

Appeal Decision

Site visit made on 2 September 2024

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Appeal Ref. APP/E3715/D/24/3344039

Millfield, Mill Row, Wolvey, Hinckley LE10 3HS

- 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 Brindle against the decision of Rugby Borough Council.
 - The application ref. is R23/1280.
 - The development proposed is described on the application form as “*Minor internal change from workshop to bedroom*” and more precisely on the Council’s decision notice as “*Change of use of workshop in existing outbuilding to a bedroom*”.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of workshop in existing outbuilding to a bedroom at Millfield, Mill Row, Wolvey, Hinckley LE10 3HS in accordance with the terms of the application, ref. R23/1280, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The bedroom shall not be brought into use until accurate existing and proposed ground floor plans, elevation drawings and site plans tallying in full with the outbuilding as it existed on site on 2 September 2024 have been submitted to and approved in writing by the local planning authority. The submission shall ensure the elevations are annotated from the starting point that the front elevation faces north not south. Development shall be carried out in accordance with those approved plans and drawings.
 - 3) The outbuilding and the bedroom hereby permitted within it shall not be occupied or used at any time other than for purposes ancillary to the residential use of the existing dwelling house known as Millfield, Mill Row, Wolvey, Hinckley LE10 3HS.

Application for costs

2. An application for a full award of costs was made by Mr S Brindle against Rugby Borough Council. This application is the subject of a separate Decision.
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Background and matters of clarification

3. Millfield is an established 2-storey dwelling at the end of a short row of houses on Mill Row, a cul-de-sac off Mill Lane. The property occupies a corner plot. Its large garden is bordered by mature hedging alongside those 2 roads. There is a recently constructed outbuilding in the garden's south-eastern corner. The surroundings are largely rural in character. The appeal site lies within the West Midlands Green Belt.
4. The outbuilding replaced a garage and was erected as a building incidental to the enjoyment of the dwelling house in accordance with Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), following the issue on 20 October 2022 of a certificate for lawful use or development under application ref. R22/0740.
5. I saw that the outbuilding that has been built does not strictly accord with the drawings that were lodged with application ref. R22/0740 or for that matter with the plans that accompanied the planning application the subject of this appeal. The main discrepancies relate to the positions of the window openings and incorrect annotations to the elevations but they do not go to the heart of or invalidate the appeal proposal. Indeed, the Council and the appellant essentially based their assessments on the outbuilding as constructed which does not include the roof lights shown on the proposed plans. For clarity, I intend to do the same and I will focus my attention on the existing building. I note that the Council decided not to ask for revised plans showing the building as existing as it found the principle of the proposal to be unacceptable. I shall return to the matter of plans later in this decision insofar as relevant to the appeal application which is for a change of use of a single room within the outbuilding only.
6. The only internal change of note from the certificate plans that has been carried out is the subdivision of the garage/workshop space to provide an additional room at the back of the building. The appellant now wishes to use that room as a bedroom for a family member instead of as a workshop. There are no other material changes envisaged in the appeal proposal.

Main issues

7. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt;
 - whether the site would be suitable for the proposal in accessibility terms, having regard to the location of facilities, services and access to public transport and the potential reliance on journeys by private cars;
 - the effect upon the living conditions of the neighbouring occupiers with particular regard to the potential for overlooking and loss of privacy; and
 - if the development would be inappropriate development in the Green Belt, whether the 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 necessary to justify the development.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

