

Appeal Decision

Site visit made on 6 March 2017

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 22nd March 2017

Appeal Ref: APP/J1915/D/17/3166870

Rushmead, London Road, Spellbrook, Hertfordshire CM23 4AU

- 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 K Miyako against the decision of East Herts Council.
 - The application Ref 3/16/2447/HH, dated 1 November 2016, was refused by notice dated 23 December 2016.
 - The development proposed is demolition of existing conservatories and erection of single storey rear extension.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposal would amount to inappropriate development within the Green Belt; whether there would be any other harm to the Green Belt; and 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

3. The proposal is for a large single storey rear extension that would extend across the full width of the house. It has already been erected and I have therefore treated the proposal as being retrospective.

Inappropriateness and any other harm

4. The Council's concern is that the works represent inappropriate development within the Green Belt. Policy GBC1 of the East Herts Local Plan Second Review 2007 advises that permission will not be given for inappropriate development unless very special circumstances exist that clearly outweigh the harm by reason of inappropriateness or any other harm. It accepts limited extensions or alterations to existing dwellings, in accordance with Policy ENV5, as not being inappropriate.
 5. Policy ENV5 accepts extensions within listed settlements providing it would not harm the character and appearance or amenities of the dwelling or adjoining dwellings. Outside these settlements, in addition to the above, any addition
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- should be of a scale and size that would itself, or cumulatively with other extensions, not disproportionately alter the size of the original dwelling nor intrude into the openness or rural qualities of the area. It should also be considered against Policy ENV6 which sets out design considerations.
6. The *National Planning Policy Framework* advises that new buildings should be regarded as inappropriate unless they fall within an exception set out in paragraph 89. This includes extensions of buildings provided that they do not result in disproportionate additions over and above the size of the original building. The Council's policies have clear similarities with those of the *Framework*, particularly with regard to the matters that are relevant to this development. However, they also differ from its requirements in a number of ways. I therefore afford moderate weight to them and greater weight to the requirements of the *Framework*. The Council's emerging District Plan is at an early stage but in any event, it requires that decisions be made in accordance with the *Framework* with regard to the Green Belt.
 7. Information regarding the original dwelling is not conclusive. However, the appellant considers that the original house should be considered as the two storey element and a ground floor addition. The 1970 map suggests this ground floor element extended across much of the rear. This would accord with the planning history which describes an infill application in 1972. However, no details of this have been provided. On this basis, the additions made to the property over and above the size of the original dwelling would represent the infill ground floor addition, the first floor addition and the new ground floor element which is the subject of this appeal.
 8. The appellant suggests that the dwelling was about 89sq.m in area in 1948 and that this proposal would amount to a cumulative increase in floor area of 86%. It is accepted that if an infill development took place, this figure may be slightly higher. The Council consider the increase to be 97%. A volumetric calculation would have been helpful to provide a further measure of scale. However, although I accept that the first floor addition is of limited overall size and the new ground floor extension is of modest height, I am not satisfied that the additions could reasonably be described as proportionate, over and above the size of the original building. The development therefore represents inappropriate development in the Green Belt.
 9. This dwelling sits within a row of properties, some of which have significant development beyond the general rear building line. The extensions to this property are closely related to the original built form. In these circumstances, the works result in only very limited harm to the openness of the Green Belt and the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. I do not find this harm to be significant but this lack of harm is a neutral rather than a positive feature of the development.
 10. The extension, although of a considerable depth and with some design shortcomings, such as it being a greater width than the structure to which it is attached, is of a form that would generally be accepted to the rear of residential properties in an area such as this. Although it is possible to view parts of the flank walls of the extension from the road, it has an extremely limited prominence. It does not detract from the character or appearance of the area. It is set in from the boundaries and given its height and the position

of the surrounding dwellings, it does not have a significant impact on the living conditions of those residents.

11. Overall, the proposal represents inappropriate development in the Green Belt but it does not result in any significant additional harm.

