently, the development conflicts with paragraph 148 of the Framework and Policies GB1 and GB2 of the CS, the aims of which are set out above.

Conclusion

19. The appeal scheme does not accord with the development plan and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that this appeal should be dismissed.

H Miles

INSPECTOR