



Appeal Decision

Site visit made on 16 November 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2023

Appeal Ref: APP/J4423/C/22/3301826

Peas Bloom House, Sunny Bank Road, Bolsterstone, Sheffield S36 3ST

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act").
 - The appeal is made by Mrs Marie Williams against an enforcement notice issued by Sheffield City Council.
 - The notice was issued on 19 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the execution of operational development consisting of the erection of an outbuilding on the Land in the approximate position shown edged red on the plan and shown in photo at the appendix attached to the notice.
 - The requirements of the notice are:
 - (i) Demolish the outbuilding described in paragraph 3 of the notice;
 - (ii) Remove from the Land all the materials arising from the performance of paragraph 5(i).
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) of the Act. 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 Act.

Preliminary Matter

2. The initial appeal site visit was arranged as an accompanied site visit with the main parties. However, this was postponed due to considerable personal health circumstances of the appellant. Therefore, a second site visit was undertaken on the basis of an access required site visit. The appeal site was accessed from an opened driveway gate which leads directly into the curtilage, and the appeal site.

The appeal on ground (d)

3. In order for an appeal on ground (d) to succeed it has to be shown that at the time of the notice was issued it was too late for enforcement action to be taken. In particular it has to be shown that the building had been substantially completed more than 4 years before the date on which the notice was issued. The relevant date therefore is 19 May 2018.

4. For this legal ground of appeal, the Courts have established that the onus of proof falls to an appellant¹, with the test of the evidence being on the balance of probabilities². Also, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted³.
5. The appellant has provided evidence to support their ground (d) appeal. Two documents are provided. The first is an invoice from '*CMP Interiors Ltd*', this is dated 19 February 2018 for the installation of electrics, spotlights, electric sockets, internet sockets etc. However, it does not identify where the location of any of these works were undertaken, and neither does it identify that the purpose of the works 'final fix', as the appellant asserts was for the development which is alleged in the breach of planning control in the notice.
6. The second document contains several images of cash invoices from '*Timber Specialists (Sheffield) Ltd*'. These are date ranged between 25 January 2018 and 3 February 2018, and show a variety of materials purchased. However, the invoices do not show who purchased the materials or any associated address or delivery. Moreover, this evidence does not establish that these itemised materials were for any purpose in the actual construction or completion of the development.
7. Having regard to all of the invoices submitted by the appellant, I find that while they are not inconsistent with her case, they do not add any positive evidential weight in support of it.
8. The Council say they received a complaint on 26 March 2019 of the appeal building under construction. Although a copy or timed and dated record of that complaint has not been provided for me to examine, it has not been disputed by the appellant and I have no reason to doubt that such a complaint was made.
9. The Council also refer to a planning application for the same development as alleged in the notice. It was submitted with a planning application form, and the declaration for the planning submission at section 26 is dated 21 May 2019. The form, at section 5 states that the work started on 20 February 2019 and the work was completed 30 March 2019. This documentary evidence directly conflicts with the appellant's case now that it was constructed earlier.
10. The Council have provided several Google earth images, I note these have a date added on the pages. However, the replicated images themselves are not dated, so I cannot be certain from this evidence of the exact date timelines, but these clearly show how development has evolved at the appeal site.
11. Overall, I find that the invoices supplied by the appellant do not attract weight either for or against allowing the appeal. The appellant's case however is contradicted by the Council's evidence in respect of a complaint being made. It is further contradicted and made entirely ambiguous by the different date given for completion of the building as set out in her earlier planning application. I conclude, on the balance of probabilities, that the building was not substantially

¹ *Nelsovil v SSE* [1962] 13 P&CR 151

² *Thrasylvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

³ *Gabbittas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

completed more than 4 years before the notice was issued. Therefore, it was not too late for the Council to take enforcement action and the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

Main Issues

12. The main issues in this case are:

- Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- The effect of the development on the openness of the Green Belt; and
- If the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate development

13. The Framework sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
14. Paragraph 149 of the Framework sets out that the construction of new buildings in the Green Belt is inappropriate development in the Green Belt subject to a number of exceptions.
15. Policy GE1 of the Sheffield Unitary Development Plan (adopted March 1998) (SUDP) sets out that in the Green Belt, development will not be permitted, except in very special circumstances. SUDP Policy GE2, relates to the protection and improvements of the Green Belt, and Policy GE6 in relation to house extensions in the Green Belt. This policy is supported by the Designing House Extensions Supplementary Planning Guidance from the Unitary Development Plan (SPG), which allows extensions in the Green Belt only if they are a minor addition to the dwelling and are not visually intrusive.
16. The appellant refers to the exceptions to being inappropriate development in relation to buildings listed at paragraph 149 of the Framework respectively.
17. The development is located within the Green Belt, and is a considerably large outbuilding located to the front of Peas Bloom House. The outbuilding is sited along the boundary and within the domestic curtilage.
18. The Framework does not make any specific reference to ancillary buildings. The appellant contends that the principle of development and the proposal should be viewed as an extension to the dwelling. Therefore, as outbuildings are buildings paragraph 149 c) should logically apply to the appeal proposal where an extension or alteration to a building is not inappropriate development provided it does not result in disproportionate additions over and above the size of the original dwelling.

