

Appeal Decision

Site visit made on 6 February 2017

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 February 2017

Appeal Ref: APP/B3030/C/16/3160466 and 3160467

Hulleys Close, Church Lane, Epperstone, Nottinghamshire, NG14 6RD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr and Mrs P Witham against an enforcement notice issued by Newark and Sherwood District Council.
 - The enforcement notice was issued on 26 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, development consisting of the building of a single storey side/rear extension to dwellinghouse, marked X on the attached plan.
 - The requirements of the notice are:
 - A. Cease works to the development
 - B. Completely demolish the development (extension)
 - C. Completely remove from the land all resultant rubbish, waste and materials from the land
 - The period for compliance with the requirements is:
 - A. 1 day after this notice takes effect
 - B. 28 days after this notice takes effect
 - C. 56 days after this notice takes effect
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, as amended, for the development already carried out, namely the building of a single storey side/rear extension to the dwellinghouse at Hulleys Close, Church Lane, Epperstone, Nottinghamshire, subject to the following condition:
 1. Notwithstanding the provisions of Article 3 and Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no further enlargement of the dwellinghouse shall be constructed without planning permission from the local planning authority.
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Appeal site and background

2. The appeal property is a substantial detached and extended mature dwelling house. It sits within a large plot, including an enclosed tennis court, within the Epperstone Conservation Area and the Green Belt.
3. The single storey extension subject of the appeal is situated to the rear of the dwelling between the side of the previously existing kitchen and the garage block, and adjacent to the enclosed tennis court and garden. It is approximately 18m² in floor area.
4. The extension was refused planning permission by the Council in April 2016 and an appeal (ref APP/B3030/D/16/3148881) against that decision was dismissed by the Planning Inspectorate on 16 August 2016. That appeal decision (hereafter "the first appeal") is a material consideration in the determination of this appeal and I have taken it into account so far as it is relevant to the matters before me.
5. As part of this appeal the appellants have submitted more detailed evidence and argument. I have therefore determined the appeal on its merits taking account of all the matters and evidence before me.

The appeal under ground (a)

6. I consider the main issues in this appeal are:
 - Whether the extension is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and Development Plan policy;
 - If the extension is inappropriate; the effect on the openness of the Green Belt and the purposes of including land within the Green Belt; and
 - Whether any harm, by reason of inappropriateness, the effect on the openness of the Green Belt, the purposes of including land within the Green Belt, 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

Whether the extension is inappropriate development within the Green Belt

7. The Framework¹ sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore, the construction of new buildings should be regarded as inappropriate development in the Green Belt subject to a number of exceptions as set out in paragraph 89 of the Framework.
8. The appellants submit that the extension should be considered to be such an exception in terms of being *limited infilling or the partial redevelopment of a*

¹ National Planning Policy Framework (2012)

*previously developed site*².

9. However, limited infilling normally refers to new development separated from existing development, often located within a gap between, or to the rear of, existing buildings in a built up frontage. That is not the case here. Also, *previously developed land* does not include the gardens of dwelling houses. Moreover, it is clear to me that in respect of extensions to buildings, as in this appeal, it is the third bullet point of paragraph 89 that is relevant. If I were to accept the appellants' argument it would make the third bullet point in respect of extensions redundant. I turn to this exception next.
10. An exception to being inappropriate development includes the extension of a building provided that it does not result in disproportionate additions over and above the size of the original building. It is important to note that in deciding whether an extension would result in a disproportionate addition, it needs to be considered by itself and cumulatively with any other previous extensions.
11. With regard to cumulative considerations, the Newark and Sherwood Core Strategy 2011 (CS) Spatial Policy 4B does not set defined limits to assess the proportionality of additions. In this respect it states that '*Other appropriate development in the Green Belt will be judged according to national Green Belt policy*'.
12. The Framework also does not give guidance on what 'disproportionate' means and hence it is a matter of planning judgement. In this regard assessments of the cumulative increase in floor space, footprint and volume have been made by the parties. I consider that approach is consistent with the Framework guidance in terms of assessments related to the 'size' of the original building.
13. I am unable to reconcile the Council's numerical assessments with the appellants' evidence. However, it is nonetheless clear that previous extensions to the original dwelling have more than doubled its floor space. These include a two storey extension to the eastern side incorporating a garage block and rooms above, and to the western side a substantial part single/part two storey extension. Given this overall increase in volume and floor space I concur with the first appeal Inspector that taken together they have resulted in a disproportionate addition to the original dwelling house.
14. The appellants argue that the previous extensions should not be considered as disproportionate because they were granted planning permission by the Council in the context of Green Belt policy at the time. However, the details of previous Council decisions are not before me and in any event it is not for me to review their rationale in this appeal. As required, I must determine this appeal on its own merit having regard to current national and local planning policies and material considerations.
15. There is no dispute that in isolation the extension is a relatively minor addition. However, when taken into account cumulatively with the other previous extensions I consider that it would result in a disproportionate addition over and above the size of the original building.
16. I conclude therefore that the extension is inappropriate development which, by definition, is harmful to the Green Belt and to which I attach substantial weight.

