



Appeal Decision

Site visit made on 4 May 2023

by C Harding BA(Hons) PGDipTRP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2023

Appeal Ref: APP/P0240/W/22/3304775

Land at Common Road, Kensworth, Dunstable LU6 3RG

- 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 Gleneden Plant Sales Limited against the decision of the Central Bedfordshire Council.
 - The application Ref CB/22/01400/FULL, dated 31 March 2022, was refused by notice dated 28 June 2022.
 - The development proposed is described as “change of use of land from agricultural field to residential garden”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my visit, it was evident that the garden area associated with the dwelling was of a larger scale than indicated on the previously approved plans¹ and included additional areas of hardstanding and grass, as well as play equipment. Additionally, the appeal site includes a further area of land, which I saw remains separated from the land being used for residential purposes and was being grazed by a small number of cattle.
3. Accordingly, the proposed change of use has not yet occurred in its entirety, and as a result, I have considered the appeal on the basis of the plans before me, and not as a retrospective proposal.
4. The description of development makes no reference to the areas of hardstanding and play equipment and is clear in relating to the change of use of the land only. I have considered the appeal on this basis.

Main Issues

5. The main issues 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; and
 - the effect of the development upon the character and appearance of the area, with particular regard to its location within the Chilterns Area of Outstanding Natural Beauty.

¹ APP/P0240/W/18/3217523

Reasons

Whether inappropriate development

6. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are openness and permanence. 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. Under Paragraph 150(e) of the Framework, the material change of use of land is not inappropriate in the Green Belt, provided that it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
8. Policy SP4 of the Central Bedfordshire Local Plan ('CBLP') sets out a general presumption against inappropriate development in the Green Belt, and advises that proposals within the Green Belt will be assessed in accordance with guidance contained within the Framework and Planning Practice Guidance ('PPG').
9. The proposal does not include any built development and would not lead to any changes to existing boundary fencing. However, the normal use of the appeal site as residential garden would be likely to lead to the introduction of normal domestic paraphernalia. Whilst the introduction of larger structures and buildings, and hardstanding through the exercising of permitted development rights under Part 1 of Schedule 2 of the General Permitted Development Order 2015 ('GPDO 2015') could potentially be controlled by means of a planning condition, this would not extend to all such paraphernalia, some of which, although not development and potentially in some cases, not bulky in nature or appearance, would nevertheless impinge upon the openness of the appeal site in comparison to an agricultural use, which would most likely be absent of any built form or structures.
10. The appellant has suggested that the extent of domestic curtilage to be associated with the existing dwelling could be defined through the use of a planning condition. It is argued that this would leave that part of the appeal site which would remain outside of the defined curtilage without permitted development rights under Part 1 of Schedule 2 of the GPDO 2015, which only allows for development within the curtilage of a dwellinghouse.
11. Whilst I acknowledge the provided evidence of where such a condition has been applied by a local planning authority, I am unsure of the circumstances or context within which that condition was imposed. Furthermore, as curtilage is not a use of land, and is usually established as a matter of fact and degree, I am not persuaded that any definition of the curtilage agreed through the discharge of such a condition would carry significant weight in determining whether the wider extent of the appeal site, on the basis of its nature and relationship with the dwelling, could also comprise curtilage. I am therefore not convinced that such a condition would be an effective mechanism for restricting development within the appeal site.
12. However, even if I were to agree that a condition to define the curtilage of the dwelling would be appropriate, or that it would be appropriate to impose conditions to remove permitted development rights, such conditions would not

prevent the siting of domestic paraphernalia that would not constitute development, within the wider appeal site. As outlined above, I consider that such domestic items would be likely to harm the openness of the Green Belt in this location.

13. Whilst a condition could be utilised in order to secure a scheme of tree planting and landscaping, I have been provided with no details as to the nature, location or extent any such areas. Furthermore, openness has both spatial and visual aspects, and whilst such landscaping could provide some visual screening, it would not overcome any harm to openness in the spatial sense.
14. The effect of the proposal would be to extend the residential use into land that would otherwise be open and be used for agricultural purposes. As a result, it would not assist in safeguarding the countryside from encroachment and, therefore, would conflict with one of the purposes of including land within the Green Belt.
15. In light of the above analysis, I conclude that the proposal would fail to preserve openness and conflict with one of the purposes of including land within the Green Belt. Therefore, it would not fall within the forms of development set out at Paragraph 150 of the Framework, and as such, would be inappropriate development in the Green Belt. For the same reasons, the proposal would conflict with CBLP Policy SP4.