8. Policy GP2 of the Rugby Borough Council Local Plan 2011-2031 (LP), June 2019, says that within the Green Belt new development will be resisted; only where national policy on Green Belt allows will development be permitted. The National Planning Policy Framework (the Framework) explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
9. The officer's report points to paragraph 154 of the Framework which indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt apart from a number of defined exceptions. One of those exceptions, at paragraph 154 c), is the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. The officer's report says that the "*proposed change of use*" complies with this paragraph and that the development is not considered to be inappropriate within the Green Belt from this perspective.
10. However, paragraph 154 is reserved for the construction of new buildings. It cannot apply to this proposal which is for a minor change from a workshop to a bedroom inside a small part of an existing building. No new building is being constructed.
11. In the decision notice itself, which must be taken to represent the settled view of the Council, the Council highlights (without numbering it) paragraph 155 d) of the Framework. This explains that the reuse of buildings provided that the buildings are of permanent and substantial construction would not be inappropriate in the Green Belt provided such a development preserves its openness and does not conflict with the purposes of including land within it. The decision notice then states that "*Whilst the proposal does not seek to create a separate planning unit that would be the effect of the proposal. Such development would constitute inappropriate development which is by definition harmful to the greenbelt (sic).*"
12. Setting aside for now whether or not a separate planning unit would be created, the Council does not explain how a separate planning unit involving the reuse of the subject outbuilding would fall foul of paragraph 155 d) of the Framework with regard to the openness or purposes of the Green Belt.
13. The Council seems to have approached the case on the basis that the proposal would effectively amount to a separate dwelling from the main house. In any event, it is important that I consider the proposal as applied for. There is no separate dwelling before me. The application was registered, validated and advertised as a proposal for the change of use of a workshop in the existing outbuilding to a bedroom in accordance with the application form. The red edge of the application site surrounds the whole site of Millfield.
14. Whilst the outbuilding is sizeable, it does not challenge the dominance of the main dwelling in terms of its overall size, scale and height. The detailed design with the bedroom included would not produce any features that are remarkably different to the scheme presented under the certificate application. Even with a bedroom, the building would fall well short of providing the facilities required for independent day-

to-day living, and even if it did contain the full range of such facilities, it would not automatically become a separate planning unit from the main dwelling.

15. As it is, the intended occupier of the bedroom would be a family member who would need to share various living activities with the occupants in the main dwelling. The whole site of Millfield would remain under one ownership with no suggestion of there being separate titles, bills or postal addresses or any letting to tenants. The bedroom accommodation and the outbuilding as a whole would be closely related to the main house and the garden area directly behind the main dwelling. The access, parking, garaging and garden areas are clearly capable of being shared. The floor space of the outbuilding as a whole would be smaller than the floor space of the main dwelling.
16. The Council arrived at a finding that the proposal could result in the creation of a new dwelling (which would be a separate planning unit) by relying on case law which had little relevance. *Emin v SSE & Mid Sussex DC [1989] JPL 909* is useful only in establishing whether an outbuilding is required for some incidental purpose in order to be permitted development under the terms of the GPDO. The key message from that judgement is that the size of the outbuilding compared to the dwelling is not by itself conclusive. More importantly, the GPDO does not prevent a householder from erecting a building genuinely required for an incidental purpose and then later seeking to change its use. That there was no separate dwelling proposed was openly acknowledged by the Council who were also aware that the use of the outbuilding as a separate, independent unit of accommodation on a new planning unit would require a separate full planning permission in any event.
17. On its planning merits, I find that the proposal would amount to the reuse of part of a building of permanent and substantial construction whilst preserving the openness of the Green Belt and not conflicting with the purposes of including land within the Green Belt. The proposal would not therefore constitute inappropriate development in the Green Belt and would accord with the Framework and LP Policy GP2.

The matter of very special circumstances

18. As I have found that the proposal would not constitute inappropriate development within the Green Belt, there is no requirement for very special circumstances to justify the development to be demonstrated.

Whether the site would be suitable for the proposal in accessibility terms

19. The appellant accepts that the second reason for refusal relating to the accessibility objectives of local and national policy might be reasonable when considering an application for new housing in a countryside location. However, the appellant has not sought approval for such a development either through the erection of a new building or the material change of use of the existing building. The additional bedroom that would be created through a minor internal change in the outbuilding would be for an existing family member. I concur with the appellant that it would be unreasonable to consider that any form of ancillary residential annexe within the residential curtilage of an existing dwelling could be in an unsustainable location.

20. On this main issue, I find no conflict with LP Policies GP1, SDC1 or SDC4 or the Framework insofar as they seek to secure sustainable development, design and buildings. The Council also mentioned the Climate Change & Sustainable Design and Construction Supplementary Planning Document (SPD) 2023 in the second reason for refusal but I have not been provided with a copy of the SPD or been referred to any clear and specific guidance it may contain or received confirmation of its adoption. In such circumstances, I can only afford limited weight to this document and in any case, it would not change the finding I have reached on this main issue.

