



Appeal Decision

Site visit made on 2 May 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Appeal Ref: APP/K0425/C/22/3293834

Land at Hunts Hill Farm, Hunts Hill Lane, Naphill, Bucks HP14 4RJ

- 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 appeal is made by Mr C Birgani against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice was issued on 19 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a swimming pool and enclosure.
 - The requirements of the notice are:
 1. Return the level of the land (indicated by the diagonal lines on the plan attached to the notice) so that it is commensurate with the adjoining land levels;
 2. Rip up and remove the hard standing (indicated by the diagonal lines on the plan attached to the notice);
 3. Remove the swimming pool enclosure (indicated by the diagonal lines on the plan attached to the notice);
 4. Remove from the land (shown in outline in a thick black line on the plan attached to the notice) all materials and debris resulting from compliance with steps 1, 2 and 3 of this notice.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed insofar as it relates to the construction of the pool and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 (the 1990 Act), for the construction of a swimming pool.
2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the erection of the pool enclosure and planning permission is refused in respect of the pool enclosure, on the application deemed to have been made under section 177(5) of the 1990 Act.

Application for costs

3. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The ground (e) appeal

4. Under a ground (e) appeal, the onus of proof is on the appellant to show that the enforcement notice has not been served as required by section 172 of the 1990 Act. The appellant takes issue with the plan accompanying the notice on

the basis that it does not correctly show the residential curtilage of the property and includes agricultural buildings.

5. Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 states a notice issued under section 172 shall specify the precise boundaries of the land to which the notice relates. This shall be by "reference to a plan or otherwise". Thus, the purpose of the plan, if relied upon by the Council, is merely to identify the land and Councils are not required to specify residential curtilage.
6. As the appellant has not been substantially prejudiced by the service of the notice and the plan clearly shows the land to which the notice relates, the appeal on ground (e) fails.

The ground (b) appeal

7. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate that the matter stated in the notice has not occurred as a matter of fact. The appellant's submissions for this ground of appeal fall to be considered under ground (a). I shall therefore have regard to them subsequently.
8. At the site visit I saw that a swimming pool and enclosure have been constructed and erected within the rear garden of the property. This is accepted by the appellant. I therefore conclude that the alleged breach of planning control has occurred as a matter of fact and the appeal on ground (b) therefore fails.

The ground (c) appeal

9. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The appellant's submissions for this ground of appeal largely fall to be considered under ground (a) and I shall therefore have regard to them subsequently.
10. The meaning of development is set out in section 55(1) of the 1990 Act and includes the carrying out of building, engineering, mining and other operations, in, on, over or under land. Section 57(1) says that, subject to the provisions of the section, planning permission is required for the carrying out of development of land.
11. Section 336(1) includes in the definition of the word "building" any structure or erection. Section 55(1A) confirms that building operations include operations normally undertaken by a person carrying on business as a builder.
12. The construction of the swimming pool and the erection of the enclosure are significant works normally carried out by a builder. The pool is around 1.5m deep, 9m in length and 4m in width. Adjacent to the pool are a sauna, shower and pool machinery. There is space to walk around the pool and all of it is enclosed by a curved light weight structure approximately 2.3m high.
13. The works involved the excavation and levelling of land, laying of pipes and infrastructure, the installation of electricity and the erection of the enclosure over the pool. This has sliding opening panels to allow ventilation in the summer. As a matter of fact and degree, I find both the construction of the

pool and the erection of the enclosure amount to an operation of development as defined by section 55(1).

14. In some circumstances the construction of a building can be “permitted development” under the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). However, Schedule 2, Part 1, Class E of the GPDO does not permit the construction and erection of pools and enclosures greater than 10 square metres (m) and more than 20m from any wall of the dwellinghouse within areas of outstanding natural beauty (AONB). The appeal site lies within the Chilterns AONB and exceeds the size and distance limitation set out in the GPDO. As such, the construction and erection of the appellant’s pool and enclosure cannot be considered as permitted development.
15. Therefore, the creation of the pool and enclosure amount to development for which express planning permission is required. They do not have the benefit of permitted development due to their location within an AONB and planning permission has not been granted by the Council. The alleged matters therefore constitute a breach of planning control and the appeal under ground (c) fails.

The ground (a) appeal and the deemed planning application

Main Issues

16. As the site lies within the Metropolitan Green Belt and the Chilterns AONB, the main issues are:
 - whether the development is inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - the effect of the development on the openness of the Green Belt;
 - the effect of the development on the character and appearance of the area, having regard to its location within the Chilterns AONB; and
 - whether harm by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the proposal.

