

Appeal Decisions

Hearing held on 22 November 2022

Site visit made on 22 November 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Appeal Refs: APP/B1550/C/22/3294077 & APP/B1550/C/22/3294078
Land at Old Pumping Station, Fambridge Road, South Fambridge, Rochford, Essex SS4 3LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Lesley Diss and Mr Nicholas Diss against a notice issued by Rochford District Council.
 - The notice was issued on 22 February 2022.
 - The breach of planning control as alleged in the notice is, without planning permission:
 1. The erection of a building (also referred to as a butler bin) used for domestic purposes comprising of storage, utility room, toilet and shower, lounging and hobby use incidental to the dwelling formed from the conversion of the old pumping station building [building is shown labelled BB on the attached plan]
 2. The material change of use of a rural building, old pumping station building, to a dwelling forming a new dwelling in the green belt [old pumping station building is shown labelled PS on the attached plan].
 - The requirements of the notice are:
 1. Cease use of the building/butler bin labelled BB on the attached plan for storage , utility room, toilet and shower, lounging and hobby use.
 2. Demolish the building/butler bin labelled BB on the attached plan and remove its foundations and any plumbing pipework installed in the building.
 3. Remove from the site all resultant material from carrying out steps 1 and 2 above.
 4. Level the land and infill any trenches from the removal of the foundations and return the land to its condition prior to development taking place.
 5. Permanently cease the use of the old pumping station building labelled PS on the attached plan as a dwelling.
 6. Permanently remove all fixtures and fittings installed in the building to facilitate the residential occupation of the building and all domestic paraphernalia and appliances not limited to oven, hob, kitchen cabinets, toilet, wash basin(s).
 - The period for compliance with the requirements is nine (9) months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of a former pumping station building for residential purposes, and also the erection of a building (known as a butler bin) to provide shower, w.c, and storage to facilitate the site's residential use on land at the Old Pumping Station, Fambridge Road, South Fambridge, Rochford, Essex SS4 3LT, referred to in the notice, subject to the conditions set out in the attached Schedule.

Background

2. Following the erection of the cylindrical, metal 'butler bin' building on the land in 2018 the appellants moved into what had become a derelict former pumping station building and commenced its use for residential purposes. Connections were made to allow for the provision of water and electricity services. Due to the small building's limited size only a very basic standard of accommodation was possible within and the butler bin, which has a series of small windows installed, was used as additional accommodation providing shower, w.c and storage facilities to allow for the on-site residential use.
3. In July 2021 the Council served the appellants with a planning contravention notice (PCN); effectively a requisition for information. This was completed and returned to the Council along with a planning application which sought to regularise the planning position at the site. However, the application was left invalid and was returned to the appellants in January 2022. The enforcement notice, the subject of this appeal, was issued the following month.

Matters concerning the enforcement notice

4. The alleged breach of control set out in the enforcement notice should best be made more succinct to focus better on the actual development involved. In the circumstances I shall correct the notice as follows. The allegation is corrected to read:

"Without planning permission, the material change of use of a former pumping station building for residential purposes, and also the erection of a building (known as a butler bin) to provide shower, w.c, and storage to facilitate the site's residential use."

5. I shall leave the required steps as worded. As no appeals have been made on legal grounds I accept that a breach of planning control has occurred and planning permission is required for both the use's lawful continuation and the butler bin building's lawful retention.

The appeal on Ground (a) and the deemed planning application (DPA)

Main Issues

6. As the site is located in the Green Belt I consider the main issues to be as follows:

- Whether the dwelling constitutes inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework;
- If it is inappropriate development, the effect on the Green Belt's openness;
- Whether there is any other resultant harm, with particular regard to the site's location within the designated Coastal Protection Belt, and given that the land also falls within Flood Risk Zone 3;
- if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development

7. Paragraph 147 of the National Planning Policy Framework (the Framework) says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework says that new buildings should be regarded as inappropriate development in the Green Belt. A number of exceptions to this are listed within the paragraph, but none of these can be reasonably considered to be applicable to the butler bin. Accordingly, I find this building as inappropriate development within the Green Belt for the purposes of the Framework.
8. Paragraph 150 lists certain other forms of development that need not be considered as inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. One of these is the re-use of buildings provided that they are of permanent and substantial construction. Applying this criteria to the appeal site I note that the appellants effected the refurbishment of the former pumping station, making good what was a previously derelict building.
9. Notwithstanding the erection of the butler bin the refurbished building has not itself been extended or altered to any material extent and, as such, I consider that, in this particular instance, returning the former pumping building to a beneficial re-use satisfies the Framework's criteria and is not inappropriate development within the Green Belt.
10. I need only, therefore, consider the effect of the butler bin on the Green Belt's openness.
11. Openness in terms of the Green Belt, which is recognised as relating to the absence of built form, can have a spatial as well as a visual aspect, although the Supreme Court has held that a consideration of openness is essentially a matter for the decision maker on a case by case basis. In this instance the round, metal, building is of modest size and its design gives an appearance of a rural type building. In fact, there are other such local examples. Although higher than the adjacent, brick-built former pumping station, given its contextual setting, and a random scattering of buildings in the locality, I find that its effect on the Green Belt's openness is limited.

