



Appeal Decision

Site visit made on 28 February 2023

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/A1910/W/22/3304045

October Cottage, Barnes Lane, Kings Langley WD4 9LB

- 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 Peggy West against the decision of Dacorum Borough Council.
 - The application Ref 21/04768/FUL, dated 14 December 2021, was refused by notice dated 15 February 2022.
 - The development proposed is described as 'the change of use of land located to the west of October Cottage, from agricultural land (*Sui Generis*) to ancillary residential (Use Class C3) land, to be used as garden land for use by October Cottage'.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land located to the west of October Cottage, from agricultural land to ancillary residential (Use Class C3) land, to be used as garden land for use by October Cottage at October Cottage, Barnes Lane, Kings Langley WD4 0LB in accordance with the terms of the application, Ref 21/04768/FUL, dated 14 December 2021, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The land shall be used as domestic garden land associated with the dwelling 'October Cottage', and for no other purposes.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, re-enacting, substituting, amending, extending, consolidating replacing or modifying that Order), no incidental buildings within Part 1, Class E of Schedule 1, and no gates, fences or walls within Part 2, Class A of the same Schedule, shall be erected on the land, except in the event that a further planning permission is expressly granted for that development.

Preliminary Matters

2. The description of development on the planning application form includes reference to the existing agricultural use of the land as a '*sui generis*' use. As *sui generis* is a use of its own kind it does not apply to this parcel of agricultural land, I have therefore deleted this reference from my formal decision.

3. The Council's first refusal reason refers to Policy GCS5 of the Dacorum Core Strategy 2006-2031, however the appeal submissions indicate that the correct reference is in fact Policy CS5. I have determined the appeal on this basis.

Main Issues

4. The main issues are:

- whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and
- Whether the development would result in the unacceptable loss of the best and most versatile agricultural land.

Reasons

Whether inappropriate development

5. The appeal site lies between the residential properties known as October Cottage and Barnes Croft. The properties are part of a small group of detached and semi-detached dwellings on this side of Barnes Lane. The agricultural land to the rear of the site extends between some of the dwellings along the lane up to the highway.
6. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. Certain other forms of development are also identified at paragraph 150 which are not inappropriate, provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Included at paragraph 150 e), is material changes in the use of land, such as outdoor sport and recreation, cemeteries and burial grounds. Whilst the change of use to residential garden land is not explicitly mentioned, the list is not exhaustive and as such I am satisfied that it would constitute a form of development which would fall within paragraph 150 e).
8. Policy CS5 of the Dacorum Core Strategy 2006-2031 (the DCS) sets out that national policy will be applied to protect the openness and character of the Green Belt, local distinctiveness and the physical separation of settlements.
9. Green Belt openness, as a matter of planning judgement is capable of having both spatial and visual aspects. The proposal does not include any structures or operational development. I note the Council's concern regarding the siting of domestic paraphernalia, such as furniture or play equipment in connection with the use of the land as garden, which would be more difficult to control. Nonetheless, in the event that this does occur, any such paraphernalia would be likely to be small scale and would not be permanent fixtures.
10. Due to its size and position between the existing residential properties the appeal site benefits from a high degree of enclosure. Moreover, as a consequence of the narrowness of the lane, the site is only visible from a short section of Barnes Lane, from where it would be viewed within the context of the adjoining residential properties, rather than perceived as part of the agricultural land beyond. Nevertheless, the proposal would maintain the spatial

separation between the properties and would be unlikely to have a significant impact upon views across the site from the lane to the front towards the open countryside. As such it would not harm the openness of the Green Belt having regard to the visual aspect.

11. Permitted development rights for the erection of incidental buildings, as well as walls, fences and other means of enclosure could be controlled by a planning condition. Therefore, subject to a suitably worded condition to remove permitted development rights for incidental buildings and means of enclosure, the openness of the Green Belt would be preserved.
12. The purposes of the Green Belt are set out at paragraph 138 of the Framework and include safeguarding the countryside from encroachment. The appeal site is largely contained by the lane which runs along the front boundary and the neighbouring residential properties to either side, with only the rear boundary being coterminous with the adjoining agricultural land to the rear of the site. As such the proposed change of use of the land would not give rise to any significant degree of impingement into the wider rural landscape.
13. Whilst it is possible that the change of use of the land would increase the potential for manicuring of the land, due to the location of the site between two residential properties, its limited size and the fact that it is not discernible as part of the open countryside beyond due to its existing and historical appearance, this would not have a significant effect on the countryside in terms of encroachment.
14. In light of the above considerations, I find that the proposal would not result in unacceptable encroachment into the countryside. I therefore conclude that the proposal would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it. As such it would constitute a type of development that is not inappropriate in the Green Belt. In that regard the proposal would accord with Policy CS5 of the DCS and National policy in the Framework in relation to the protection of Green Belt land.