Reasons

17. Hunts Hill Farm comprises an extended dwellinghouse with front and rear gardens situated in just over 5ha of land. West of the house are various rural buildings and to the north of them is a manege. The remaining land comprises small fields bordering the property to the north and west. Access is from Hunts Hill Lane, one of several rural roads that lead from the village of Naphill and end at the entrance to woodland or Naphill Common.
18. The pool development lies within the rear garden, which is separated from the “farm” area by fencing and planting. The appellant makes various submissions on the matter of curtilage to support his case. There is no authoritative definition of the term curtilage and it is not a matter of law; it is therefore a matter of fact and degree. Over the years the Courts have made a number of findings and reiterated their findings regarding curtilage including that curtilage must serve the purpose of a building in some necessary or useful manner but need not be marked off or enclosed in any way.

19. It seems to me that the extent of curtilage for the dwellinghouse is limited to the front and rear garden. The front garden is largely used for residential parking and the rear area directly adjacent to the dwellinghouse is maintained and used as a garden with a lawn, trees and shrubs. It contains a small wooden shed and a greenhouse. Both of these areas have an intimate connection with the occupation of the dwellinghouse.
20. For land to be regarded as curtilage it must have a close spatial and functional relationship with the building. The parking area is adjacent to the front door and is no doubt in daily use. The rear garden appears to be regularly maintained and it is intimately associated with the dwellinghouse due to its proximity. However, the rural buildings to the west, the manege and the fields beyond are not used in the same way or to the same degree. Although they are owned by the appellant, it is the spatial and functional relationship with the dwellinghouse that limits the curtilage to the front and rear gardens in my view.

Whether inappropriate development and openness

21. The Framework states that the construction of new buildings is inappropriate in the Green Belt but there are exceptions such as the extension or alteration of a building provided it does not result in disproportionate additions over and above the size of the original dwelling. There is no mention of whether domestic outbuildings, such as the pool enclosure, are appropriate or inappropriate development. However, engineering operations, namely the construction of the pool, are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
22. Policy CP8 Protecting the Green Belt, from Wycombe District Local Plan, adopted August 2019 (the LP), states that the Council will protect the Green Belt from inappropriate development. LP Policy DM43 The Replacement or Extension of Dwellings in the Green Belt (Including Outbuildings) reflects one of the Framework's exceptions. It states that the erection of residential outbuildings will be considered as appropriate development subject to various criteria.
23. The Council state the volume of the enclosure is 276.9 cubic metres. Criteria 2(b) of Policy DM43 states outside of villages in the Green Belt, any increase in the volume of residential outbuildings will only be considered appropriate development where the total volume of all existing and proposed outbuildings on the property would not exceed 140 cubic metres. So, although the enclosure meets other criteria of the policy, such as 2(e), as it is under 4m in height, overall, there is conflict with Policy DM43 due to the volume of the enclosure. The enclosure is therefore inappropriate development.
24. I turn now to consider openness as the Framework (Paragraph 137) indicates it is an essential characteristic of the Green Belt. Following the development of the enclosure I find there is harm to the Green Belt both spatially and visually from the introduction of new built form into an area where none existed before. However, there are no public views of the enclosure, only limited views from a few private gardens over a considerable distance where there are intervening trees and screening provided by boundary fencing and hedging. Nevertheless, I find it is inappropriate development in the Green Belt due to the loss of openness.

25. Turning to the pool, openness is also a consideration when deciding whether engineering operations are inappropriate development in the Green Belt. The pool is more or less flush with the surrounding ground level. As such I consider it does not result in a loss of openness. The size of the surface area in relation to the size of the garden in which it is sited, is modest. The construction of the pool as an engineering operation is therefore not inappropriate development because it does not result in a loss of openness.
26. The appellant submits that the enclosure is not a “residential” outbuilding and the application of Policy DM43 is therefore incorrect. However, in my view there is no doubt that the enclosure is an outbuilding serving the dwelling, so to that extent it is a “residential” outbuilding. Although “outbuilding” is not defined in Policy DM43, its ordinary everyday meaning describes a building that is away or beyond the main building on site. Thus, greenhouses, garden sheds and garages are outbuildings. They can be described as “residential” outbuildings if they are sited within the garden of a dwelling. That is not to say they have a “residential” use, as described by the appellant, only that they are located within residential grounds. The use of outbuildings is often incidental to the residential use of the dwelling on site but it does not necessarily follow that the use means the erection of the building does not fall within the meaning of development.
27. In this case the erection of the enclosure amounts to development and does not benefit from permitted development. The application of Policy DM43 is therefore correct.
28. Openness is one of the Green Belt’s most important attributes and loss of openness, however minor, is harmful to the Green Belt by reason of inappropriateness. Therefore, whilst the construction of the pool is appropriate development in the Green Belt, I consider the enclosure is inappropriate development as it is a new building in the Green Belt and due to the loss of openness. Whilst the construction of the pool accords with Policy CP8, the enclosure does not.