The living conditions of the neighbouring occupiers

21. The third reason for refusal refers to a loss of privacy to neighbouring properties. Millfield and the outbuilding would be part of the same planning unit. The only other property that could be potentially affected is 1 Mill Row, the adjoining dwelling.
22. Looking at the key proposal in the appeal scheme, the situation is likely to be more favourable to the occupiers of 1 Mill Row than if there had been full compliance with the certificate plans or the plans submitted with the appeal. This is because, with reference to the existing construction, the window to what would be the bedroom is now in the far east-facing side wall (not west as annotated on the plans). The only opening in the rear elevation facing the side boundary of 1 Mill Row is in fact an obscure glazed window to the wet room. Moreover, the roof lights shown on the plans submitted for the appeal do not exist in the completed roof structure.
23. The parties have commented on the 3 evenly-spaced, 2-light windows in the west (not east as annotated on the plans) elevation of the outbuilding, 2 of which serve a garden room/gym and the other an office. The certificate plans showed a wide set of glazed folding doors to the gym and a 3-light window to the office in this elevation, whilst the plans submitted with the appeal showed a single glazed door to the gym and a 3-light window to the office.
24. It is a moot point as to whether the fenestration treatment of this west elevation should have been directly linked to the actual appeal proposal to the extent that it appears as a reason for refusal. In any event, I find no material difference in terms of the privacy issue between these various window and glazed door arrangements. Overlooking resulting in a material loss of privacy for 1 Mill Row would not, in my view, arise from the existing window arrangements in any event given the generous separation distance, the mature hedging along the common boundary and other boundary features, the slightly angled orientation of the outbuilding away from 1 Mill Row and the fact that the 3 windows are at ground floor level.
25. As an aside on amenity, noise transfer from the gym area is less likely to be an issue with the 2 side windows than if doors were present in that side which could be left fully open for ventilation during exercise. The wide folding doors to the gym area are now in the front of the building as correctly shown on the submitted plans.
26. I find on this issue that as the living conditions for neighbouring occupiers, with particular regard to the potential for overlooking and loss of privacy, would be safeguarded, the proposal would therefore comply with one of the key aims for sustainable design within LP Policy SDC1.

Other material consideration

27. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the appeal proposal requires planning permission as questioned by the appellant. However, I have considered the evidence as to whether permission is required so far as it is material to this appeal. If the appellant wishes to ascertain whether this development is or would be lawful, he may make an application under section 191 or 192 of the Act.
28. The proposal is to carry out alterations to the building of works which primarily affect only the interior of the building and do not materially affect the external appearance of the building. It is unlikely that planning permission would be required to subdivide the building in the manner proposed as the subdivision does not involve physical works that amount to development or involve a material change in the Class C3 use of the planning unit represented by Millfield.
29. I therefore attach some weight to the claim made by the appellant but my finding is for the purposes of this appeal only and does not prejudice the formal consideration any future application for a lawful development certificate, should one be lodged.

Conditions

30. The Council has recommended 4 conditions in the event of the appeal being allowed. I have considered these against the advice on conditions set out in the Framework and the Planning Practice Guidance.
31. I have imposed the standard time limit condition relating to the commencement of development. The plans should be confirmed in the interests of certainty. In this regard it is necessary that revised drawings, tallying with the outbuilding as it existed on site on 2 September 2024, are submitted to and approved in writing by the local planning authority. The revised drawings should ensure the elevations are annotated from the starting point that the front elevation faces north not south.
32. I am aware that the development is likely to remain in place long after the need which gave rise to the application has gone. As noted in the Council's 4th suggested condition, it would be necessary to restrict the future use of the outbuilding and the bedroom within it such that there shall be no occupation or use at any time other than for purposes ancillary to the residential use of the dwelling known as Millfield. This will reflect the purposes stated by the appellant whilst the outbuilding's use for other purposes might raise wholly different considerations.
33. It would not be reasonable to seek to control external facing materials in the context of a planning application described as a change of use. The Council's 3rd suggested condition is not therefore imposed.

Conclusion

34. For the reasons given above and having had regard to all other matters raised, I conclude that this appeal should be allowed.

Andrew Dale

INSPECTOR