² National Planning Policy Framework (2012) paragraph 89, 6th bullet point

Effect on openness of the Green Belt and the purposes of including land within the Green Belt

17. Given its small scale, its location to the rear of the dwelling, and the enclosed gardens I find that the appeal extension does not result in any visual impact on the wider area. However, it has nonetheless added an extension to the building on what was a previously open (hard-surfaced) area of the site. Consequently this reduces the openness of the Green Belt, albeit that reduction is very limited.
18. Although I have found that the reduction in openness is very limited, that impact conflicts with the purposes of including land within the Green Belt. It adds to the harm I have identified in respect of the extension being inappropriate development.
19. I therefore attach substantial weight to the total harm to the Green Belt I have identified.

Whether any harm is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development

20. It is argued that that the removal of a chimney and detached timber outbuilding in the rear garden area would together offset the additional increase in floor space resulting from the appeal extension.
21. However, I agree with the Inspector in the first appeal who found that the outbuilding appears as a domestic outbuilding, is some distance away from the main house, and in comparison to the appeal development has a very different impact in its appearance, form and physical relationship to the dwelling. I also find that the removal of the outbuilding would have some benefits in terms of openness, but it would not fully address the harm I have identified.
22. Moreover, allowing the appeal on that basis would be ineffective without imposing a planning condition to remove permitted development rights for any further curtilage buildings that could be later erected under Class E of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). However, such a condition would be unreasonable given that control over extensions to buildings in the context of paragraph 89 is entirely separate to the permitted development rights of householders to erect curtilage buildings.
23. The appellants' submitted evidence includes details and plans of an alternative kitchen extension of similar overall size that could be built directly to the rear elevation of the existing kitchen. Also submitted from the appellant is a letter from the Council confirming that the alternative kitchen could be constructed as permitted development under Class A of the GPDO. In essence, the appellants are arguing that the alternative kitchen is a 'fall-back' position which, if erected, would have a greater impact on openness and the purposes of including land within the Green Belt, than the appeal extension.
24. Established case law³ indicates that the correct test to be applied in considering a fall-back argument is whether there is a reasonable possibility that if planning permission were to be refused, a development which has been permitted (in

³ *Coln Park LLP v SSCLG & Cotswold DC* [2011] EWHC 2282 (Admin)

this case by the GPDO) would take place, and such development would be less desirable than that for which planning permission is sought.

25. Given the test described above, it is clear to me that the submitted drawings and confirmation letter from the Council demonstrate that the fall-back extension is a reasonable possibility and not just a hypothetical argument. Furthermore, the appellants make it clear in paragraph 4.9 of their statement that the fall-back extension will be built if the appeal is dismissed. Additionally, there is no contrary evidence before me that would lead me to doubt the appellants' intention in such circumstances. Given these factors, I find that the fall-back extension is a realistic alternative outcome if the appeal were to be dismissed.
26. In comparison to the appeal extension which is elongated and projects outwards to the side only, the fall-back extension would instead have a square footprint, three elevations, and project directly outwards from the rear elevation of the house. It would have a ridged and hipped roof and would be approximately 3.6 metres in height. I consider it would visually intrude into the Green Belt and have a significantly greater impact in reduction of openness. Overall, if the fall-back extension were constructed I conclude the totality of harm to the Green Belt would be greater than results from the appeal extension.

Conclusion

27. In conclusion, I find that the totality of harm I have identified resulting from the appeal extension is clearly outweighed by the realistic likelihood of the fall-back extension being constructed which would result in greater harm. This amounts to the very special circumstances necessary to justify the development. In such exceptional circumstances a planning condition removing permitted development rights for any further Class A enlargements is justified.
28. For the reasons given above I conclude that the appeal should succeed on ground (a) and conditional planning permission will be granted.
29. The appeal on grounds (f) and (g) do not therefore need to be considered.

Thomas Shields

INSPECTOR