12. Nonetheless, policy GB1 of the Council's Core Strategy (CS) has the objective of protecting the Green Belt and, whilst serving to prevent the coalescence of individual settlements, it encourages forms of rural diversification to aid the rural economy. In this regard CS policy GB2 refers to outdoor recreation and leisure, small-scale overnight accommodation and the conversion of existing buildings for employment purposes. Both this policy and policy DM12 of the Council's Development Management Plan (DMP) reflects the Framework's purpose of discouraging inappropriate development, and as residential development is not included as a suitably appropriate use in such environments it is not encouraged.
13. Although DMP Policy DM10, which concerns the re-use of previously developed land (PDL) in the Green Belt, considers that residential development of such might be acceptable subject to particular criteria, I consider that, overall, the development fails to accord with the objectives of the said policies.

Coastal Protection Belt

14. The appeal site lies in open countryside within the designated Coastal Protection Belt. It lies south of Fambridge Road, at the point where it turns towards the settlement of South Fambridge. There is an expanse of green fields between the site and the coastline to the north, a point which is some distance away. Given the various scattering of buildings in the locality I am satisfied that the landscape has not been compromised by the development in situ. Accordingly, I find that there is no material conflict with CS policy ENV2

Flood Risk

15. The Environment Agency (EA), when consulted on the current appeal, raised objections to the development based on the flood risk assessment (FRA) submitted by the appellants along with the planning application which was submitted to the Council in August 2021, but which was subsequently declared as invalid. The FRA produced at that time was considered deficient on a number of grounds.
16. The EA did though, in its consultation response, provide advice as to how the objection might be overcome which, amongst other things, would require for the appellants to prepare a flood emergency plan (FEP). In addition to the said response the Council will be able to provide guidance on this matter and I have had regard to the wording of the suggested condition put forward by the Council in the event that the appeal is allowed and planning permission granted for the development.
17. On the face of it CS policy ENV3 would guard against planning permission being granted for the development but, given its realistically temporary nature and the fact that the suggested condition would still require that the appellants produce a revised FRA and a FEP I am satisfied that the recommended measures would constitute suitable mitigation.

Other Considerations

Personal circumstances and Human Rights

18. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to

respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and which is necessary, amongst other things, for the protection of the rights and freedoms of others.

19. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest.
20. Personal circumstances are themselves capable of being a material consideration in a planning case and this is well established in law. In this particular instance, whilst I have taken into account relevant policies which, in the main, would guard against the development, I consider that the displacement of Mr and Mrs Diss, who are of elderly age, from this modest development which is their sole residence, would result in them experiencing a significant degree of hardship. Given the rather low key nature of their occupation, the fact that the development partly involves the re-use of a small derelict building, and that the development can be conditioned personally, I afford the appellants personal circumstances as carrying significant weight.

Intentional Unauthorised development

21. The government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission, particularly on land within the Green Belt. In such cases there is often no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve Councils having to take time consuming enforcement action and, since August 2015, intentional unauthorised development (IUD) has been considered as a material consideration to be weighed in the determination of planning applications and appeals.
22. The Council's 'Timeline of Events' as set out in its Written Statement, refers to a site meeting attended by Council officers and Mrs Diss in October 2018, which had followed a site visit earlier in the month, where it was advised that works on the site should cease. Clearly, this advice was not heeded and some seventeen months later the appellants took up residence at the site. No application for retrospective planning permission was submitted until after the PCN was issued in July 2021.
23. I have balanced these factors with the degree of development involved and the character and impact of such, along with the appellants personal circumstances and I find that this to be a case of 'build first, apply later'. However, when I consider the actual circumstances involved and the appellants on-site needs which are relatively very limited – the habitable floorspace is certainly modest - I am of the view that the degree of harm caused can be limited or mitigated by imposing necessary and reasonable planning conditions.

Planning Balance

24. Paragraph 148 indicates that the decision maker should ensure that substantial weight is given to any harm to the Green Belt. Also, the very special circumstances that must be demonstrated will not exist unless the potential harm

to the Green Belt by reason of inappropriateness, and any other harm resulting, is clearly outweighed by other considerations. Whilst finding that the butler bin represents inappropriate development within the Green Belt, and that this also adversely impacts on the openness on the Green Belt, albeit to a limited extent, I am, though, satisfied that its effect on the landscape is not of marked significance and the aims of DMP policies DM1 and DM26 are not compromised. Here I am mindful of the appearance and rural character of the butler bin. As mentioned, I have also found that the personal circumstances involved carry substantial weight.

