
Appeal Decision

Site visit made on 29 May 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th June 2024

Appeal Ref: APP/C1570/W/23/3321152

Warwicks, Chelmsford Road, White Roding, Essex CM6 1RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Sammy Forway against the decision of Uttlesford District Council.
 - The application Ref is UTT/23/0110/FUL.
 - The development is the retention of temporary structures and the change of use of part of a garden to class E commercial as the Daily Grind café, and as an outdoor restaurant, trading as Stone and Coal.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted retrospectively, and I saw during my site visit that some of the structures relating to the development and associated paraphernalia were on site. However, the canopies and the horse box wagon had been removed and the class E use of the site had ceased. I have therefore considered the appeal on a part retrospective basis.

Main Issues

3. The main issues are:
 - whether the development would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the 'Framework') and relevant development plan policies;
 - the effect of the development on the living conditions of the occupiers of the neighbouring dwellings with regard to noise and air quality;
 - the effect of the development on highway safety;
 - the effect of the development on the setting of the grade II listed building, Warwicks; and
 - would the harm by reason of inappropriateness and any other harm, be clearly outweighed by other consideration so as to amount to the very special circumstances required to justify the development.

Reasons

Whether it is inappropriate development

4. The appeal site is located in the grounds of the grade II listed dwelling Warwicks. It is physically separated from the main garden of Warwicks by a fence with a separate pedestrian access from the road via a gate. The surrounding area is rural in nature with only several neighbouring dwellings and the appeal site is located within the Green Belt. The development changes the use of the appeal site from a residential garden to use class E, to be used as an outdoor café and restaurant. This includes two shipping containers, one used as a toilet block and the other as a kitchen, an outdoor bar area, a horse box wagon and two large canopies.
5. It is noted that the appellant considers the structures on the appeal site to be temporary as opposed to permanent buildings. However, the application is not time limited and the structures would remain in perpetuity and therefore should be considered as such.
6. The preamble to Policy S6 of the Uttlesford Local Plan 2005 (the LP) states that within the green belt development will only be permitted if it accords with national planning policy on green belts. Paragraph 154 of the Framework indicates that the construction of new buildings in the Green Belt are inappropriate subject to a number of exceptions. The development would not fall under any of the listed exceptions in this paragraph. However, paragraph 155 of the Framework also lists other forms of development that are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These exceptions include material changes in the use of land.
7. In considering the concept of openness, the courts have found that it broadly has two dimensions; spatial and visual. This means that 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. Equally this does not mean that the openness of the Green Belt has no visual dimension.
8. No evidence has been provided to suggest that there were any buildings or structures on the site prior to the development taking place. Therefore, the addition of the development to the site, and its associated structures, has a significant spatial impact on the openness of the Green Belt. Whilst the development could be removed, the shipping containers in particular appear to be permanent and are likely to remain in place for a significant period of time. In addition, whilst partially obscured from public view by trees, hedging and fencing, due to the corner plot location of the appeal site and its proximity to the road, the development is still visible within the streetscene. This is particularly true for the horse box café which, from the photos provided, appears to have been located on the boundary of the site. As such, the development also visually reduces the openness of the Green Belt. Therefore, there would be both a spatial and visual impact to the openness of the Green Belt from the development and it would not fall under the exception in paragraph 155(e).
9. The development would therefore be inappropriate development within the Green Belt. This is harmful to the Green Belt which, in accordance with paragraph 153 of the Framework, should be given substantial weight. Development should not be approved unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations, which will be considered below.

Living Conditions

10. Whilst in a rural location, there are several residential properties in relatively close proximity to the appeal site. Due to the rural surrounds the ambient noise level in the area is minimal with only some sporadic noise from passing cars and agricultural activities. Therefore, an outdoor restaurant and café in this location would likely have a significant increase in the overall noise levels in the area through operational noise, background music, vehicles going to and from the site and customers conversing. Whilst this may result in less disturbance to the occupiers of neighbouring properties during the day, when there is a greater level of background noise, the premises is open until midnight when such noise would be more apparent to the neighbouring occupiers and result in more disturbance.
11. The appellant submits that sound recordings have been carried out. However, these have not been provided and no noise assessment or noise management plan have been submitted as part of the application. Therefore, I am unable to ascertain the precise background noise levels in the area, the predicted noise levels of the business when in operation or the resultant effect on the occupiers of the nearby dwellings, taking into account any mitigation measures. Due to the nature of the business, the quiet surrounds and the proximity of neighbouring dwellings, it is highly likely that the development would result in an increase in noise levels and disturbance to the occupiers of the neighbouring dwellings.
12. The use of the site, as an outdoor restaurant, involves outdoor cooking on an open fire. Whilst the appellant may have all the necessary safety procedures in place, using professional cooking and kitchen equipment, no information has been provided outlining the methods of cooking, the type of fuel used and the resultant odours and emissions from such an activity. Due to the scale of the business, including regular cooking for a relatively large number of people, such outdoor cooking methods may be likely to impact the air quality within the area to the detriment of nearby residents when using their gardens.
13. Therefore, without evidence to demonstrate otherwise, the development results in harm to the living conditions of the occupiers of neighbouring dwellings with regard to the increase in noise and disturbance and the decrease in air quality and conflicts with Policies ENV11 and ENV13 of the LP. These policies seek to ensure that development will not be permitted if it would be liable to adversely affect the reasonable occupation of existing noise sensitive development nearby or if it would involve users being exposed on an extended long-term basis to poor air quality outdoors near ground level.
14. The development also conflicts with the relevant section of the National Planning Policy Framework which states that planning decisions should ensure that developments create places with a high standard of amenity for existing users.

