



Appeal Decision

Site visit made on 20 June 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/G2245/W/22/3307570

Shepherds Barn, Fullers Hill, Seal, Sevenoaks TN15 0EN

- 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 & Mrs A Coleman against the decision of Sevenoaks District Council.
 - The application Ref 22/01092/HOUSE, dated 14 April 2022, was refused by notice dated 5 July 2022.
 - The development proposed is erection of detached, oak-framed garage following removal of existing timber outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was originally submitted in the name of Prime Oak, on behalf of their client Mr & Mrs A Coleman who are the owners/occupiers of Shepherds Barn, with the requisite notice given to them. The council processed the application under the name of Mr & Mrs A Coleman, with Prime Oak as the agent, and the decision notice reflects this position. Under these circumstances, the agent submitted the appeal in the name of Mr & Mrs A Coleman in good faith. In such circumstances, I am content to use the name of the owners as it appears on the appeal form in my banner heading above.
3. In light of the above, there was some confusion regarding the serving of requisite notices at appeal submission stage, including to others with an interest in the land. I am satisfied that the requisite notices have been duly given, and therefore no one has been prejudiced in this regard.

Main Issues

4. The main issues are:
 - whether the proposed 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;
 - the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposal upon biodiversity and protected species; and
 - whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

5. The appeal site lies within the Metropolitan Green Belt and the Kent Downs Area of Outstanding Natural Beauty (AONB). 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; and that the construction of new buildings within the Green Belt is inappropriate development.
6. There are however a limited number of exceptions to this, as set out in paragraph 149 of the Framework. Paragraph 149 c) refers to 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. Paragraph 149 d) refers to the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces.
7. While the Framework does not address matters relating to ancillary buildings within the curtilage of a dwelling house, nor define disproportionate additions, Policies GB3 and GB1 within the Sevenoaks Allocations and Development Management Plan 2015 (SADMP) set out the approach to such matters.
8. I have also had regard to case law¹ referenced by both of the main parties, which held that that an outbuilding could be considered as a normal domestic adjunct of the host property and hence an extension to it, even though it is a detached structure.
9. Policy GB3 of the SADMP defines the circumstances in which any outbuilding may form part of a dwelling. It clearly sets out that proposals for residential outbuildings, within the curtilage of an existing dwelling in the Green Belt will be treated as an extension under Policy GB1 if the proposed outbuilding would be located within 5m of the existing dwelling. The proposed outbuilding would be some 9.5m from its host.
10. Policy GB3 further states that outbuildings located more than 5m from the existing dwelling will be permitted where the building, including the cumulative impact of other outbuildings and extensions within the curtilage of the dwelling would be ancillary to the main dwelling in terms of function and design and would not materially harm the openness of the Green Belt through excessive bulk or visual intrusion.
11. The host property was originally a barn, with approval (Ref 95/01631/HIST) for re-use to provide a single dwelling house in 1995. The main parties are in dispute with regard to the lawful use of the existing timber building, and whether it lies within the residential curtilage. The evidence upon which the council relies has not been submitted to the appeal, and the appellant has offered no evidence to the contrary.
12. Consequently, I cannot be certain that the lawful use of the existing timber building is residential, regardless of whether the Council dealt with the proposal as a householder planning application. Moreover, it is not the role of an inspector dealing with a s78 appeal to determine whether the existing use of a

¹ Sevenoaks DC v SSE & Dawe (1997)

building is lawful. Such matters can only be determined by an application for a certificate of lawfulness. I therefore cannot be certain that the proposal would fall to be considered as an exception under paragraph 149 c) or d) of the Framework.

13. I have also had regard to the exception under paragraph 149 g) of the Framework, which refers to the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use. Given my findings regarding the lawful use of the building, I cannot be certain that the proposal would meet the definition of PDL within the Framework.
14. I therefore conclude that the proposal is inappropriate development in the Green Belt, and represents spatial encroachment into the countryside, in conflict with Policy GB3 of the SADMP and the Framework.

