



Appeal Decision

Hearing held on 16 August 2017

Site visit made on 16 August 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 05 September 2017

Appeal Ref: APP/Q4625/W/17/3166795

Sunnyside, Kenilworth Road, Balsall Common, Solihull B92 0LW

- 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 Charlie Doherty against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2016/01853/MINFHO, dated 15 July 2016, was refused by notice dated 17 October 2016.
 - The development proposed was originally described as '*extensions and alterations to the existing property, trading in existing extensions, existing lawful development and garage*'.
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Decision

1. The appeal is allowed and planning permission is granted for extensions and alterations to the existing property at Sunnyside, Kenilworth Road, Balsall Common, Solihull B92 0LW in accordance with the terms of the application Ref PL/2016/01853/MINFHO, dated 15 July 2016, subject to the condition below;

1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Classes A-D of Schedule 2, Part 1 of the Order shall be carried out.

Preliminary and Background Matters

2. I have removed words from the original description of development within the formal decision as they address the purpose of the case and are not acts of development.
3. Both parties confirmed at the Hearing that the extensions and alterations (the extension) have been substantially completed externally. I have therefore determined the appeal on the basis that the development has already occurred. A previous planning application (2007) in relation to the extension was refused by the Council and the extension is the subject of a current enforcement notice.
4. In 1953 planning permission was granted for the use of the site for the erection of a bungalow. In 1998 planning permission was granted for, amongst other things, the addition of a conservatory, front dormer window and detached garage. In 2004 a planning application for the addition of a ground floor bedroom was granted. The appellant stated at the Hearing that the extension encompassed within it the conservatory, ground floor bedroom and detached garage. Nevertheless, at the site visit it was apparent that the conservatory

had been substantially altered as the extension is a brick and tile structure with its rear wall in line with the remainder of the extension.

5. In 2016 a certificate of lawful development (CLOPUD) for a proposed implementation of all permitted development rights to a single dwelling as stated in the General Permitted Development Order Schedule 2 Part 1, Section A; Permitted Development; A. the enlargement, improvement or other alteration of a dwelling house was granted.
6. Whether, the Council was correct in issuing the enforcement notice or the CLOPUD are not matters for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990.

Main Issues

7. The main issues in this case are:-

- Whether the development would constitute inappropriate development in the Green Belt having regard to the development plan and the National Planning Policy Framework (the Framework);
- The effect on the openness of the Green Belt and the purposes of including land in the Green Belt;
- If the development would be 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

Whether the proposal would be inappropriate development in the Green Belt

8. The extension comprises a single storey element linking the dwelling and the detached garage, the alteration of the roof of the detached garage and single storey elements between the conservatory and the ground floor bedroom and adjoining the side elevation of the dwelling.
9. Policy P17 of the Solihull Local Plan (2013) (LP) states that the Council will not permit inappropriate development in the Green Belt, except in very special circumstances.
10. Apart from certain clearly defined exceptions set out in paragraph 89 of the Framework the construction of new buildings in the Green Belt is to be regarded as inappropriate development. Such development is harmful by definition and should not be approved except in very special circumstances. The exceptions defined within paragraph 89 of the Framework include, amongst other things, the replacement of a building, provided the new building is in the same use and is not materially larger than the one it replaces.
11. As stated above, the development has incorporated the detached garage, conservatory and the ground floor bedroom within it. The extension is in the same use as these buildings. However, it is not part of the appellant's case that the extension replaced these buildings. Nevertheless, even if I treated the level of alteration to the conservatory as constituting a replacement of that building given the substantial size of the additional parts of the extension I consider that it is materially larger than the conservatory.

12. The CLOPUD illustrates that extensions similar in size to the extension could be erected as permitted development. However, I am mindful that an unbuilt permitted development which a developer may be keen to implement could not, on the basis of the interpretation of the plain words of bullet point 4 of paragraph 89, be included in such an assessment.
13. Bullet point 3 of paragraph 89 of the Framework states that the extension or alteration of a building is not inappropriate in the Green Belt provided it does not result in disproportionate additions over and above the size of the original building. An *"original building"* is defined in the Glossary to the Framework as *"a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally"*. There is no dispute that in this case there are 2 original buildings on the appeal site that is the dwelling and the detached garage.
14. There is no definition in the Framework or LP Policy P17 of what constitutes disproportionate additions. However, the Council's adopted House Extension Guidelines Supplementary Planning Document (SPD) states that the Council will limit extensions to any property to no more than 40% of the original habitable floor space measured externally. The Council considers that the cumulative size of the extensions and alterations to the original dwelling, including the loft conversion, equates to a 238.5% increase in habitable floor space. Whilst, I understand that the loft conversion may have created additional habitable space it appears to have had minimal impact on the overall size of the original building.
15. Nevertheless, even without the floorspace of the loft conversion the cumulative floorspace/footprint and volume of the extension represents a substantial increase to the size of the original buildings. The configuration and location of the extension has also considerably increased the bulk and massing of the original buildings. As such, I conclude that the extension has resulted in disproportionate additions over and above the size of the original buildings.
16. The appellant suggests that as the extension is similar in footprint and volume to that deemed lawful under the CLOPUD it would not be reasonable to consider it as disproportionate additions. However, as stated above the Framework defines the term original building and it does not include any reference to extensions allowed under permitted development rights.
17. I have no evidence before me to show that the scheme would fulfil any of the other categories as set out at paragraph 89 of the Framework. Against this background the proposal would be inappropriate development within the Green Belt.

