
Appeal Decision

Site visit made on 27 March 2023

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 06 April 2023

Appeal Ref: APP/J3720/D/22/3294331

White Croft Barn, Kemps Green Road, Kemps Green, Warks B94 5PN

- 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 Mr & Mrs Sidhu against the decision of Stratford-on-Avon District Council.
 - The application Ref 21/03373/FUL, dated 18 October 2021, was refused by notice dated 14 January 2022.
 - The development proposed is a detached outbuilding.
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Decision

1. The appeal is dismissed.

The appeal site and planning background

2. The appeal site comprises a large plot within the small hamlet of Kemps Green. The settlement consists of a few scattered dwellings, surrounded by mainly open countryside. The dwelling White Croft Barn is positioned in the site's south-western corner, adjacent to Kemps Green Road.
3. In a previous appeal on the site, it was determined that in this case the 'principal elevation' is the one which faces east, towards the central part of the site. As a result, it is now agreed that permitted development (PD) rights for 'Class E' curtilage buildings do not apply in the part of the site which is forward of that elevation.
4. Subsequently, in 2021, a lawful development certificate (LDC) was issued for a proposed outbuilding, to provide a games room, shower room and laundry. The building would be sited to the north of the house, outside the area where PD rights are excluded, and the certificate appears to have been granted on the basis that the building fell within the terms of Class E. Implementation of this development has not been commenced.
5. Towards the south-eastern corner of the site, there is an existing wooden shed, apparently used as a log store and garden storage.

The proposed development

6. The development now proposed would comprise a new, freestanding building, sited to the east of the house, towards the centre of the plot. The building would have two wings, one containing a games room, and the other a shower room and gym, connected by a glazed lobby. The two wings would be arranged on either side of a central space or courtyard, onto which both would open via glazed folding doors. The roof would be a single mono-pitched structure, oversailing the courtyard and both wings. Solar panels would be

mounted across the width of the roof slope, facing south towards the road. The overall dimensions would be about 13.5m by 5m, with a maximum height of just over 3.3m. The external materials would be brick and timber cladding to the walls, a metal roof, and upvc or aluminium windows.

7. The submitted plans indicate that the existing wooden outbuilding would be removed, and the appellants have indicated their willingness to accept a condition to this effect. In the circumstances of this case, I agree that the removal of this structure could be secured by condition, and I have considered the appeal on this basis.
8. In addition, the appellants suggest that, in the event of the present appeal being allowed, they would also be willing to give up the benefit of the LDC, by way of either a further condition or a legal agreement. In this case however, it seems unlikely that a condition would be effective, as any such condition would only come into force upon the commencement of the new permission; it would therefore not be able to prevent the prior implementation of the LDC proposal, followed by the planning permission. Nor could such a condition prevent the erection of any further buildings under PD rights, elsewhere within the part of the site where such rights remain available. No legal agreement or undertaking appears to have been entered into¹. In the absence of any such obligation, it seems to me that there is no means available within the terms of the present appeal to secure the withdrawal of the LDC, or of any other Class E rights. I have therefore dealt with the appeal on this basis.

Green Belt policy

9. Kemps Green lies within the West Midlands Green Belt (the GB). In the Stratford-on-Avon Core Strategy (the SACS) adopted in 2016, Policy CS10 states that, in order to uphold the purposes of the GB, inappropriate development will be resisted, except where justified by very special circumstances. In this context, Policy CS10 makes it clear that the words 'very special circumstances' and 'inappropriate development' are to be understood by reference to the particular meanings given to them in national policy.
10. The relevant national policies relating to GBs are set out in the National Planning Policy Framework (the NPPF). Paragraph 137 of the NPPF states that the fundamental aim of GB policy is to keep land permanently open, and that openness and permanence are the GB's essential characteristics. Paragraph 138 sets out the GB's purposes, which include safeguarding the countryside from encroachment. Paragraph 147 states that development which is 'inappropriate' in the GB is harmful by definition, and should not be approved except in very special circumstances. Paragraph 148 requires that any harm to the GB is given substantial weight.
11. Paragraph 148 goes on to provide the definition of 'very special circumstances'. Such circumstances will only exist where the harm to the GB by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
12. The meaning of 'inappropriate development' in the GB is explained at paragraphs 149 and 150. The construction of new buildings is to be treated as

¹ For appeals proceeding under the Part 1 Householder procedure, the deadline for receipt of an executed planning obligation is the date of submission of the appeal (see: 'Procedural Guide: Planning Appeals - England')

inappropriate, except where it falls within one of various specified exceptions. These include (c), which relates to extensions, (d) relating to replacement buildings, and (g) which is concerned with previously developed land.

