



Appeal Decision

Site visit made on 21 November 2023

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal Ref: APP/M1005/D/23/3324170
34 Cloves Hill, Morley, Derbyshire DE7 6DH

- 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 Clemson against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2023/0030, dated 15 January 2023, was refused by notice dated 27 April 2023.
 - The development proposed is construction of triple garage.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Clemson against Amber Valley Borough Council. This application is the subject of a separate Decision.

Procedural matter

3. Much has been made by the parties as to whether the land that this proposal is situated on is domestic curtilage or not. This is not a matter for this appeal to deal with, as that should be tested via a Certificate of Lawful Use & Development application and be appealed if necessary.

Main Issues

4. Based on the above, the main issues in this appeal are as follows: -
 - whether the proposal is 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;
 - if the proposal is inappropriate development, 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 necessary to justify the development.

Reasons

5. The site is located within the Green Belt on a road of residential properties of various sizes and designs. At the time of my site visit the development appeared to be largely completed, as the appellant considered that the garage could be constructed under his permitted development rights as he believed that the land was in his domestic curtilage.

Planning policy context

6. In this appeal, the policy quoted as a reason for refusal was policy EN2 of the Amber Valley Borough Local Plan (2006) (the LP). Policy EN2 relates to the Green Belt and is inconsistent with the guidance set out in the Framework as it relates to Green Belts and is therefore considered to be out-of-date. As a result, I have utilised the Framework as the main point of planning policy as it relates to Green Belt policy.

Whether inappropriate development & openness

7. The Framework explains that the Government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl. The essential characteristics of Green Belts are their openness and permanence.
8. Paragraph 149 of the Framework states that construction of new buildings within the Green Belt is inappropriate development, subject to certain exceptions. Paragraph 150 of the Framework details certain other forms of development which are not inappropriate in the Green Belt. The exceptions under paragraph 150 are subject to additional requirements, whereby development is not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
9. I do not find that the development meets any of the criteria set out in those paragraphs, and as such, I consider the proposal to be inappropriate development within the Green Belt.
10. In accordance with paragraph 147 of the Framework, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
11. The development, which appears to be largely constructed is large and bulky, albeit reduced from that first proposed. It is set back from the highway and screened to some extent by existing boundary treatments and gates. However the screening is not total and the development represents an intrusion into the Green Belt from a new development.
12. Although spatially and visually the harm to openness would be limited in the context of the whole Green Belt, the Framework is clear in paragraph 148 that substantial weight is given to any harm to the Green Belt.

Other Considerations

13. The appellants have drawn my attention to other works that have been carried out in the near vicinity to the site and the inconsistency demonstrated by the Council. However, there is very limited information before me to ascertain whether these schemes are comparable to the appeal scheme. For the reasons set out above, these do not set a precedent for this development. In any event, I am required to determine the appeal on its own merits.
14. While the immediate neighbours have not objected to the proposal, this does not justify the harm I have identified. Furthermore, the imposition of conditions would not make the development acceptable.
15. The appellants submissions contend that the development could be permitted development in the event this appeal is dismissed. However this would have to

be dealt with via a different procedure to establish the legal position in respect of the land. Consequently, this represents a fallback position.

16. Even so, given that the fallback has technically already been constructed, this attracts limited weight as is stated above, the legal position would need to be established, which is not a matter for this appeal.

Green Belt Balance and Conclusion

17. I have identified the most important policy from the LP as being policy EN2 but consider this policy to be out of date for determining this application and have utilised the guidance set out in the Framework and significant weight can be afforded to the conflict with the Green Belt guidance in that document.
18. I have found that the triple garage is inappropriate development within the Green Belt and would be harmful to Green Belt openness. It should not be approved except in very special circumstances.
19. I must attach substantial weight to the harm to the Green Belt. The harm arising by this clearly outweighs the other considerations. Consequently, the very special circumstances necessary to justify the development do not exist and the appeal should therefore be dismissed.

Paul Cooper

INSPECTOR