



Appeal Decision

Site visit made on 10 July 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2023

Appeal Ref: APP/P1805/D/22/3310707

**The Lodge, Newlands Barns, Billesley Lane, Alvechurch, Birmingham
B48 7HE**

- 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 David Evans against the decision of Bromsgrove District Council.
 - The application Ref 22/01184/FUL, dated 2 September 2022, was refused by notice dated 21 October 2022.
 - The development proposed is Retrospective planning application for annex building associated with main house, originally believed to be Permitted Development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed outbuilding has been partially constructed. It has a block and beam floor, and its breeze block walls are nearing a completed height. However, no window or door lintels have been installed and there is no roof. As such the structure is not substantially complete and therefore the scheme forms only a partially retrospective proposal.
3. The Lodge, originally a barn, was approved to be converted to a dwelling in 1994. The approved plans demonstrate that the application site was relatively tightly drawn around the barn and the parking area to its front. This was the extent of its residential curtilage at the time. The site plan included two fields to the immediate north of the site as being within the applicant's ownership, but not being part of the application site. The appeal site includes the eastern of these two fields.
4. A later planning application was made in 1995, also showing a red-lined site around the dwelling and parking area. There is no evidence before me to indicate that the field, to the north of the red-lined site, has gained planning permission or a lawful development certificate to establish it as being an extended residential boundary of the dwelling. As such, I find that the appeal site is a field within the open countryside.

Main Issues

5. The main issues are:
 - whether the proposed outbuilding would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (The Framework) and any relevant development plan policies,

- the effect on the openness of the Green Belt, and
- if the proposal would be inappropriate development, whether any harm is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it.

Reasons

6. The appeal site is within the Green Belt. The proposed building is being erected within a field beyond the residential demise of the adjacent dwelling. Policy BDP4.4, of the Bromsgrove District Plan [2017] (DP), states that proposals for new buildings in the Green Belt will be inappropriate, except in certain listed exceptions. These include extensions to residential dwellings, replacement of buildings and limited infilling. This policy is generally consistent with paragraph 149 of the Framework in defining development that would not be inappropriate in the Green Belt.
7. As it has not been demonstrated that the proposal would meet any of the exceptions of DP policy BDP4.4, it would amount to inappropriate development in the Green Belt.

Effect on openness

8. The proposed outbuilding would have a relatively large footprint. Although being single-storey, it would occupy the centre of the field with a substantial overall mass. It would be largely screened from the highway by hedge planting, although it would be plainly visible from the access drive alongside the site. Considerations of openness have both visual and spatial aspects. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result.
9. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and its essential characteristics are therefore its permanence and openness. Due to the location and massing of the proposed building, the appeal proposal would fail to preserve the openness of the Green Belt. The building would also represent encroachment, in contradiction with a key principle of Green Belt policy. As a result, the proposal would cause harm to the openness of the Green Belt.

Other Considerations

10. The Appellant thought he was implementing development by virtue of Permitted Development (PD) Rights. He also asserts that the Council advised that the proposal would be PD and would not require planning permission.
11. The Council demonstrates that the application for the barn conversion and for the later garage, included a similar redlined site that defined its residential curtilage. This included land that was around a third of the area of the appeal site. The dwelling is in the southern section of the appeal site. Therefore, whilst having a front door at its rear, the principal elevation of the dwelling appears to look to the north, over the forecourt and garden beyond.
12. The appeal site includes both the original grounds surrounding the converted barn and a field to the north of the site. During my visit I noted that no form of enclosure delineates a separation between the garden and the field. Both areas of land were visually connected and appeared to be subject to the same

mowing regime. The Council identifies that the approved residential boundary was in place in 1999. The boundary then seems to have been extended slightly to the north in 2003 and was fully removed by 2007. Accordingly, whilst the absence or otherwise of a boundary does not necessarily define the curtilage of a residential Unit, these areas have become visually combined without the requisite planning permission.

13. There is no statutory definition of curtilage, and this is therefore a matter of planning judgement. No evidence has been provided from the Appellant that might demonstrate that the field is an integral part of the curtilage of the dwelling or that it serves the users of the dwelling in some reasonable and necessary way as required by case law¹. It has also not been demonstrated that the land is intimately associated with the building, and forms part and parcel with it, as sought by further case law². Consequently, I am unconvinced, based on the submitted evidence, that the field is part of the residential curtilage that might enable it to be subject to residential PD rights.
14. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), under Article 3(1) and Schedule 2, Part 1, Classes A-H allows development to be built within a residential curtilage within certain limitations. These limitations, under class E, part 1 of the GPDO allows for the erection of an outbuilding within certain size and locational requirements. These include at E.1.(c) "any part of the building...would be sited on land forward of a wall forming the principal elevation of the original dwellinghouse". The proposed outbuilding would be in the middle of the field, accessed via the driveway that connects Billesley Lane to the parking area in front of the dwelling.
15. The planning permission, associated with the barn conversion, removed PD rights for development including for extensions, external alterations and the erection of outbuildings through condition 3. Furthermore, the proposed development appears to be within land beyond the residential curtilage. Therefore, even if PD rights were intact and encompassed the field, both of which are in question, it is unlikely that it would be PD anyway by virtue of it being forward of the principal elevation of the dwelling. As a result, for the above various reasons, I am satisfied that PD Rights do not present a legitimate fall-back position for the proposal.
16. The Appellant's evidence refers to pre-application advice that he was given by various officers of the Council. An email extract has been provided by the Appellant, from the Council, that indicates that the outbuilding would not require planning permission because it was within the curtilage of the residential property. However, the email refers to a barn conversion application, of reference 'B19963' granted in 1990. This does not seem to relate to 'The Lodge', that gained planning permission for conversion under reference of B/1993/0894, in 1994. Furthermore, the email does not include its second page, further eroding its substance and relevance to the proposal. In any event, this procedural issue is largely a matter of dispute between main

¹ Sinclair-Lockhart's Trustees v Central Land Board [1950] 1 P&CR 195

² Methuen-Campbell v Walters [1979] 1 QB 525

parties and has a limited bearing on the material considerations associated with this appeal.

Whether there would be Very Special Circumstances

17. Paragraphs 147 and 148 of the Framework set out the general presumption against inappropriate development within the Green Belt. They explain that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
18. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in harm to the openness of the Green Belt. Paragraph 148 of the Framework requires substantial weight to be given to any harm to the Green Belt.
19. On the other hand, based on the evidence before me, the Appellant may have received unclear guidance at a pre-application stage. This situation, whilst extremely unfortunate for the Appellant, conveys only minor weight in support of the proposal. In these circumstances, I consider that the harm to the Green Belt is not clearly outweighed by other considerations and therefore the very special circumstances necessary to justify the development do not exist.

Conclusion

20. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

Ben Plenty

INSPECTOR