Agricultural land

15. Saved Policy 108 of the Dacorum Borough Local Plan 2004 (DBLP) sets out that development which would result in the loss of the best and most versatile land (classified by the Department for Environment, Food and Rural Affairs as being of Grades 1, 2 and 3a) will be refused, unless it can be demonstrated that there is an overriding need for the development and there is no alternative land of a lower quality which could reasonably be used. The supporting text to Policy 108 highlights the importance of retaining the best and most versatile agricultural land as an important economic resource for the longer term, which reflects paragraph 174 b) of the Framework.
16. The appeal submissions indicate that the site comprises agricultural land which is classed as good (3a) to moderate (3b). In the absence of any substantial evidence to demonstrate that the land is not the best and most versatile land (3a) the proposal would give rise to conflict with saved Policy 108 of the DBLP.
17. I saw at my site visit that the appeal site forms a small, narrow strip of land between the 2 adjoining dwellings on either side and is separate from the wider field. Notwithstanding whether or not the land has been used recently for agricultural purposes, given its size and siting it is unlikely that the land would

make a meaningful contribution to agricultural activity on the holding or in the wider vicinity. Moreover, it has not been demonstrated that the proposal would give rise to any tangible harm having regard to farming activity.

18. In conclusion on this main issue, the development would be in conflict with saved Policy 108 of the DBLP, insofar as it has not been demonstrated that it would not result in the loss of the best and most versatile land. I return to this in the balancing exercise below.

Other Matters

19. I note concerns expressed by interested parties with regards to the risk of precedent if the proposal were to be allowed. I see no reason why, if this proposal were to be allowed, that it would undermine the Councils ability to exercise its judgement in relation to similar development proposals on this or other sites, especially because each case is determined on its own merits and because each site will have different constraints and opportunities. Moreover, because I have found the scheme acceptable on Green Belt grounds it will not set a harmful precedent.
20. Furthermore, there is no reason to believe that granting permission for the change of use of the land would be a precursor to future applications for development on the land, which in any case would be assessed on their own merits against relevant Green Belt policies.
21. Even if development over and above that proposed has taken place, such as alterations to the front boundary and raising of ground levels, these matters do not form part of the appeal proposal before me.
22. Previous enforcement matters on the site, historic boundary disputes or whether or not the site has been known as a different name have no bearing on my decision. Whilst there may be previous planning applications on the site that do not form part of the planning history indicated in the appeal submissions, this does not alter my finding in relation to the main issues. My attention is also drawn to an appeal at 8 Round Hill Farm Cottages¹ for the change of use of agricultural land to residential garden which was dismissed. However, I do not have full details in respect of either of these so I cannot be sure of the specific circumstances and that they are directly comparable to the proposal before me. In any case, I have determined the appeal on its own merits, based on the evidence before me.
23. There is no substantive evidence that the use of the land as garden would give rise to antisocial behaviour that would cause harm to the living conditions of the occupiers of neighbouring properties through noise and disturbance or smoke from bonfires. In any case, in the event that they did arise, these would be matters for the relevant authorities to investigate and take appropriate action against. Given the scale and nature of the proposal it is unlikely to have any effects on the existing sewage system or water supply in the area.
24. Thus, none of these matters, on their own or in combination, alter my view.

¹ Ref APP/C3430/W/19/3235771

Conditions

25. I have imposed the standard condition relating to the commencement of development. Conditions are necessary to define the use and to remove permitted development rights in order to preserve the openness of the Green Belt and to safeguard the countryside from encroachment. A condition requiring adherence to an approved plan is unnecessary when applying the statutory tests.

Conclusion

26. Whilst the appellant has not demonstrated that the proposal would not result in the loss of the best and most versatile agricultural land, the appeal site is modest in size and located between existing residential properties. As such the proposed change of use would be unlikely to have any significant effect on the provision of agricultural land as an important economic resource for the longer term. Consequently, for these reasons the weight I attach to the conflict with Policy 108 of the DBLP is limited. Moreover, I have found that the proposal would accord with the provisions of Policy CS5 of the DCS and the Framework having regard to the protection of Green Belt land and would therefore comply with the development plan as a whole.
27. For the reasons set out above the appeal is allowed.

Emma Worley

INSPECTOR