Very Special Circumstances

12. The extension replaced two modern conservatories. I am satisfied that the extension is likely to have resulted in an improvement to the appearance of the rear of the dwelling, improved accommodation and substantially improved thermal qualities. These considerations provide weight in favour of the development.
13. The appellant suggests that there should be equity with regard to decisions in relation to other nearby properties. A number of developments have been referred to. Hillview is to the south. The appellant advises that this had a single storey extension permitted which was 6.4m deep by the full width of the dwelling. The officer report accepted that it would increase the area of the dwelling by 97%. This is directly comparable with the Council's calculation in relation to this proposal. The Council accepted that the potential for an extension with regard to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) represented very special circumstances given the lack of any other harm. This decision was in 2015 and was therefore subject to the same local and national policies.
14. In relation to the nearby White Cottage, a replacement dwelling was permitted in 2016. It was considered that the new larger dwelling represented inappropriate development but that the permitted and potential lawful extensions to the existing dwelling, allowable by virtue of the GPDO, represented a fall-back position that outweighed the harm from inappropriateness. A replacement dwelling is not considered under the same provisions as an extension and the report does not indicate the increase in scale, other than to say it would be significantly larger than 20%. However, I acknowledge that the Council's view with regard to the permissible extensions is a material consideration relevant to this case.
15. Reference is made to Westwoods which I understand was a replacement dwelling which then also had an extension accepted to its garage. The supporting information is not entirely clear as to the percentage increases in size that were being considered. I am not certain the developments are directly comparable.
16. In order to compare this proposal with the examples above, the fall-back position with regard to lawful extensions must be established. This requires that what was and what remains of the original dwelling is clearly established. I find the evidence of the appellant to be limited but persuasive with regard to the existence of a rear addition. There is support for the view that it was retained and no evidence, such as building regulations records, to suggest that it was rebuilt. There is however no clear evidence as to the extent of the infill.
17. I am not able to reach a lawful determination as to what could be built under the provisions of the GPDO as there is clearly the potential for evidence to emerge as to the exact nature of the history of works at the property.

However, if I accept the appellant's view, subject to no negative results from a neighbour notification process, an 8 metres deep extension could be added to the original ground floor addition. On this basis, I would have to accept that the current extension, which would not be as deep but would be wider, would result in little discernible difference in terms of the scale of development. On the basis of the Council's approach with regard to Hill View and White Cottage, this would be a consideration that would provide considerable weight in favour of this development.

18. However, it is for the appellant to establish the lawfulness of proposed development. If established, it is for the decision maker to determine the likelihood of such development taking place in order to consider it as a realistic fall-back position. Then it must be considered whether the benefits of the alternative scheme, compared to those of the fall-back position, together with any other considerations would be sufficient to clearly outweigh the harm from inappropriateness.
19. In this case, the fall-back position has not been clearly established and a number of matters remain unresolved. The weight I can afford it is therefore reduced substantially. Accordingly, the weight I can afford to the Council's approach in relation to Hill View and White Cottage, is also diminished.

Conclusions

20. I have not found there to be any significant harm to openness or any other harm other than that relating to inappropriate development. The *Framework* is clear that inappropriate development 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 potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
21. The development has resulted in improvements to the appearance of the rear of the property compared to the previous additions and has undoubtedly improved the quality of the accommodation and importantly the buildings thermal qualities. The lack of concern from neighbouring residents is also a positive consideration. The works have been constructed but I am unable to consider this as a benefit within my assessment.
22. The lack of any certainty with regard to a lawful fall-back position limits the weight that I can afford to the approach previously adopted by the Council with regard to Hill View and White Cottage. With this unresolved, I find that the harm to the Green Belt, by reason of inappropriateness, would not be clearly outweighed by other considerations. On the basis of the current evidence, very special circumstances do not therefore exist and the proposal would conflict with the requirements of the *Framework* and the Council's policies. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR