



Appeal Decision

Site visit made on 13 November 2024 by Andreea Spataru BA (Hons) MA MRTPI

Decision by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2024

Appeal Ref: APP/P4415/W/24/3349455

8 Hillcrest Rise, Harthill, Rotherham S26 7ZE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Charles Dent against the decision of Rotherham Metropolitan Borough Council.
 - The application reference is RB2024/0749.
 - The development proposed is for the change of use of land to residential garden area including fencing, erection of external staircase and raised patio and alterations to access.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matter

3. The description of development above has been taken from the Council's Decision Notice and the Appeal Form, rather than the Application form, as it more precisely describes the development.
4. A new version of the National Planning Policy Framework (the Framework) was published 12 December 2024. I have not sought comments from main parties on this matter, as the changes made to the Framework have not had a material bearing on the issues raised in this appeal.

Main Issues

5. The main issues are:
 - Whether the proposed development would be inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies, including its effects on the openness of the Green Belt and the purposes of including land in it; and
 - If the development would be inappropriate, whether the harm to the Green Belt by way 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 it.
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Reasons for the Recommendation

Whether inappropriate development in the Green Belt

6. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 h) of the Framework identifies that certain forms of development are, however, not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Paragraph 154 h)v. of the Framework relates to material changes in the use of land. Policy CS 4 of the Rotherham local plan Core Strategy 2013 – 2028 (CS) and Policy SP 2 of the Rotherham local plan Sites and Policies (LP) state that its approach to development in the Green Belt development will conform to national policies relating to the Green Belt.
7. The development is retrospective and seeks to regularise the change of use of land to residential garden. It also includes the erection of fencing, an external staircase, a raised patio, and alterations to access.
8. The submitted plans show an area of land located to the west and south of the appeal dwelling. The Council indicates that the land located to the south falls within the Green Belt boundary. The 'Aerial image showing Green Belt boundary' document provided by the appellant matches the Council's description regarding Green Belt boundary. The Council indicates that the triangular area of land located to the west of the dwelling falls within the residential allocation and thus has no objection to its use as residential garden. Accordingly, it is apparent that the Green Belt issue concerns solely the area to the south of the appeal dwelling.
9. The use of the appeal site as garden area has led to the introduction of fencing, raised patio area, garden furniture and a staircase. There is also a pergola, which was subject to another application and a dismissed appeal¹. In addition, the proposed change of use could also lead to the introduction of further domestic paraphernalia associated with this use.
10. Notwithstanding the small scale of the existing domestic elements, such paraphernalia has both a visual and spatial impact and has resulted in a loss of openness. The staircase is partially visible within the street scene; the rest of the area is screened behind the boundary treatment. Given the scale of the development, the impact is limited, but nevertheless it does not preserve the openness of the Green Belt.
11. Notwithstanding the residential area in which the appeal dwelling is located, there is an established Green Belt boundary that separates the dwelling from the land to its south. I acknowledge the appellant's stables located to the south, within the Green Belt boundary, as well as the neighbouring residential property. However, the other structures located within the Green Belt boundary do not justify the sought change of use. Thus, the domestic appearance of the land that has resulted from the residential use has led to encroachment into previously undeveloped land. This is contrary to paragraph 143 of the Framework which identifies the five purposes of the Green Belt, and of which c) is to assist in safeguarding the countryside from encroachment.

¹ LPA ref: RB2024/0047 & Appeal ref: APP/P4415/D/24/3342385

12. Accordingly, the appeal proposal does not comply with the exception in the Framework paragraph 154(h) as it would not preserve the openness of the Green belt. It is therefore inappropriate development in the Green Belt, contrary to Policy CS 4 of the CS, Policy SP 2 of the LP and the provisions of the Framework.

Other considerations

13. The Framework states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
14. The appellant states that the appeal dwelling benefits from permitted development rights, and elements of the development, such as the fence, could have been erected under Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. It is also argued that permitted development rights could be utilised in the location of the staircase and outdoor seating area. There is no evidence before me, such as a lawful development certificate, to demonstrate the lawfulness of a specific structure. Furthermore, I have considered the development as submitted, and for the reasons set out above, the elements of the development constitute inappropriate development in the Green Belt.
15. The appellant has drawn my attention to paragraph 5.2.77 of the CS, which acknowledges that the Green Belt in some locations follows irrational, arbitrary lines. I am unconvinced, based on the evidence before me, that this could be the case for the appeal site. In any event, the supporting text for Policy CS 4 of the CS, at paragraph 5.2.77, states that minor alterations to the Green Belt boundary could be considered appropriate during the review process, which is not a matter for me to consider in the context of this appeal.
16. I have had regard to the judgements² referenced by the appellant regarding the use of land as garden and to the statements that the appellant has been using the land as residential garden for some time. The appellant has put forward evidence, including aerial photos, to suggest that the area of land subject of this appeal may be lawful. However, establishing the legal status of the appeal site as 'residential curtilage' is a matter beyond the scope of this appeal. Furthermore, I note that applications for lawful development certificates regarding the use of land as residential garden have been refused³.
17. I have also been referred to neighbouring properties, including No 3 Serlby Drive, which the appellant indicates that they use land within the Green Belt as gardens. Be that as it may, I do not have full details of those properties to demonstrate that the development before me is directly comparable to them. In any event, I have considered the development based on its own merits and site-specific circumstances, and thus I attach limited weight to this matter.
18. I note that elements of the development have been found acceptable in terms of design. However, this is a neutral matter rather than one that carries positive weight for the development.

² Sinclair-Lockhart's Trustees v Central Land Board [1950] & The Court of Appeal in Sutcliffe v Calderdale BC [1982].

³ LPA refs: RB2020/1900 & RB2021/1651.

Whether very special circumstances necessary to justify the proposal exist

19. To conclude, the appeal proposal is inappropriate development in the Green Belt, which is, by definition, harmful to the Green Belt. It is also causing harm to the openness of the Green Belt. For the reasons set out above, very special circumstances do not exist, and the proposal conflicts with the Framework, Policy CS 4 of the CS and Policy SP 2 of the LP.

Recommendation

20. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

21. I have considered all the submitted evidence and my representative recommendation and on that basis the appeal is dismissed.

Ben Plenty

INSPECTOR