19. Although, case law⁴ has established that a domestic outbuilding could be regarded as part of the dwelling and, therefore, that an outbuilding could potentially be regarded as an extension to the dwelling, this is a matter of fact and degree. It appears from the evidence before me that both parties do not agree that it would form a 'normal domestic adjunct' or that the outbuilding is an extension to the dwelling.
20. Furthermore, in this case, there would be no physical attachment between the development and that of the dwelling, the levels of the decking change and there is a further intervening raised stone patio, steps and planting between the outbuilding and the nearest part of the dwellinghouse. There would be little visual or functional relationship between them, given the outbuilding is standalone, detached and as I saw that the enclosed area with glazing and doors could function independently as an outbuilding containing several electric points and heating. Therefore, the outbuilding could not reasonably be regarded as an extension to the original dwelling.
21. Notwithstanding the above, even if I were to consider it was regarded as an extension to the dwelling, the Framework does not define the term of disproportionate. The outbuilding on the site is of a significant size, footprint and volume, and I have no substantive evidence to the contrary that it has not added considerable further built development at the site, alone or in combination with previous alterations and extensions to the original dwelling. Therefore, in that regard, the development would not be of a limited scale or a proportionate addition when comparing to the original dwelling.
22. With regard to paragraph 149 g) and 'previously developed land'⁵. Although the decking is in situ this does not simply mean because the appeal site contains structures the whole of the site should be considered as such. However, whether the development has a greater impact on the openness than the existing development, I set this out in the next section.
23. For the reasons given above, I conclude that the development would not comply with the exceptions as set out in paragraph 149 of the Framework, and as such, it would be inappropriate development in the Green Belt.

Openness

24. As set out in paragraph 137 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics thereof being its openness and permanence.
25. The outbuilding is built on garden land to the front of the dwelling, it has resulted in additional built development and the loss of this garden area which unavoidably results in a reduction of openness of the site.
26. Furthermore, the appeal site is within an elevated position in relation to the surrounding landscape. This combined with the open character of the surrounding countryside, particularly as I saw that the outbuilding can be viewed from along and looking up from Sunny Bank Road means the development can be clearly seen from both nearby and distant views in the public realm. Despite, the existing planting and vegetation, which would vary

⁴ *Sevenoaks District Council v The Secretary of State for the Environment and Dawe [1997]*; *Warwick DC v SSLUHC, Mr J Sorer & Mrs A Lowe [2022] EWHC 2145 (Admin)*.

⁵ Framework Annex 2

during the year, the outbuilding, given its substantial size, length, massing and prominent position is still readily visible in the landscape.

27. Moreover, the existing decking does little to prevent this, and the decking alone is of limited height compared to the outbuilding, and is not the development before me. I have had regard to the caselaw⁶ cited by the appellant, however visual effects are a matter of planning judgement⁷. As a result, the development has a moderate detrimental effect on the open character of the area and causes a reduction in the openness of the Green Belt, in both visual and spatial terms.
28. Therefore, I conclude that the development does not preserve, and has a harmful effect on, the openness of the Green Belt. It is contrary to Policies GE1, GE2 and GE6 of the SUDP, Section 9 of the SPG, and the Framework, 2021, which all aim to protect the openness of the Green Belt.

Other Considerations

29. The appellant asserts that the removal of the building would have financial and environmental implications for them. However, I have no substantive evidence to support these concerns, or that it would justify an unauthorised development. Furthermore, the matter of whether it prevents the appellant from enjoying their garden or views to its full potential would be of a personal choice. The appellant also asserts permitted development rights, however there is nothing before me to suggest that it would meet any limitations set out in the GPDO⁸. I therefore give these considerations no weight.
30. In coming to my conclusion, I have had due regard to the previous appeal decision⁹ at the site for the same development. I have no reason to disagree with that Inspectors finding, and that the development is inappropriate development within the Green Belt and is harmful to Green Belt openness.

Planning Balance and Conclusion

31. The development is inappropriate development in the Green Belt. This is harmful by definition and to which I attach substantial weight. The development would reduce the Green Belt's openness, which gives rise to additional harm. The considerable harm renders the development contrary to the requirements of the Council's Development Plan policies and in conflict with the Framework.
32. Against the totality of the harm, I have identified, the other considerations advanced by the appellant are not sufficient, either individually or cumulatively, to clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist.
33. The development is contrary to the development plan and the Framework taken as a whole. There are no other material considerations that would indicate that the development should be determined other than in accordance with the development plan.

⁶ *Timmins v Gedling Borough Council* [2014] EWHC 654 (Admin)

⁷ *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire Council (Appellant)* [2020] UKSC

⁸ The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

⁹ APP/J4423/D/19/3235506

Conclusion

34. For the reasons set out above and having regard to all other matters raised, 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 Act.

K A Taylor

INSPECTOR