Openness and Green Belt purposes

18. Paragraph 79 of the Framework notes that the Government attaches great importance to Green Belts and that 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 permanence.
19. The parts of the extension at the sides of the dwelling can be clearly seen from Kenilworth Road and the extension has visually filled the gap between the dwelling and the detached garage. However, the concept of openness is related to but not entirely the same as visual impact and it can be taken as the absence or otherwise of buildings or development. The extension has, by its

very nature as an additional form of built development, eroded to some extent the openness of the Green Belt. I therefore conclude that the extension has resulted in a loss of openness in both visual and spatial terms.

20. The site is adjacent to a garden centre, other commercial uses and residential dwellings. Although there has been some encroachment into an undeveloped part of the site in this particular context the extension has little visual impact on the wider countryside. As such, the extension does not materially conflict with the purposes of the Green Belt, including safeguarding the countryside from encroachment.

Other considerations

21. Even though the extension was constructed before the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) came into force it is reasonable to assess whether the CLOPUD can be treated as a fallback position. The CLOPUD extensions would be similar in size and volume to that of the extension. However, the Council considers that the restrictive costs involved in altering or replacing the extension means that there is not a realistic prospect of the works being carried out.
22. Taking into account the personal circumstances of the appellant, outlined within the witness statement, it would appear that the appellant and his family utilise and require the space provided by the extension. Consequently, the appellant would be likely to exercise his permitted development rights if the enforcement notice was upheld, and its requirements complied with. As such, taking into account all of the above I consider that there is a realistic prospect of the CLOPUD being implemented if this appeal is dismissed. This constitutes the fallback position and I give it considerable weight.
23. The fallback position would involve extensions of a similar footprint, volume, configuration and location and therefore it would be of a similar size as that built. There would be a small gap between the extensions and the detached garage in the fallback position and the ridge height of the side extensions would be below that of the existing extension.
24. However, both side extensions of the CLOPUD would be in line with the front wall of the dwelling, whereas the extension is set back a noticeable distance from the front wall. Moreover, the side extension close to the site boundary would be appreciably wider than the existing extension on that side. I therefore consider that the fallback position would have a slightly greater impact on the openness of the Green Belt. As such, I consider it lends substantial weight in favour of the extension as built.
25. The Council confirmed at the Hearing that it does not object to the extension in terms of its effect on the character and appearance of the area. The design and use of materials on the extension are compatible with that of the host dwelling. I find no objection to the extension in relation to this matter. By contrast the fallback position would involve the erection of side extensions with very shallow pitch roofs that would appear incongruous in visual terms when compared to the more steeply pitched roof of the dwelling. I therefore consider the lack of harm to the character and appearance of the area arising from the extension would be preferable to the inferior design of the fallback position and this lends moderate weight in favour of the extension.

26. The appellant has drawn my attention to other developments that have been built or approved in the area. However, I do not have the full details of the circumstances that led to these proposals being accepted and so cannot be sure that they represent a direct parallel to the appeal proposal. Moreover, since the matter under consideration in this appeal is specific to the site and its immediate surroundings I give them little weight. In any case, I am required to determine the appeal on its own merits.

Conclusion and conditions

27. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have found that the extension is inappropriate development and that it has eroded the openness of the green belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. Substantial weight should be given to the harm to the Green Belt. I have not found any other material harm.
28. For the reasons given above, I find that the substantial weight to be given to the fallback position in relation to openness and the moderate weight given to the inferior design of the CLOPUD clearly outweigh the substantial Green Belt harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.
29. One condition in relation to restricting permitted development rights was suggested by the appellant at the Hearing. Even though the dwelling has been significantly extended it could be further extended by the implementation of permitted development rights through Classes A-D of Schedule 2, Part 1 of the GPDO. A condition restricting permitted development rights is justified, in the interests of visual amenity and also to maintain the openness of the Green Belt. Consequently, the suggested removal of permitted development rights is reasonable and necessary to make the development acceptable in the particular circumstances of the site and its surroundings which are, therefore, exceptional.
30. For the reasons given above, and having regard to all other matters raised I conclude that the appeal should be allowed.

D. Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Studio Ltd
Ian Leighton	Green Planning Studio Ltd
Charlie Doherty	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jon Hallam	Area Planning Officer
Rebecca Hadley	Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Completed Statement of Common Ground
- 2 Updated Witness Statement