25. The Council has, in support of its case, provided a previous appeal decision from 2016 for a site within the Rochford DC area where the case turned on the potential for the land to flood (*APP/B1550/W/15/3137716*). The appeal related to a proposed three-bed dwelling and was dismissed. In drawing a comparison between the cases, whilst there is a similarity as to flood risk, and the respective appellants for both cases failed to demonstrate that there are no other suitable sites within the District or outside Flood Zone 3 that might accommodate a new single dwelling, a clear distinction can be drawn. The current proposal partly involves the re-use of an existing building and, moreover, this is only a temporary use given the personal circumstances involved. Following the site being vacated the former pumping station building's residential use rights will be lost and the land will take on a nil use.
26. I have also had regard to an earlier unsuccessful appeal relating to the current appeal site. The decision letter from 1988 followed the Council refusing planning permission for the extension of the former pumping station and its change of use for residential purposes. Given the length of time that has elapsed since, the comparative nature of the proposals, and also the current circumstances, I afford this decision only limited weight.
27. Weighing up the various factors I have concluded that, on balance, the appeal turns on the personal need involved and, as it will be of a temporary nature, the very special circumstances which are necessary to outweigh the general presumption against inappropriate development in the Green Belt have been demonstrated.

Conclusion and Conditions

28. For the reasons given above, and having had regard to all matters raised, and also the development plan as a whole, I conclude that the appeal should succeed on ground (a) and a conditional planning permission is granted. The appeal on grounds (f) and (g) do not therefore need to be considered.
29. At the point when the personal permission granted ceases to have effect there will be a condition imposed requiring for the butler bin building to be removed from the land and also for the former pumping station building to be vacated. The butler bin performs no other primary use and should not be retained. Together, these measures will ensure that the residential use of the land ceases.
30. A site development scheme is necessary in the circumstances. This will provide details of the layout of the site, details of any intended boundary treatment and external lighting, and also drainage proposals. Given the small scale nature of occupation and its surroundings I see no need for details to be provided as to any new planting proposed. Neither do I consider it necessary or reasonable for the

provision of visibility splays to be incorporated at the site's entrance. The access point to the site is longstanding, and I note the local highway authority has not raised specific objections to the proposal. Further, from my site visit observations, the site already has a satisfactory ingress/egress arrangement.

31. A timetable for the implementation of the SDS, where necessary, shall be agreed along with the details.
32. Given the circumstances regarding flood risk suitably worded conditions are imposed requiring for both a revised FRA and a FEP. Also, as I agree with the Council that normal householder permitted development rights shall be removed, I am also imposing a condition to this effect.
33. Finally, given the nature of the approved use, I do not consider it either necessary or reasonable to impose a condition as to a requirement that public footpath PROW 280_11 shall be maintained free and unobstructed at all times. Planning permission can be granted without reference to such and, in the event that problems might arise in this respect, primary legislation exists, other than the 1990 Planning Act, to remedy matters.

Timothy C King

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be occupied only by Lesley Diss and Nicholas Diss. When the premises cease to be occupied by both Lesley Diss or Nicholas Diss, the use hereby permitted shall cease, the butler bin building and all materials and equipment brought onto the site in connection with the use shall be removed from the land, along with the vacation of the former pumping station building. Upon this, the land shall be returned to its former condition prior to the erection of the butler bin.
- 2) Within 3 months of the date of this decision a Site Development Scheme (SDS) shall be submitted for the written approval of the local planning authority. The SDS shall include details of:
 1. The layout of the site, including the extent of any amenity or open areas, the position of the access driveway and the locations of vehicular parking, any buildings and hardstanding;
 2. Proposed and existing external lighting on the boundary of and within the site;
 3. Foul water drainage, a programme of works and the location of the cesspit, if retained;
 4. All boundary treatment and other means of enclosure, incorporating the retention (and augmentation where necessary) of the existing planting around the entirety of the site, and including details to identify any existing boundary fencing which is to be removed;
 5. A timetable for the implementation of the SDS.

Upon implementation of the approved SDS specified in this condition, that scheme shall thereafter be retained.

- 3) Within three months from the date of this decision, a revised Flood Risk Assessment (FRA) shall be submitted to the local planning authority incorporating the recommendations provided in the Environment Agency consultation response dated 14th April 2022 at section sub-headed 'Overcoming Our Objection' for subsequent written approval. The development permitted by this planning permission shall be carried out in accordance with the approved FRA and mitigation measures detailed within the FRA shall be undertaken.
- 4) Within three months from the date of this decision, a flood response plan shall be submitted to and agreed in writing with the local planning authority. Once agreed, the flood response plan shall be implemented in times of flood.
- 5) Notwithstanding the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order) no development falling within Classes A, AA, B, C, D and E including of Schedule 2 to the said Order shall be erected without the benefit of planning permission.

APPEARANCES

For the Appellant

Lesley Diss Appellant

For the Local Planning Authority

Talent Masuku Rochford District Council

Katie Fowler " "

Elise Davis " "

Calum Lewis " "