Main issues

13. The main issues in the appeal are:

- whether the proposal would constitute 'inappropriate development', in terms of Green Belt policy;
- if so, whether the development would also have any other impacts on the Green Belt, or its purposes;
- the effects on the character and appearance of the Arden Special Landscape Area;
- the effects on the Council's policy aims for carbon emissions and climate change mitigation;
- how the effects of the appeal proposal compare to those of the 'fallback' position'
- and whether any harm to the Green Belt, together with any other harm, would be clearly outweighed by other considerations, so as to amount to 'very special circumstances'.

Reasons for decision

Inappropriateness

14. The Council and the appellants both agree that the proposed new outbuilding falls within the definition of inappropriate development, albeit for apparently different reasons. I also concur that the proposal is inappropriate. For the avoidance of doubt, the reason is that the scheme would involve the construction of a new building, which would not fall within any of the exceptions in NPPF paragraph 149.
15. Furthermore, even if I were to consider the proposed new outbuilding as being akin to an extension of White Croft Barn, the exception provided for by paragraph 149(c) is limited to cases where the development would not result in disproportionate additions to the size of the original building. In the present case, I have no evidence to support such a finding. But in any event, given that paragraph 149(c) is cumulative, the appeal proposal would have to be considered in combination with any other relevant developments or outstanding permissions at the site; and for the reasons already explained, that would include the outbuilding already authorised by the LDC. On that basis, it seems to me that the addition resulting from the appeal proposal would be likely to be disproportionate. The requirements of paragraph 149(c) are therefore not met.
16. In a similar vein, I recognise that if the existing wooden storage shed is removed, then the new outbuilding now proposed could be considered as a replacement for that building. But the exception in paragraph 149(d) applies only where the new building would not be materially larger than the building to be replaced. In the present case, the building now proposed would be significantly larger than the existing shed. For the reasons already explained, the appeal proposal cannot be treated as a replacement for the LDC building. The scheme therefore does not fall within the terms of paragraph 149(d).

17. Finally with regard to paragraph 149(g), the exception relating to previously developed land is subject to consideration of the impact on openness. In this case, the proposed new building would not only be significantly larger than the shed that it would replace, but it would also be sited more prominently, in the most open, central part of the site, where there are views through to the countryside beyond. On both counts, the building now proposed would have a greater impact than the existing small shed. The scheme would therefore cause substantial harm to the GB's openness. As such, it does not qualify as an exception under paragraph 149(g).
18. I appreciate that, on another site, a building of the same size and position as that now proposed might be PD. But in the light of the previous appeal decision at this site, that is not the case here, and it appears not to be disputed that planning permission is required. That being so, the appeal proposal is subject to the policies of the development plan and NPPF, including those relating to the GB, in the same way as any other application.
19. For the reasons stated above, I conclude that the proposed scheme would be inappropriate development in terms of GB policy, contrary to SACS Policy CS10 and NPPF paragraph 147. As such, it would be a type of development that the NPPF regards as causing harm to the GB, by definition.

Other impacts on the Green Belt

20. For the reasons already explained, the proposed development would reduce the GB's openness, thus conflicting with one of the main aims of GB policy.
21. In addition, due to its design and materials, the new building would be obviously residential in nature, and the effect would be to make the site as a whole appear more urbanised. As such, the development would conflict with one of the main purposes of GBs, of safeguarding the countryside from encroachment, as set out in NPPF paragraph 138.
22. These impacts would represent additional harms to the GB, over and above that arising from inappropriateness.

Character and appearance

23. The countryside around Kemps Green is mainly open and rural in nature, with predominantly large arable fields, interspersed with small woodlands. The high visual quality of the landscape is recognised in its designation as part of the Arden Special Landscape Area (the SLA). The appeal site, with the absence of buildings in its central area, affords long views over this surrounding landscape, which contribute positively to the character and appearance of the area.
24. The development now proposed, for the reasons already explained, would obstruct these existing views through the site, and thus weaken the visual link from Kemps Green Road to the open countryside of the SLA. It would also urbanise the central part of the site, by introducing a permanent building of a residential nature.
25. Although this adverse impact would be partly offset by the removal of the existing storage shed, that building is smaller and lower, and sited close to the trees on the site's side boundary. As such, its effect on views of the countryside is relatively small. In addition, the shed has a rustic appearance, and is partly open-sided, and built of lightweight, short-life materials; all of

these characteristics further reduce its visual prominence. In comparison, the new building now proposed would be significantly larger, more prominent, more permanent, and more solid in appearance.

