



Appeal Decision

Site visit made on 16 July 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/F0114/W/23/3331479

Lobbington Cottage, Chew Lane, Chew Stoke, Bristol, Bath and North East Somerset BS40 8UE

- 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 Mr and Mrs Bryant against the decision of Bath and North East Somerset Council.
 - The application Ref is 23/01178/FUL.
 - The development proposed was described as "Change of use of land from agricultural land to garden land and erection of timber fencing (Retrospective) resubmission of 22/05135/FUL".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024, the Government published a consultation on proposed reforms to the NPPF. Whilst national policies relating to Green Belt are proposed to change as part of this consultation, these proposals could be subject to further change and can only be given very limited weight at this stage. It has therefore not been necessary to consult the parties on the changes, and in reaching my decision I have had regard to the Framework published in December 2023.
3. Reference to the resubmission of a past application and "retrospective" in the description of the application are not forms of development. However, the application form confirms that the development has been completed and I was able to see this during my site visit. I have determined the appeal on that basis.
4. The appeal has been submitted with an Agricultural Land Classification and Soil Resources report. This provides additional technical information for the development and does not represent a change to the scheme considered by the Council. As such I am satisfied that no parties would be prejudiced by my acceptance of this information, and I have taken it into account in my determination of the appeal.

Main Issues

5. The main issues are:
 - whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;

- the effect of the development on the character and appearance of the area;
- the effect of the development on best and most versatile agricultural land; and
- whether any 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 development.

Reasons

Whether inappropriate development

6. Policy CP8 of the Bath and North East Somerset Core Strategy (2014) (Core Strategy) aims to protect the openness of the Green Belt from inappropriate development in accordance with national planning policy. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essential characteristics of Green Belts being their openness and permanence. 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.
7. The appeal scheme includes new boundary fencing that encloses the garden. Two sides are timber post and rail fencing, and one side is taller timber close boarded fencing. Paragraph 154 of the Framework establishes that the construction of new buildings in the Green Belt is inappropriate subject to a number of exceptions. The term 'building' refers to any structure or erection and therefore includes the fencing erected. Fencing is not in the list of exceptions in paragraph 154 of the Framework and therefore when judged against the wording of national policy, the fencing is inappropriate development in the Green Belt.
8. Paragraph 155 of the Framework sets out that material changes of use of land do not constitute inappropriate development in the Green Belt, provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
9. The change of use has resulted in the land being used as garden land associated with the adjacent house. Such a residential use is, in spatial terms, essentially open. Nevertheless, residential gardens can generally be used for any purpose or activity which is part of that use or ancillary to it. The appellants describe the only permanent physical structures associated with the scheme as the boundary fences. However, I observed on site the presence of raised planters and ornamental pots, along with partially raised hard-standings and pathways associated with vegetable beds and structures including a greenhouse, store, and summerhouse. There are other minor domestic features present including a table and chairs, a washing line, an ornamental archway and other garden ornaments. Such residential uses emphasise and are in contrast with the openness of the adjoining agricultural land and result in a spread of residential use and activity into the countryside.
10. Whether or not such features represent permanent or occasional changes, alongside the fencing, their presence in association with the change in use results in a moderately harmful loss of the spatial openness of the land. Seen from the public right of way to the north-east, the close boarded fence and roofs of the greenhouse, store, and summerhouse above it represent solid,

man-made structures which did not exist previously. The development therefore also results in a moderately harmful loss of visual openness.

11. While I can consider imposing a planning condition to prevent the erection of structures, including those that would otherwise constitute permitted development, other effects of the use as I describe above would have harmful impacts upon openness. It would be unreasonable to in effect nullify the benefit of any planning permission by preventing normal domestic activities on the land to such an extent that it could conceivably prevent any effects upon openness.
12. The purposes of the Green Belt are set out at paragraph 143 of the Framework. Although a number of these are not directly related to the appeal site, they include criterion c) to assist in safeguarding the countryside from encroachment. The domestic appearance of the land resulting from the residential use has led to encroachment into the countryside.
13. For these reasons, I conclude that, alongside the fencing, the material change of use of land represents inappropriate development within the Green Belt. As such, the development conflicts with Policy CP8 of the Core Strategy and the Part 13 of the Framework.

Character and appearance

14. The appeal site represents a small parcel of land that was previously part of a larger agricultural field on the edge of Chew Stoke. Although not a designated landscape, the agricultural context of rolling open fields bound by hedgerows and a high proportion of hedgerow trees forms an attractive and verdant rural setting to the settlement. Although described by the appellants as semi-urban in character, my observations on site were that the small ribbon of houses following Chew Lane with open fields to either side represent a distinctly rural edge to the settlement. The presence of the rugby club and school further along Chew Lane do not alter this character.
15. It is likely that the southern garden boundaries of properties south of Chew Lane were previously formed by a consistent hedged boundary. This would have continued the hedgerow boundaries of the adjacent field and marked a distinct edge to the settlement. Significant parts of this boundary remain, but the line has been altered by the removal of the hedgerow and a fenced parcel of land south of The Cottage. The appeal site represents a further incursion beyond this boundary.
16. Although screened from Chew Lane by built form, the extended area of garden land, its close boarded fencing, and various features present within the garden are visible from the public right of way to the north-east. There is also visibility, albeit at some distance, from Wallycourt Road and an adjacent public right of way to the south. In such views the development represents an uncharacteristic domestic encroachment into the field. While the parcel of land south of The Cottage is also present within these views, there is little information provided as to the circumstances of this adjacent land, or whether it benefits from any lawful planning status as a garden for The Cottage. I observed that it does not contain the same level of domestic paraphernalia as the appeal site, and in the absence of any confirmation of its lawful use, it does not provide an appropriate residential garden context for the development.

17. There is some screening to the appeal site boundaries in the form of hedgerows. However, enclosing a small portion of an otherwise open field, the short, angled stretches of hedgerow do not reflect the characteristic pattern of open fields surrounding the settlement. Moreover, the principal screening of the close boarded fencing lies outside of the appeal site, and I cannot be certain that this planting is within the appellants' control or whether its retention could be secured.
18. The scale of the garden area is not out of keeping with nearby properties including larger plots at The Tynings and Brambles. However, its form and location, resulting in incursion into an open field, is not in keeping with the prevailing character of the locality. Moreover, the close boarded fencing in particular is not typical of a rural settlement edge. Indeed, there is a notable absence of such fencing to the rear gardens of neighbouring properties which abut the open countryside. Instead, they are typically formed by hedgerows. While any harm in this regard is relatively localised, it does represent an adverse effect on the local rural character.
19. I therefore conclude that the development harms the character and appearance of the area. This conflicts with Policy HDE1 of the Chew Valley Neighbourhood Plan, and Policies GB1 and NE2B of the Bath and North East Somerset Placemaking Plan (2017) (Placemaking Plan). Taken together, amongst other things, these policies require development to conserve and not harm the characteristic rural features of the area, including the undeveloped landscape setting of settlements and natural field boundaries. They also require that development seeks to enhance the visual amenities of the Green Belt by reason of its siting, design or materials, that there are no adverse impacts on local rural landscape character, and that boundary treatments to residential gardens are sympathetic to their location.
20. Although not referenced in its reason for refusal, the Council also finds conflict with Policy NE2 of the Local Plan Partial Update (2023) in relation to this main issue. This policy similarly seeks development that conserves or enhances local landscape character, avoiding or adequately mitigating any adverse impact on landscape. Given my findings above, I also find conflict with this policy.

Best and most versatile agricultural land

21. The development results in the loss of agricultural land, identified by the Council as Grade 1 and 'excellent quality agricultural land'. Policy RE5 of the Placemaking Plan seeks to prevent the loss of the best and most versatile (BMV) agricultural land, particularly Grade 1 and 2, unless significant sustainability benefits are demonstrated to outweigh any loss.
22. I have not been provided with the basis on which the Council identified the appeal site as Grade 1 agricultural land. However, the evidence indicates that the identification was based on the national *Provisional Agricultural Land Classification Maps*, and the Council has not provided any indication to the contrary. These provisional maps were intended to provide strategic guidance for planners on a small-scale map base. Natural England in its *Technical Information Note TIN049*, advises that they should not be relied on for individual site assessments.
23. The Appellants commissioned an *Agricultural Land Classification and Soil Resources* report, dated August 2023, which was based on a site survey

including two auger samples and a trial pit. This concluded that the southern part of the site was Grade 3a, and the northern part Grade 3b. This is the best available evidence, and on this basis I am satisfied that the development does not result in the loss of Grade 1 agricultural land.

24. The Framework describes the BMV agricultural land as including Grade 3a land, which makes up some 64% of the appeal site. Although a lower grade than originally considered by the Council, this area of BMV land is protected by Policy RE5. Nevertheless, the area lost from agricultural use is only a part of the small appeal site, and the large surrounding field would remain accessible and in active agricultural use. The sustainability benefits associated with the development are limited to relatively small-scale biodiversity enhancements from planting. However, in light of the lowered land grading and scale of the development, I consider the sustainability benefits of the development do outweigh the small amount of loss of Grade 3a agricultural land.
25. Consequently, the development does not result in an unacceptable loss of the BMV agricultural land. It therefore accords with Policy RE5 of the Placemaking Plan.

Other considerations

26. A number of other considerations have been put forward by the appellants and interested parties in support of the development.
27. The existing rear garden area at Lobbington Cottage was small, representing a narrow strip of paved land which was previously enclosed by a hedgerow. I recognise that the space available did not meet the aspirations of the appellants, and that the extended garden land offers a more flexible garden area and also offers a more practical solution for their dog. While I sympathise with their situation, as in general planning is concerned with land use in the public interest, these personal benefits carry limited weight in favour of allowing the appeal.
28. The appellants have highlighted Policy D6 of the Placemaking Plan, which outlines that development must allow for provision of adequate and usable private amenity space. The accompanying text to the policy specifically refers to new and future occupiers, indicating that it is intended to apply to new development. Nonetheless, the private amenity spaces of the property include the small rear paved garden and a relatively generous front garden which provides parking and ornamental areas. Even if Policy D6 were to be applied retrospectively to the existing property, there is little substantive evidence to demonstrate that the external areas of the property could not provide adequate or unusable space.
29. While it is suggested that the appeal site was no longer needed for agriculture, there is no compelling evidence to show that the land could not have continued under management for silage production and grazing alongside the remainder of the field. The land ownership of the site has now changed, and it is likely to be impractical to continue to farm the small area under the previous management regime. However, neither the agricultural needs of the previous owner, nor the farming options now available for the smaller parcel of land provide a clear justification for the development.

30. Several fruit trees have been planted, and hedgerow planting of predominantly native species has been carried out to the site boundaries. The area of land identified as wildflower planting on the plans was mown grass at the time of my site visit, and a proportion of this area now contains a greenhouse and vegetable garden, reducing its biodiversity value. Nonetheless, overall these measures are an enhancement to biodiversity against the previous agricultural use. However, on a small parcel of land the changes implemented represent a minor improvement to the biodiversity of the area. While I have concluded that these small changes do outweigh the loss of a small area of Grade 3a agricultural land, they carry very modest weight in my overall consideration of the appeal.
31. It has been suggested that the boundary fencing installed would typically fall within permitted development rights. However, if the change of use to a domestic garden had not occurred, it is unclear what purpose fencing, in particular the close boarded fencing, would serve enclosing a small area of agricultural land. Consequently, in the absence of the change of use, there would have been no real prospect of such an installation taking place. Thus, the existence of permitted development rights for certain forms of boundary treatment does not demonstrate very special circumstances for the development.
32. The appellants also set out that the timber post and rail fence to the southern and western boundaries was required as part of the contract for the sale of the land. Any such requirement would be a civil matter between the parties involved, outside of planning control, and therefore carries minimal weight in my determination of this appeal.
33. The Council has not found any harm in relation to other matters including residential amenity or highway safety, and I see no reason to reach a different conclusion. The site is also at a low risk of flooding, and no heritage assets are affected by the development. That no harm has been identified in respect of these matters is a neutral consideration. The appellants have also referred to design policies in their planning statement. Although the policies quoted do not appear to form part of the Council's development plan, I have considered the design of the development in so far as it relates to the effect on character and appearance above, and have found conflict with the policies of the development plan.

Green Belt Balance

34. The change of use and new fencing constitute inappropriate development in the Green Belt and harm openness. By virtue of paragraph 153 of the Framework this harm attracts substantial weight.
35. The Framework makes it clear that the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, must be clearly outweighed by other considerations for planning permission to be granted. In this case, the harm to landscape character is relatively localised, and there is not an unacceptable loss of BMV agricultural land. There are also other considerations which weigh in favour of the scheme. However, even taken together, these other considerations do not clearly outweigh the substantial weight given to the harm arising to the Green Belt.

36. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case.

Conclusion

37. The development conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that the appeal should be dismissed.

K Jones

INSPECTOR