



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: 11 September 2023

Appeal Ref: APP/G2245/W/22/3313352

Hatch House, Bridle Road, Godden Green, Sevenoaks, Kent TN15 0JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr & Mrs Mourgue d'Algue against the decision of Sevenoaks District Council.
- The application Ref 22/02500/HOUSE, dated 22 September 2022, was approved on 17 November 2022 and planning permission was granted subject to conditions.
- The development permitted is: *Construction of open air swimming pool with associated landscaping. Demolition of existing garages and garden wall, construction of detached garage with associated landscaping and gates.*
- The condition in dispute is No.9 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) England) Order 2015 (as amended) (or any Order revoking or re-enacting or amending those Orders with or without modification), planning permission shall be required in respect of development falling within Schedule 2, Part 1, Classes A, D, E, of that Order and Schedule 2, Part 2, Class A of that Order. Any other extensions to the dwelling or outbuildings other than those as approved on plan number 22004-P-310 Rev B erected after the grant of this planning permission and prior to implementation/commencement of the development hereby approved shall be demolished and all demolished items removed from the site.*
- The reasons given for the condition is: *To ensure outbuildings cannot be reinstated on the site without the prior written consent of the Local Planning Authority, as required under this case of Very Special Circumstances for allowing this development within Green Belt. This is necessary to safeguard the openness of the Greenbelt in accordance with aims and objectives of the National Planning Policy Framework, and policy L08 of the Sevenoaks Core Strategy and policy GB3 of the Sevenoaks Allocations and Development Management Plan.*

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr & Mrs Mourgue d'Algue against the decision of Sevenoaks District Council. This application is the subject of a separate decision.

Preliminary Matters

3. There was some confusion regarding various drawings. A drawing (ref 22004-E-500-Rev B – Existing Volume Study) was submitted in error by the appellant to the appeal, and therefore it has had no bearing on my consideration of the appeal.
4. I also sought clarification from the main parties in regard to two further drawings. The appellant submitted a drawing (ref E-200-Rev C – Existing

Layout) to the appeal, but this was not detailed in the decision notice. The decision notice details a drawing (ref P-200-Rev C), but this was not submitted to the appeal.

5. The Council advises that there is an error within the decision notice, and it should read as E-200-Rev C. The Council also confirms that this drawing was submitted with the planning application, and I am satisfied that the main parties are clear on what the correct plan numbers should be in this regard.

Main Issue

6. The Council granted planning permission with a condition to remove certain permitted development rights under the GPDO¹ for certain classes of development, and the appellant seeks the removal of the condition to enable full permitted development rights to be reinstated. The Council considers that the condition is necessary to preserve the openness of the Green Belt. Therefore, the main issue in this appeal is whether the condition is reasonable and necessary to safeguard the openness of the Green Belt.

Reasons

7. The appeal property is a large, detached house in substantial grounds, and is located within the Metropolitan Green Belt and the Kent Downs Area of Outstanding Natural Beauty (AONB). From the evidence before me, it is clear that the original dwelling has benefitted from various planning permissions for extensions, additions, alterations and enclosures, but there is little evidence before me in regard to the justification for such permissions.
8. The dispute centres on the proposed detached garage (the detached garage). In essence, the council considered that it would be inappropriate development in the Green Belt, but in light of proposed demolition of four outbuildings (numbered consecutively on the submitted plans), the council determined that very special circumstances existed to allow the proposal. At the time of my visit, the development had commenced, the outbuildings were demolished, and the detached garage was under construction.
9. The Framework states that the construction of new buildings in the Green Belt is inappropriate development, which is, by definition, harmful and should not be approved except in very special circumstances. There are limited exceptions to this as set out in paragraph 149. While there is no specific exception for curtilage outbuildings, it is established practice to consider such buildings as extensions to the dwelling itself under paragraph 149 c), especially where a proposed use is ancillary to the dwelling, as is the case with the detached garage in this case. The Sevenoaks Allocations and Development Management Plan 2015 (SADMP) follows a similar approach to the Framework in this regard.
10. Policy GB3 is entitled Residential Outbuildings in the Green Belt, and differentiates between residential outbuildings in terms of distance from an existing dwelling. It states that residential 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. The Supplementary Planning Document:

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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, in order to minimise impact upon openness. Furthermore, the SPD makes clear that consideration will also be given to the need to remove permitted development rights in regard to Policy GB3.