Highway Safety

15. The development provides no car parking provision on site and, due to the rural location of the appeal site, it is likely that the majority of customers would travel by car. On-street car parking is possible on the road directly adjacent to the appeal site, where there is no car parking restrictions. However, this road is a relatively narrow country road and customer car parking here on a regular

basis and at relatively large volumes, due to the lack of other transport options, could restrict access, particularly for larger emergency service vehicles, dustcarts or farm vehicles. Such restricted access from on-street parking, along with a likely increase in traffic levels, would result in difficult driving conditions for road users, to the detriment of the overall highway safety in this area.

16. It is noted that the appellant has indicated that a historic access to the appeal site could be reinstated to provide an area for off street parking on site. However, no further details have been provided regarding this and it does not form part of the development. Therefore, I cannot give this any weight in my consideration of the appeal. Furthermore, the grass verge to the side of the road is not a suitable surface to provide all-weather car parking and therefore cannot be relied upon to provide safe car parking provision to customers.
17. As such, due to the lack of suitable car parking provision, the development results in harm to highway safety and conflicts with Policies GEN1 and GEN8 of the LP. These policies collectively seek to ensure that development will only be permitted where the design of the site does not compromise road safety, with the number, design and layout of vehicle parking places proposed appropriate for the location.

Heritage Asset

18. The development is located within the grounds of the grade II listed dwelling, Warwicks. From my observations on site and the information submitted as part of this appeal it would appear that its significance is derived, at least in part, from the antiquity of the structure and from its status as a well preserved example of a vernacular building of its age and type. Its verdant and rural surrounds contribute to how the asset is appreciated and this setting makes a positive contribution to the significance of the listed building.
19. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for the development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest.
20. Whilst the area for the restaurant and café is within the grounds of Warwicks, it has been physically separated by a woven willow fence and benefits from a separate entrance. Due to the substantial size of the garden and the position of the development at the far end of the site away from the dwelling, it would be a sufficient distance from the dwelling to ensure the intervisibility between the two is minimal. Furthermore, whilst the development does include shipping containers that are not necessarily in keeping with the existing rural surrounds of the dwelling, the appellant intends to timber clad these in order for them to better assimilate into the area. This could be secured by way of a suitably worded condition and would ensure that the development is in keeping with the location and the setting of the listed building.
21. Therefore, the development does not harm the setting of the grade II listed building, Warwicks, and accords with Policy ENV2 of the LP. This policy states that development affecting a listed building should be in keeping with its scale, character and surroundings.

Other Considerations

22. The appellant considers that the development supports a community orientated rural business which was used and well supported by local residents, providing an alternative dining out option. The development does provide a service which could be used by the local community in an area where such facilities are limited. Therefore, this is given moderate weight.
23. It has been put forward that the development enhances the appearance of the appeal site which was previously an overgrown wasteland and is now a landscaped and useable space. The outdoor and rustic feel of the development is generally in keeping with the rural surrounds. However, this lack of harm is a neutral factor which does not weigh in favour of the development.

Green Belt Balance

24. The development would be inappropriate development in the Green Belt in that it would result in a material change in the use of land which does not fall under any of the listed exceptions. It also results in harm to the living conditions of the occupiers of neighbouring dwellings and harm to highway safety. The Framework establishes that substantial weight should be given to any harm to the Green Belt and the development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
25. I find that the other considerations in this case do not clearly outweigh the harm to the Green Belt, in terms of a loss to openness and inappropriateness that I have identified, and the harm to the living conditions of neighbouring occupiers and highway safety. Consequently, the very special circumstances necessary to justify the development in the Green Belt do not exist. Therefore, the proposal conflicts with paragraphs 152, 153 and 154 of the Framework.

Other Matters

26. It is noted that an enforcement notice was issued by the Council on 15 June 2023 for the appeal site. This alleged a breach of planning control for the material change of use of the land to a mixed use residential (C3) and an event venue and café (sui generis) activity, the installation of structures and ancillary works attached, without planning permission. However, this has no bearing on my consideration of the appeal.
27. The appellant has provided information regarding a request for a licensing review which was refused by Uttlesford District Council. However, this process is separate from the application for planning permission and is therefore not relevant to the appeal before me.

Conclusion

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

E Grierson

INSPECTOR