Openness

15. Openness is an essential characteristic of the Green Belt. Having regard to case law² cited by the appellant as well as Planning Practice Guidance: Green Belt (PPG), the openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
16. The proposed garage would have a footprint of some 54.84m², and thus would be larger than the existing building footprint, which is about 43.47m², regardless of any area of hardstanding. The proposed garage would also be taller and longer. In order to minimise impact upon openness, the council's Supplementary Planning Document: Development in the Green Belt 2015 (SPD) seeks a restriction upon the size of residential outbuildings in the Green Belt to 40m² when measured externally. The proposed garage would be significantly above this threshold. While the proposed garage may have been designed to be the minimum size necessary to accommodate vehicle parking, it nevertheless results in an increase in mass and bulk compared to the existing building, and therefore the openness of the Green Belt would be reduced in both visual and spatial terms.
17. The existing building is located at a higher level than the existing dwelling. It is screened from immediate neighbouring properties to the west by virtue of extensive vegetation and the presence of the host dwelling, and in this regard, the additional footprint and height of the dwelling would not be visually intrusive. However, during my visit, I saw that the existing timber building is within a more distant view from the upper floors of neighbouring properties towards the north in the vicinity of Fuller Hill Farmhouse and The Oasts, where the topography is at a lower level. In this regard, the proposed garage would be visible from the surrounding area, and it would therefore intrude upon the openness of the Green Belt, albeit to a limited extent.
18. The proposal would not result in additional traffic generation, and thus it would be in accordance with the PPG. However, it would result in extended journeys towards the proposed garage, and vehicles could be parked in front of the garage. While the appellant suggests cars are parked in the vicinity at present, this may not be a lawful use of the area. It is not clear what paraphernalia

² Turner v Secretary of State for Communities and Local Government (2016); Euro Garages Ltd v Secretary of State for the Environment (2018); Samuel Smith Old Brewery (Tadcaster) v North Yorkshire Council (2018)

would be removed by the proposal. The existing timber building is not so unsightly that it harms the appearance of the area.

19. I therefore conclude that the proposal fails to preserve the openness of the Green Belt, and thus it conflicts with Policy GB3 of the SADMP, the SPD and the fundamental aims of the Framework.

Biodiversity and protected species

20. Circular 06/2005 (ODPM) sets out that it is essential that the presence or otherwise of protected species and the extent to which they may be affected by a proposal is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. It further goes on to advise that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.
21. Paragraph 174 of the Framework sets out that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity. Paragraph 176 refers to the conservation and enhancement of wildlife as an important consideration in Areas of Outstanding Natural Beauty.
22. I note that the appellant advises that no ecological information was sought by the council during the determination period. Nevertheless, there is no substantive or compelling evidence before me to demonstrate that there is no reasonable likelihood of protected species being present on or near the appeal site, nor whether there is a risk that they may be adversely affected by the proposal, and if so, what mitigation measures would be appropriate. Having regard to the nature of the proposal and the existing timber building, together with the context of the appeal site in a predominantly rural area with a variety of habitats nearby including areas of woodland, hedgerows and tree belts, it cannot be assumed that protected species would not be present within the site or the vicinity.
23. I therefore conclude that the absence of sufficient information means that I cannot rule out potential harm to biodiversity and protected species in the AONB. As such, the proposed development conflicts with Policy SP11 of the Sevenoaks District Council Local Development Framework Core Strategy 2011, which seeks to conserve the biodiversity of the district and to seek opportunities for enhancement to ensure no net loss of biodiversity, and it conflicts with the Framework. I attach significant weight to this conflict.

Other Considerations

24. The main parties agree that the design of the proposal would have no adverse impacts upon the character and appearance of the area, the amenity of adjacent neighbouring occupants, or the setting of the adjacent grade II listed building (The Old Farmhouse). I find no reason to consider otherwise in these matters. However, the absence of harm in such terms is a neutral factor in my assessment, carrying neither positive nor negative weight.
25. The appellant suggests that if the proposed garage was located within 5m of the existing dwelling, it may lead to an adverse impact upon the setting of the barn. This position is predicated upon a view that the council considers the existing dwelling (previously a barn) to be a non-designated heritage asset, but

there is little evidence to support this position. In any event, the appellant suggests that a more proximate siting would somehow detract from or prevent appreciation of the architectural merit of the existing dwelling. In my judgement, a more proximate siting would not result in such an outcome. Furthermore, there is little evidence before me to suggest that there are any impediments to a more proximate location. Accordingly, this matter does not carry positive weight in favour of the proposal.

26. The appellant suggests that permitted development rights could represent a fallback position. However, the appellant also states that it is not certain whether permitted development rights have been removed. Given my reasoning in regard to the lawful use of the building and the dispute regarding the extent of residential curtilage, there is very little evidence before me to demonstrate that there is a theoretical fallback position, and therefore it is not necessary for me to consider this matter further.
27. The proposal would allow the parking of vehicles to the limited benefit of the existing occupiers of the host property, which attracts little weight.

Green Belt Balance and Conclusion

28. The proposal would represent inappropriate development in the Green Belt, which is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances. In addition, openness is an essential characteristic of the Green Belt, so a reduction in openness would also be harmful, even if to a limited extent. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
29. In this case, it is clear that the limited benefit arising from the proposal would not outweigh the substantial and significant harms I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist.
30. For the reasons above, I conclude that the appeal should be dismissed.

J Moore BA (Hons) BPL MRTPI

INSPECTOR