11. The detached garage would have a footprint of some 90m², which is significantly larger than that sought within the SPD. However, the scheme included the demolition of four outbuildings, which together amount to some 110m². In this context, the council determined that the detached garage would be of a smaller footprint than the aggregated footprint of the four outbuildings that were proposed for demolition, and thus the council considered that this position demonstrated the very special circumstances to justify the development. Certain permitted development rights were removed to ensure that the council could retain control over any further additions and enclosures to ensure that they could not be re-introduced to the site without harm to the openness of the Green Belt.
12. Given the scale of previously approved additions and enclosures at the appeal site, the restriction of certain rights is clearly justified to control any further such additions and enclosures in order to safeguard the openness of the Green Belt. Without such control, there would be no mechanism to prevent further additions and enclosures that could undermine the openness of the Green Belt. The spatial harm could be significant, dependant on the nature of further additions, over which the Council would have no control, subject to the criteria in the GPDO, including the those relating to Article 2(3) land (AONBs).
13. The appellant does not dispute the imposition of the condition in this regard. Rather, it is the appellant's case that the council then failed to consider the proposed development in the context of the exemption set out in 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 (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development. This matter is referenced within the submitted statement accompanying the planning application.
14. The appellant suggests that such consideration should have taken place before considering the case for very special circumstances with regard to Policy GB3. In this event, the appellant argues that the development would not be considered as inappropriate, and thus the restriction of permitted development rights is not reasonable or necessary.
15. Notwithstanding my findings in relation to the Council's approach in my reasoning above, I have had regard to the appellant's grounds of appeal in regard the exemption under paragraph 149 g). Even if the proposal should be considered as PDL, the definition of PDL in the Framework makes clear that it should not be assumed that the whole of the curtilage should be developed. The relevant test having regard to the Framework is whether the development would have a greater impact on the openness of the Green Belt.
16. I am unable to make my own assessment as to whether the four outbuildings would satisfy the definition of PDL in the Framework as they are now demolished. A photograph of outbuilding 2 demonstrates a permanent structure, described as a garage block. Outbuilding 4 is described as a

greenhouse on the submitted plans. Otherwise, there is very little evidence before me in this regard. I therefore cannot be certain that all four outbuildings would meet the definition of PDL, nor that they would therefore satisfy the criteria within the SPD with regard to the consideration of PDL.

17. The SPD also refers to PDL in the Green Belt at paragraphs 7.3-7.5. It details that redevelopment proposals will be considered on a case by case basis and the unique circumstances of each site. It further references three criteria in order to maintain the same impact on the openness of the Green Belt and fulfil its purposes, and all three must be satisfied. The detached garage is taller than three of the outbuildings, and thus it does not comply with criterion b) of the SPD, even though it would occupy a smaller area than that of the four outbuildings when combined.
18. Consequently, the demolition of the four outbuildings results in less overall harm to the openness of the Green Belt by the removal of outbuildings that are dispersed within the extensive curtilage of the site. The removal of certain permitted development rights in this regard would thus result in safeguarding the benefits to the spatial and visual harm to the Green Belt that arises as a consequence of the development. Therefore, the restriction of such rights would be reasonable and necessary, even if I were to agree that the development should be considered as PDL.
19. Overall, and even if the development should be considered as PDL, I am satisfied that without the removal of certain permitted development rights, there would be no mechanism to prevent further additions and enclosures within the extensive curtilage, that could undermine the openness of the Green Belt.
20. In reaching this view, I acknowledge that the GPDO does not restrict permitted development rights relating to development within the curtilage of a dwellinghouse in the Green Belt, and such rights would not generally conflict with the purposes of the Green Belt or its essential characteristics of openness and permanence. As such the appeal site's location within the Green Belt would not, in itself, represent justification to warrant removal of permitted development rights. I also accept that the blanket removal of permitted development rights is unlikely to meet the tests of reasonableness and necessity, and must be clearly justified, in accordance with Planning Practice Guidance (PPG) and the Framework.
21. However, in this case the detached garage was clearly justified on the basis that the four outbuildings would result in a reduction of overall harm to the openness of the Green Belt, and thus formed the very special circumstances required to justify the inappropriate development. In this case, certain permitted development rights were removed, without which the very special circumstances required to justify the development would not exist.
22. For the above reasons, I conclude that the disputed condition is both reasonable and necessary, in order to preserve the openness of the Green Belt. The condition complies with Policy GB3 of the SAMDP and paragraph 149 of the Framework, which seek to ensure that extensions to existing buildings in the Green Belt are not disproportionate to the original building, and that development does not materially harm the openness of the Green Belt. The condition meets the tests of reasonableness and necessity within the Framework and the PPG, therefore there is no need to remove it.

Conclusion

23. For the reasons given above I conclude that the appeal should be dismissed.

J Moore BA (Hons) BPl MRTPI

INSPECTOR