26. I appreciate that the appeal site has a lawful residential use, and that outbuildings are not an unusual feature within a domestic curtilage. I also agree that the proposed design is reasonably attractive, and in all other respects would be generally suitable for this setting. But nonetheless, for the reasons that I have explained, the introduction of a building in this part of the site would cause harm, due to its siting.
27. For these reasons, I find that the development would cause harm to the character and appearance of the Arden SLA. This harm, being unrelated to the site's GB status, would be additional to the harm that I have identified in that regard. The development would thus conflict with SACS Policy CS12, which seeks to protect the SLA's landscape quality and distinctive character.

Carbon emissions and climate change mitigation

28. SACS Policy CS2 seeks to ensure that developments incorporate measures to mitigate and adapt to the effects of climate change. Such measures may include designing to reduce carbon emissions and the waste of natural resources, and to make efficient use of renewable energy. I note that the Council has also published further guidance on these matters in a supplementary planning document.
29. In the present case, the development would incorporate solar panels, and it is not disputed that these would go some way towards satisfying the relevant policy requirements for a building of the type now proposed. The Council suggests that the submitted information is insufficient, but I see no reason to doubt that any reasonable requirements for further details, and indeed additional measures if necessary, could be secured by condition.
30. On this basis, I am satisfied that the development is capable of complying with Policy CS2, and that in terms of carbon emissions and climate change impacts, no undue harm would be likely to arise.

The fallback position

31. The existing LDC provides for a building which would serve a similar function to the one which is the subject of the present appeal. I see no reason to doubt that, if permission for the appeal proposal is refused, the LDC building could be built instead. I am therefore satisfied that the LDC offers a realistic fallback position.
32. Nominally, it appears that the LDC building would have a greater volume than the appeal proposal. However, that comparison is somewhat misleading, due to the effect of the central courtyard in the present proposal. A comparison based on floorspace would suffer the same defect. The LDC building would have a slightly greater overall height, but to my mind this would not be unduly noticeable. Overall, taking account also of the differences in building shape, roof form, and style, it seems to me that the apparent size of the LDC building would be much the same as that of the building now proposed.
33. To my mind, the most significant basis for comparison between the two proposals relates to their siting. The LDC building would be close to the rear

boundary. It would thus intrude into a part of the appeal site which is currently free from buildings, and relatively close to the sensitive countryside beyond the site itself. But in this part of the site, the LDC building would be behind, and partly screened by, the main house. It would also be close to, and further screened by, the boundary trees between the appeal site and the neighbouring property to the west, 'White Croft'. And given that White Croft is set well back towards the common rear boundary, the LDC building would be no closer to the open countryside than that property. Whilst any new building anywhere on the appeal site would have some adverse impact on the GB's openness, and on the area's character and appearance, it seems to me that the siting chosen for the LDC building would allow these impacts to be minimised. For the reasons already set out above, the present appeal proposal, due to its siting, would have a significantly more damaging effect in both these respects.

34. I note the appellants' contention that the location of the LDC building is unsuitable for solar panels. However, this has not been substantiated. On the face of it, the LDC site appears relatively unobstructed, whereas the appeal building would be directly to the north of the tall trees on the site frontage. In the absence of any technical evidence, it is not clear why these matters should be considered to favour the siting now proposed. In any event, this issue is not conclusive, as I consider that in this case the greater weight should attach to the impacts on the GB and the area's character and appearance.
35. Based on the above comparison, I conclude that if the fallback scheme authorised by the LDC were implemented, the effects on the GB, and on the area's character and appearance, would be less harmful than those arising from the present appeal scheme. It therefore follows that in this case the fallback position adds no weight to the case for the appeal.

Very special circumstances

36. As explained earlier in this decision, the way in which 'very special circumstances' are required to be judged is prescribed by the NPPF. In the present case, I have found that the development would cause harm to the GB, by reason of inappropriateness, and a loss of openness, and also due to the conflict with the GB's purposes. These harms to the GB must carry substantial weight. In addition, I have found harm to the character and appearance of the SLA, to which in this case I also attach significant weight.
37. I have taken account of all of the other matters raised, including the LDC, the removal of the shed, and the building's sustainable design, but in the overall balance all of these are, at most, neutral. The harm is therefore not clearly outweighed, and very special circumstances have not been demonstrated.

Conclusion

38. In the absence of very special circumstances, the proposed scheme conflicts with SACS Policy CS10 in relation to GB. It also conflicts with Policy CS12 with regard to the SLA. None of the matters raised justifies a decision other than in accordance with these development plan policies. The appeal is therefore dismissed.

J Felgate

INSPECTOR