Character and appearance

16. Kensworth is a linear settlement focused around Common Road and sits on the shoulder of broad valley which extends to the north and east. To the north of Common Road, the pattern of development is characterised by dwellings fronting the road, with countryside beyond, which falls into the valley.
17. The appeal site is situated with the Chilterns Area of Outstanding Natural Beauty (AONB). The special qualities of the AONB include the notable chalk escarpment, along with tranquil valleys, downland, woodland and the network of ancient routes. The land to the north of the appeal site comprises one such tranquil valley. In accordance with Paragraph 176 of the Framework, I have given great weight to the conservation of the landscape and scenic beauty of the AONB.
18. The dwelling adjacent to the appeal site, along with its limited curtilage is discreetly located close to other properties and a wooded area. The increase in size of the previously approved extent of residential garden would lead to a more domestic character to the immediate area, and would extend the garden to the rear of other rear gardens associated with properties fronting Common Road. Although not prominently located, the appeal site, as a result of its size, would be more visible, particularly in views from the north, and have a greater effect on the character and appearance of the area when compared to the limited extent of residential garden originally provided for the associated dwelling.
19. The use of the larger garden for domestic purposes would be likely to lead to more intensive activity than would be expected in relation to an agricultural field. As a result, although no built development is proposed, the proposed use, including the inevitable introduction of domestic paraphernalia would nevertheless lead to a more urbanised character to this edge of the settlement

and would erode the tranquil nature of this part of the AONB to a limited extent.

20. The proposed garden use could be screened to a certain degree through the use trees and landscaping. However, I have been presented with no detailed scheme for such screening, and accordingly, I am unable to consider how successful or otherwise such a scheme would be. Even if a scheme could be secured by means of a planning condition, it is likely that any landscaping scheme would require a number of years before reaching maturity, so would not be wholly effective at mitigating harm in the short to medium term in any event. Accordingly, I afford this factor only modest weight in my consideration.
21. My attention has been drawn to other examples of gardens and other development that extend northwards into the countryside. The level of detail provided with regard to these examples is limited. Furthermore, some of these are located some distance from the appeal site and are therefore located within a different context, whilst others, such as the nearby churchyard are not comparable to the appeal site and proposal in nature or function, or indeed size. None of the cited examples persuades me that the proposed development would not lead to unacceptable harm to the character and appearance of the area.
22. I acknowledge the cited examples of where the Council has approved extensions to gardens elsewhere. However, whilst CBLP Policy SP7 does make provision for limited extension of gardens beyond settlement envelopes, this is not unqualified and requires an assessment of the effect of such development upon the character and appearance of the area, and in this case I have found the development would cause harm to the character and appearance of the area.
23. I have not been provided with the full details of all of the specific cases cited, however the circumstances of one appears to differ from the proposal before me, as it is stated as bringing a garden in line with those adjacent to it, whilst another includes assessment which makes reference to several policies that I understand no longer form part of the development plan, and also comprised 'rounding off'. A further cited example, appears to relate to a site in a different settlement, and on the basis of the evidence before me, did not appear to be located within the AONB. Accordingly, none of these examples appears to be directly comparable with the circumstances of the appeal proposal before me now, and I therefore afford little weight to them.
24. The appeal proposal would lead to harm to the character and appearance of the area, and would fail to preserve or enhance the special qualities of the AONB. It would therefore be contrary to CBLP Policies HQ1, EE5 and EE7, which together and amongst other criteria require development to have regard to the key characteristics and sensitivities of the site and its setting, reflect local character and distinctiveness, landscape setting, and conserve and enhance the special qualities, tranquillity and remoteness of the AONB. It would also conflict with CBLP Policy SP7, which although making provision for the limited extension of gardens beyond settlement envelopes, does so only where they would not harm the character and appearance of the area.

Other considerations

25. I acknowledge that any tree planting or landscaping scheme secured as part of the proposal could lead to biodiversity and geodiversity net gain. However, no detailed scheme or assessment of biodiversity and geodiversity baseline is before me. Therefore, I am unable to quantify the extent of any potential net gains, and as a result I can afford this factor only very modest weight as a benefit of the proposal.

Conclusion

26. In summary, the proposal would result in a harmful loss of openness to the Green Belt and so would be inappropriate development in the Green Belt in the terms set out by the Framework. The Framework requires that substantial weight should be given to any harm to the Green Belt. Therefore, it should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
27. I give very modest weight to the potential of the appeal proposal to deliver biodiversity and geodiversity net gains.
28. However, for the reasons set out above, the harm to the Green Belt and the other harm that I have identified would not be clearly outweighed by the other considerations and, therefore, the very special circumstances required to justify a grant of planning permission have not been demonstrated.
29. The proposed development would be contrary to CBLP Policies HQ1, EE5, EE7, SP4 and SP7 and there are no material considerations that indicate a decision should be taken other in accordance with the development plan. Therefore, for the reasons given, the appeal is dismissed.

C Harding

INSPECTOR