Character and appearance

29. The appeal site lies on the edge of the village adjacent to an isolated group of dwellings overlooking fields to the north. On the south side of the lane there is woodland and the lane terminates in woodland leading to Naphill Common. Although there are public rights of way (PROW) through the woods, there are no PROW to the north of the appeal site. In effect, the fields are enclosed by the housing in the village and Hogtrough Farm. The main road through the village lies on a ridge and Hunts Hill Lane rises to a wooded ridge. The fields between the appeal site and the village fold down into a dip and are sheltered by the woods on higher ground. There appear to be no long distance views across this area, rather the immediate landscape is enclosed.
30. The appellant has planted a native hedge to the north of the pool enclosure to screen it in part. There is already a mature beech hedge which screens the manège and adds to the attractiveness of the area. The remaining boundary of the garden with the field is marked by an open fence but together with existing mature trees within the garden, I consider that the hedge would break up the already limited views of the development.

31. Consequently, the development is not intrinsically detrimental to the qualities of the AONB as a whole and is not prominent in the wider AONB. The development therefore accords with LP Policy DM30 The Chilterns Area of Outstanding Natural Beauty, which requires the natural beauty of the AONB to be conserved.
32. The Council are concerned that the modern material of the enclosure, the pool lighting and the distance from the house are at odds with the rural character and the particular qualities of the AONB. However, it seems to me that the pool enclosure material is not dissimilar to a greenhouse, which are common features at the bottom of gardens. There is no lighting within the enclosure, only two underwater lights on the sides of the pool. These shine into the water not upwards and given the lack of any lighting within the enclosure it is doubtful that the pool would be used at night. In any event, there is no substantiated evidence that the level of illumination from just the underwater lights would cause harm to the tranquillity and darkness of the AONB. As such, I find no conflict with LP Policies DM35 Placemaking and Design Quality and DM32 Landscape Character and Settlement Patterns. These require, amongst other matters that development takes account of tranquillity and darkness and demonstrates high quality design.

Other considerations

33. The appellant relies on section 55(2)(d) of the 1990 Act but this states:

"The following operations *or* (my emphasis) uses of land shall not be taken for the purposes of this Act to involve development of the land:

(d) the use of any buildings or other land within the curtilage of a dwelling for any purpose incidental to the enjoyment of the dwelling as such."

However, the notice attacks operational development that has occurred in the rear garden. It does not attack the incidental use of the pool and enclosure. Section 55(2)(d) therefore does not assist the appellant's case.

Conclusion

34. In conclusion, the construction of the pool is not inappropriate development in the Green Belt and the character and appearance of the area and the AONB are preserved. The erection of the enclosure is inappropriate development in the Green Belt and the Framework establishes that substantial harm should be attached to any harm to the Green Belt. In addition, there is a minimal loss of openness. The absence of harm by the enclosure in relation to the character and appearance of the area and the AONB attract significant weight in the planning balance.
35. Other considerations weighing in favour of the development must clearly outweigh the substantial harm to the Green Belt. The appellant's submissions under this heading do not outweigh the substantial harm which I have identified. The very special circumstances needed to justify the enclosure do not therefore arise. Accordingly, I conclude that the appeal should be allowed in respect of the construction of the pool but dismissed in respect of the enclosure. There is therefore partial success on ground (a).
36. The Council have not suggested any conditions in the event that planning permission is granted. As the construction of the pool is substantially complete

and the proposed hedge has already been planted, I consider none are necessary.

The ground (f) appeal

37. The ground (f) appeal does not fall to be considered as it relates to the construction of the pool, which I have allowed. The appellant has made no submissions regarding lesser steps in relation to the requirement to remove the enclosure.

Overall conclusion

38. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of section 180 of the 1990 Act.

D Fleming

INSPECTOR