The Planning Inspectorate

Appeal Decision

Site visit made on 27 June 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/M4320/C/22/3313776
Abbey View, Southport Road, Lydiate, Liverpool L31 4HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Anthony Bone against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The notice was issued on 25 November 2022.
- The breach of planning control as alleged in the notice is the erection of a polytunnel/detached outbuilding within the curtilage of the property without planning permission.
- The requirements of the notice are to: Remove the polytunnel / outbuilding from the property.
- The period for compliance with the requirement is: One month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters

2. The appellant suggests that a site visit would be of benefit to ascertain the scale and footprint of the building. However, I am satisfied that I could assess these matters sufficiently from the public domain and so I carried out an unaccompanied site visit.

Ground (a)

3. An appeal under ground (a) is made on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issues

4. The main issues of the ground (a) appeal are:

    - Whether the appeal scheme is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (2021)(the Framework) and relevant development plan policies;
    - The effect of the appeal scheme on the openness of the Green Belt;
    - The effect of the appeal scheme on the character and appearance of the Lydiate Hall and Chapel Conservation Area (LHCCA);

- 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 required to justify the appeal scheme.

Reasons

Whether inappropriate development in the Green Belt

5. The main parties do not dispute that the appeal site lies within the Green Belt. Policies EQ2 and MN7 of the Sefton Local Plan (2017)(the SLP) both set out that the construction of new buildings is generally regarded as inappropriate development in the Green Belt and will not be approved except in very special circumstances. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.

6. Paragraph 149 of the Framework advises that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions. The Council state that none of the exceptions apply to the appeal scheme and the appellant does not suggest that it should be considered under any of the exceptions set out under paragraph 149. Nevertheless, I shall consider whether the appeal scheme would fall under any of the exceptions.

7. Although the appellant asserts that the outbuilding is for agricultural use, they also state that it is located within the residential curtilage of Abbey View. The Council does not dispute that the building is located within the residential curtilage and during my visit I saw that the polytunnel is located within an area of landscaped garden. I therefore have no reason to disagree that it is located within the residential curtilage.

8. In practice, even if the building is used for agricultural activities such as the growing of crops, given its location within the curtilage of the dwelling, it is highly likely to also be used for purposes which are incidental to the enjoyment of the dwellinghouse. Consequently, I do not consider the appeal scheme should be considered under paragraph 149a) of the Framework.

9. The exception under paragraph 149c) of the Framework is the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building[1]. Whether a detached structure would amount to an extension of the existing building is a matter of fact and degree. For residential outbuildings, it is reasonable to take into account whether the proposal is a normal domestic adjunct. Consideration should also be given to the purpose and use of the proposed building, its relationship with the original building and its size.

10. The building is substantial in size and whilst it is sufficiently close to be considered a normal domestic adjunct, such buildings are more commonly found in commercial enterprises rather than domestic settings. Moreover, the footprint of the building is so substantial, I am not persuaded that it has not resulted in disproportionate additions over and above the size of the original building. Consequently, the appeal scheme does not fall to be considered under 149c).

11. The appellant states that the building rests on hardstanding upon which timber outbuildings previously stood. However, no substantive details of these timber

[1] [1] A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

outbuildings have been provided and so it is not possible to conclude that the building would fall to be considered under paragraph 149d) which concerns the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. For similar reasons I consider the building would not fall to be considered under paragraph 149g), which concerns the limited infilling or the partial or complete redevelopment of previously developed land.

12. Thus, for the reasons given above, I find that the appeal scheme is inappropriate development in the Green Belt.

Openness

13. A fundamental aim of the Green Belt policy in the Framework is to keep land permanently open. Although the building is set back from the main road, due to its substantial size and height, it is clearly visible when walking along Southport Road. In spatial terms, given its substantial size, the building has resulted in a modest loss of openness which harms the Green Belt and conflicts with the purposes of including land within it, contrary to the relevant expectations of the Framework and policies MN7 and EQ2 of the SLP, the requirements of which are set out above.

Character and appearance

14. The LHCCA has a generally rural character and comprises a limited number of buildings, including Our Lady's Catholic Church. From the evidence before me and my site visit, I consider the significance of the LHCCA is derived from the rural character of the area, the historic layout of development and the use of traditional building materials.

15. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the LHCCA. Furthermore, paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

16. The appeal building comprises a dome shape, constructed from black plastic material which contrasts significantly with the more traditional building materials used elsewhere in the LHCCA. As a consequence, the building diminishes the character and appearance of the LHCCA, contrary to policy NH12 of the SLP, which seeks high quality design which preserves or enhances the character or appearance of the conservation area..

17. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Although the building is set back from the main road, it is clearly visible when viewed from Southport Road. Given its limited size relative to the LHCCA as a whole, I consider the harm to be less than substantial harm to the significance of the LHCCA.

18. Paragraph 202 of the Framework advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.

19. The appellant has not advanced any public benefits of the appeal scheme. Although the building may provide protection from the weather for the growing of food stuffs, the appeal scheme is not the only means of providing such protection. Any benefit arising from the production of home-grown crops does not, therefore, outweigh the harm to the LHCCA, the conservation of which I attribute great weight to.

Other considerations

20. The appellant advises that they understood the development to constitute permitted development. However, the appellant has not appealed under ground (c) and whilst they may have believed this to be the case when they erected the building, they do not assert this to be the case through this appeal. The appeal site comprises article 2(3) land[2] and is situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse. It is therefore not development which is permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

21. As set out above, the appellant asserts that the building replaced substantial timber outbuildings that sat on the site since the early 1920's. However, no substantive evidence has been provided to show what these buildings comprised or when they were removed. The Council advise that Google Street View images going back to 2008 show that there is no outbuilding in situ at this time. This suggests that any buildings were removed long before the erection of the appeal building and so do not weigh in support of the appeal scheme.

Green Belt Balance and ground (a) conclusion

22. The Framework sets out the general presumption against inappropriate development within the Green Belt. It states that inappropriate development is, by definition, harmful to the Green Belt and 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.

23. I have found the appeal schemes have a modest adverse impact on the Green Belt and I have found that it harms the character and appearance of the LHCCA. I find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the developments do not exist and the appeal scheme conflicts with the Framework and with policies MN7, EQ2 and NH12 of the SLP and the development plan taken as a whole.

Ground (g)

24. An appeal under ground (g) is made on the basis that any period specified in the notice…falls short of what should reasonably be allowed. The appellant suggests that the compliance period offers very limited time to apply for planning consent on a retrospective basis, which is unreasonable. However, I have considered the planning merits of the appeal scheme through the appeal under ground (a).

[2] Which includes land within an area designated as a conservation area under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (designation of conservations areas).

25. Given the nature of the construction of the building, I consider a month is sufficient time to carry out the works which are required by the notice. Consequently, the appeal under ground (g) fails.

Overall conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR