

Appeal Decision

Site visit made on 3 September 2024

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 SEPTEMBER 2024

Appeal Ref: APP/A4710/W/24/3343047

**6 Dean Houses, Dean House Lane, Luddenden, Sowerby Bridge,
Calderdale HX2 6TP**

- 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 S Main against the decision of Calderdale Council.
 - The application Ref is 23/00227/COU.
 - The development proposed is the change of use from agricultural land to garden area including the construction of a raised terrace.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal scheme had been undertaken at the time of my visit and the submitted plans reflected the extent of the raised garden area that has been formed. For clarity, I have dealt with the appeal based on the submitted plans.

Main Issues

3. I consider the main issues are:
 - whether the proposal is inappropriate development in the Green Belt, having regard to the development plan and the National Planning Policy Framework (Framework);
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the setting of listed buildings; and,
 - 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

Inappropriateness

4. The appeal site is situated in the Green Belt. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
5. The Framework at paragraph 155 states that engineering operations and material changes in the use of land are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The appeal development relates to an extended garden area beyond the gable of the appeal dwelling. Although there is no intention to place structures in the garden, the extended garden area has resulted in the reprofiling of the land and the formation of a raised terrace. This terrace is enclosed by a stone wall which extends to 2m in height, with a timber rail and post fence above it.
6. Although screening of the stone wall is provided by planting, the engineering works has resulted in a significant change through the creation of a level area from the previously sloping site. As such, the proposal has reduced the visual aspect of openness, and by introducing development into an area where it was previously absent, it has also led to a reduction in the spatial aspect of openness. By spreading development into an open area of land forming part of the countryside, the proposal has contravened one of the purposes of the Green Belt, namely, to assist in safeguarding the countryside from encroachment.
7. I therefore conclude that the proposal is inappropriate development. It therefore conflicts with Paragraph 152 of the Framework, which states that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The proposal is also contrary to Policy GB1 of the Calderdale Local Plan 2018/19 – 2032/33 (Local Plan) which reflects national policy in setting out that engineering operations and material changes in the use of land are inappropriate development where they do not preserve openness and where they conflict with the purposes of including land in the Green Belt.

Character and appearance

8. The appeal site is situated amongst a small group of buildings in a countryside location. The surrounding fields and open areas of land along with the varying topography provide for far reaching views of the surrounding rural landscape and contribute to a verdant, spacious character.
9. The development of the raised garden area has encroached into the open countryside and significantly changed the appearance of the site. The raised garden area appears visually conspicuous in this undulating rural landscape.
10. Although concerns have been raised on the type of stone used, I do not consider this aspect of the development would be harmful given the planting along the stonework face. Nevertheless, by virtue of the scale and form of the development, it would detract from the rural spacious setting of this area.

11. I therefore conclude that the proposal has resulted in significant harm to the character and appearance of the area. As such, the proposal is contrary to Policies GN4 and BT1 of the Local Plan and Paragraph 135 of the Framework, which seek, amongst other matters, for development to be sympathetic to local character, including on landscape setting.

Setting of listed buildings

12. A number of listed buildings, 1-3, 7 and 8 Dean Houses and Dean House Farmhouse are located in the vicinity of the appeal site. These buildings have historical significance dating from the early to mid-17th Century and with their traditional vernacular and rural setting also contributing to their significance.
13. These heritage assets are seen in views across fields from various vantage points. As the proposal is situated beyond the gable of the appeal dwelling, it would not be directly in the line of sight of these nearby listed buildings which are situated further along the terrace, or beyond a hardstanding area which is used for vehicle access and parking. The proposal has no detrimental effect on these heritage assets which continue to be appreciated in their rural setting.
14. For the reasons set out, the proposal preserves the setting of the listed buildings and as such, there is no conflict with Policy HE1 of the Local Plan or Paragraph 195 of the Framework, which seek, amongst other matters, to conserve heritage assets in a manner appropriate to their significance.

Other considerations

15. My attention has been drawn by the appellant to the fallback position of removing the infill material that has been used to construct the raised garden area and for a walled enclosure up to 2m in height to be formed using Permitted Development rights. The Council has however set out that an application for a Certificate of Lawfulness¹ to create a walled agricultural enclosure was refused as planning permission would be required. Whatever the position on this, the use of the land would be limited to an agricultural use and not as a garden area. As such, given that it would not provide the benefit that the appellant is seeking, in terms of providing a safe children's play and learning area, I do not consider that there is a reasonable prospect of the fallback being carried out. Even if it was undertaken, and the walls of the enclosure were not in a sympathetic material, it would be less harmful than the appeal scheme which I have found to be inappropriate development, as it would be lower and not result in an elevated levelled area of land. The fallback position advanced is therefore of very limited weight in this appeal.
16. The appeal dwelling has a small external amenity area, and the appellant has set out the need for an enlarged garden area to provide a safe outdoor play and learning area for their children. Having regard to the small size of the current external amenity area and the lack of alternative opportunities at or near the site for children to play in, this weighs in favour of the proposed development and is a matter to which I attribute significant weight.
17. The appellant has referenced a number of approvals that are said to be similar to the proposed development. The Council has however set out that

¹ LPA Reference: 24/00379/192

these were considered under a different policy context, and that the referenced approvals did not involve raised terraces or engineering operations. The circumstances of the referenced approvals are not therefore comparable to the appeal development which I have considered on its own merits.

18. The appellant has set out the efforts that were made to work with the Council and the lack of engagement by them. These matters do not alter my conclusions in relation to the main issues and I have determined the appeal before me on its own merits, having regard to representations that have been made.

Conclusion

19. The proposed development would be inappropriate development, which the Framework clearly sets out is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt, and any other harm, in this case to character and appearance is clearly outweighed by other considerations.
20. I have attached significant weight in favour of the scheme to the provision of a larger garden area for the reasons set out. With this in mind, the substantial weight I have given to the Green Belt harm and other harm is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances.
21. Dismissing the appeal would interfere with the appellant's family's rights to peaceful enjoyment of their possessions, and to a private and family life and home, under Article 1 of the First Protocol and Article 8 as set out under the Human Rights Act 1998. However, those are qualified rights; interference with them in this instance would accord with the law and be in pursuance of a well-established and legitimate aim: the protection of the Green Belt.
22. It is therefore proportionate and necessary to refuse to grant planning permission and there will be no violation of the appellant's human rights. The protection of the public interest cannot be achieved by means that are less interfering with their rights.
23. I conclude therefore that the appeal should be dismissed.

F Rafiq

INSPECTOR