



Appeal Decision

Site visit made on 8 February 2024

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th March 2024

Appeal Ref: APP/R0335/W/23/3323109

Skylarks, Maidens Green, Winkfield, Windsor SL4 4SJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr O Pardo against Bracknell Forest Council.
 - The application Ref is 22/00190/FUL.
 - The development proposed is the erection of a single storey detached Hydrotherapy Pool.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. I have given the main parties an opportunity to comment on the new Framework, and, in determining the appeal, I have taken the comments received into consideration. I have proceeded to determine the appeal having regard to the revised Framework.
3. Drawing no. 01.A Rev A indicates a fundamental change to the siting of the proposed building. However, it is not clear from the evidence before me that the Council publicised the amended plan or that interested parties were re-consulted. As such, I cannot be certain that interested parties would have had reasonable opportunity to comment on the amended scheme. Therefore, in the interests of fairness and to ensure that there would be no prejudice to interested parties, I have determined the appeal based on the original site plan.
4. The appeal is against the failure of the Council to give notice of their decision on the planning application within the prescribed period. However, the Council's statement sets out that, had it been in a position to determine the application, it would have refused planning permission. The substance of the Council's statement has informed the main issues in this appeal.

Main Issues

5. The main issues in this appeal are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to 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 resulting harm and any other harm, is clearly outweighed by other considerations, to amount to the very special circumstances necessary to justify the proposal.

Reasons

6. Section 13 of the Framework establishes the national policy objective to protect the Green Belt and to prevent urban sprawl by keeping land permanently open. Inappropriate development is, by definition, harmful and should not be approved except in very special circumstances. It goes on to say that very special circumstances will not exist unless the potential harm to the Green Belt by reasons of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Policy CS9 of the Core Strategy Development Plan Document 2008 (the Core Strategy) is generally consistent with the provisions of the Framework.
7. The Framework, at paragraph 154 sets out several exceptions whereby development in the Green Belt would not be inappropriate. The provision of domestic outbuildings is not listed as a type of development which may be permissible in the Green Belt. Although saved Policy GB1 of the Bracknell Forest Borough Local Plan 2002 (Local Plan) indicates that domestic outbuildings may be approved in the Green Belt subject to other criteria, this approach is not consistent with the Framework's more stringent test for establishing whether a proposal would constitute inappropriate development. This policy carries limited weight in the determination of this appeal.
8. It has not been put to me by the main parties that the appeal proposal could be considered as an extension of a building under paragraph 154 of the Framework. Consequently, and given that the proposed development would not satisfy any of the exceptions set out at paragraph 154, I find that the appeal proposal would be inappropriate development in the Green Belt. This is by definition harmful and carries substantial weight. It would therefore conflict with paragraph 154 of the Framework together with Policies CS9 of the Core Strategy and saved Policy GB1 of the Local Plan.

Openness

9. Openness is identified in the Framework as one of the Green Belt's essential characteristics and can be perceived both spatially and visually.
10. In spatial terms, the loss of the undeveloped space at the rear of the appeal property and the introduction of built form, albeit of a relatively low profile would have a reducing effect on the openness of the Green Belt. The appeal proposal would be largely screened from the road or any public right of way and therefore visibility of the appeal proposal would be limited to residents of neighbouring properties. Although in visual terms, the effect on openness would be limited, 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.
11. Taking account of the spatial and visual effects, I find that the proposal would result in limited harm to the openness of the Green Belt. This would add to the harm arising from the proposal being inappropriate development.

Other Considerations

12. The evidence before me sets out that a member of the family has a debilitating health condition, and that the primary intention of the proposal is to enhance the health and wellbeing of the family member. Hydrotherapy treatment would reduce their pain, help develop mobility and strength whilst also increasing fitness in a positive, familiar environment. In addition, the onsite facility would reduce the stress and strain currently experienced by car journeys to other facilities further afield. The evidence also indicates that the proposal would have positive emotional implications for the family as a whole.
13. I do not dispute the fundamental need for the proposal or indeed the facilities therein. Further, I accept that an outdoor pool would not be feasible in this case given that the facility is required all year round. However, and whilst having had regard to the Occupational Therapy Report, there is a lack of substantive evidence before me to satisfactorily demonstrate that the pool size is the minimum required for the intended use. Therefore, I cannot be certain that a smaller pool, contained within a smaller building could not achieve the same end without causing the same level of harm to the Green Belt. For the same reason, I cannot conclude with any degree of certainty that the existing garage could not be adapted to accommodate the proposed hydrotherapy facility.
14. The Public Sector Equality Duty contained in section 149 of the Equality Act 2010, sets out the need to foster good relations between people who share a protected characteristic and those who do not. These characteristics include disability, and I am mindful of the appellant's circumstances in this regard. I afford these other considerations great weight in my decision.

Other Matters

15. Planning permission was given by the Council for a swimming pool in the rear garden of the adjacent property¹. Whilst this scheme provided an enclosure for associated plant, the pool itself is not enclosed. Therefore, this neighbouring development is materially different to the appeal proposal.
16. The proposal would utilise existing landscaping features in the site whilst the building design, including external materials would be sympathetic to the character of the area. The proposal, being for personal use would not adversely affect highway safety and sufficient parking provision would be provided within the site. Further, the site is located within a low flood risk area, is not known to be contaminated or lie within an area of archaeological potential. These however are neutral factors and do not weigh in favour of the proposal.
17. A local building firm would be employed to construct the development thereby supporting the local economy. Biodiversity enhancement measures could also be incorporated to support and promote the biodiversity of the site. However, given the scale of the proposal, the benefits in this regard would be limited. Further, whilst it has been put to me by the appellant that the proposal would reduce carbon emissions, the offset and associated environmental benefit is not clear.
18. The appellant indicates that the site is located outside of the 5km buffer for the Thames Basin Heath Special Protection Area (SPA). For the reasons set out in

¹ 22/00446/FUL

this decision, I find that the proposal is unacceptable. Therefore, in dismissing the appeal, it has not been necessary for me to consider the effect of the proposal on the SPA.

Conclusion

19. The appeal development would result in inappropriate development in the Green Belt, which would be, by definition harmful. The Framework indicates that such harm should be given substantial weight. I also give substantial weight to the adverse impact on the openness of the Green Belt.
20. The proposed development would have positive implications for the family member who has a protected characteristic. However, the harm caused by the proposal outweighs its benefits. Consequently, the very special circumstances necessary to justify the development do not exist. I therefore conclude that it is proportionate and necessary to dismiss the appeal.

H Wilkinson

INSPECTOR