
Appeal Decision

Site visit made on 25 October 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 17th November 2017

Appeal Ref: APP/Y3615/W/17/3180015

Lillington, Smugglers Way, The Sands, Farnham GU10 1NB

- 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 Michael Powell against the decision of Guildford Borough Council.
 - The application Ref 17/P/01042, dated 10 May 2017, was refused by notice dated 5 July 2017.
 - The development proposed is described as 'erection of a dwelling with basement and detached double garage following demolition of existing dwelling and garage. This application is pursuant to extant consent ref: 16/P/02537 for a replacement dwelling and detached double garage in exactly the same form as the proposal but without the basement'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt;
 - the effect of the development on the openness of the Green Belt; and
 - if the development would be inappropriate, 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 it.

Reasons

Whether inappropriate development in the Green Belt

3. The development would involve the construction of a replacement house with a basement. The appealed application having been submitted further to permission having been granted on 1 March 2017 under file reference 16/P/02573 for a replacement house without a basement (the extant permission). Above ground level the houses subject to the extant permission and the appealed application would be identical.
4. Extant national Green Belt policy is set out in section 9 of the National Planning Policy Framework (the Framework), which on its publication in

March 2012 replaced Planning Policy Guidance 2 'Green belts' (PPG2). Paragraph 87 of the Framework states that inappropriate development in the Green Belt is harmful by definition and should not be permitted. However, paragraph 89 of the Framework lists six categories (exceptions) of development which may be regarded as not being inappropriate in the Green Belt, subject to certain circumstances. Paragraph 89's fourth exception (the fourth exception) specifically relates to replacement buildings. In that regard paragraph 89 states: 'A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are: ...

the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces ...' (the fourth exception)

5. Saved Policies RE2 and H6 of the Guildford Borough Local Plan of 2003 (the Local Plan) address new development in the Green Belt, including the construction of replacement dwellings. Those Local Plan policies indicate that replacement dwellings in the Green Belt will be acceptable so long as the new dwelling would not be materially larger than the one to be replaced. Although Policies RE2 and H6 predate the Framework their wording¹ relating to replacement dwellings in the Green Belt is broadly consistent with the fourth exception, albeit the latter concerns all replacement buildings rather than just dwellings. The supporting text for Policy H6, most particularly paragraph 5.33, is, however, inconsistent with the fourth exception. That is because for the purposes of inappropriateness assessments under the fourth exception any effect on the openness of the Green Belt is not a matter for consideration. While Policy H9 of the Local Plan has been referred to² I consider it is not relevant to this case because that policy concerns extensions rather than replacement dwellings.
6. The purpose of the supporting text of the Local Plan's policies is to assist with the interpretation of those policies, and that text does not form part of the actual policy. Accordingly, having regard to the previously mentioned inconsistency, and for the purposes of the assessment as to whether the appeal development would or would not be inappropriate, I have only had regard to the actual policy wording of Policy H6. I have also disregarded all references to PPG2 because it is no longer extant policy.
7. For the purposes of the assessment as to whether the appeal development would or would not be inappropriate, having regard to the fourth exception and Policies RE2 and H6 of the Local Plan, I consider that the floor areas and volumes of the existing and replacement garages should be included. That is because the existing garage forms part of the building to be replaced and a new garage would be constructed as part of the new development. I also consider that as the appeal development would be an alternative to that benefiting from the extant permission that it is the difference between the areas and volumes of the existing house and the appeal development that is at issue. That is because the extant permission has not been implemented and accordingly it does not constitute the building to be replaced for the purposes of either the fourth exception or Policies RE2 and H6.

¹ ie the text contained in the shaded boxes

² The appellant's final comments

8. The Council has calculated that the development subject to the appealed application would have a floor area and a volume respectively 59% and 53% greater than the existing house and garage³. In this regard the appellant has not disputed the accuracy of the calculations undertaken by the Council. I consider that the percentage increases in both the floor area and the volume would be significant and that the replacement dwelling would be materially larger than the one to be replaced. Although the additional floor area and volume associated with the formation of the basement would be wholly below ground, it would nevertheless constitute new development. There is nothing in either the wording of Policies RE2 and H6 or the fourth exception that indicates that basements should be disregarded when considering whether a replacement dwelling/building would be inappropriate or not inappropriate development. In this regard case law (the Feather judgement⁴) has established that basements should be considered and the approach I have taken is consistent with that the case law and that adopted by the Inspector who determined the Kingswood Hall appeals cited by the Council.
9. I therefore conclude that the proposal would be inappropriate development in the Green Belt for the purposes of saved Policies RE2 and H6 of the Local Plan and paragraph 89 of the Framework because the new house would be materially larger than the one to be replaced. Accordingly because of the development's inappropriateness, it would, by definition, be harmful to the Green Belt (paragraph 87 of the Framework), and I give 'substantial weight' to that harm (paragraph 88 of the Framework).

Green Belt Openness

10. When the house subject to the extant permission is compared with the appeal development there would be no greater effect on the openness of the Green Belt. In that regard there would be no additional loss of permanent openness in the Green Belt and thus no extra conflict with paragraph 79 of the Framework. So while the appeal development would concern a larger house than the one subject to the extant permission, the effect on the area's openness would be a neutral one. I also accept that the appeal development would have no greater effect on the character and appearance of the Surrey Hills Area of Outstanding Natural Beauty or Area of Great Landscape Value.

Other Considerations

11. It has been submitted that the need for the basement has arisen because the house subject to the extant permission would provide insufficient space for the installation of plant (a heat pump) and general storage. It is contended that the existence of the extant permission should be treated as being a material consideration of 'significant weight' weighing in favour of the development. However, the argument made by the appellant suggests that the house benefiting from the extant permission was not designed with the requirements of its occupiers in mind.
12. While it is contended that the provision of a basement would address a design shortcoming that has now been identified by the appellant, no explanation has been provided as to why the design of the house benefiting from the extant

³ Based on the figures quoted in the Council's officer report

⁴ Feather v Cheshire East Borough Council v Mr Christopher Wren and Mrs Susan Wren [2010] EWHC 1420 (Admin)

permission could not be altered to accommodate a heat pump and extra storage space. I recognise that any such redesign would be likely to result in a reduction in the internal habitable space, however, on the available evidence I am not persuaded that is something that can be discounted. Notwithstanding the sustainability benefits that would arise from the installation of a heat pump system, I consider limited weight should be attached to the explanation as to why a basement is now required to accommodate that system.

13. The appellant has referred to various appeal decisions, some of which concern replacement dwellings, ie Little Acre and Sandy Cross House⁵, while others concern extensions to existing dwellings⁶. Reference has also been made to some permissions that have been granted by various Councils.
14. It is rare for the circumstances of one case to be directly comparable with another and I consider that the various appeals and other decisions referred to by the appellant are not directly comparable with the case before me. That is because those cases either predate the Feather judgement, or predate the Framework's publication, or concern extensions to dwellings. With respect to cases concerning extensions it is the third exception listed in paragraph 89 of the Framework that is relevant. The third exception is worded quite differently to the fourth exception, which means that conclusions made against it cannot be compared directly with those made under the fourth exception. I therefore consider that the various cases drawn to my attention by the appellant do not weigh in favour of the appeal development.

Conclusions

15. The appeal development would have no greater effect on the openness of the Green Belt, when compared with development subject to the extant permission. However, I have found that by definition the replacement house, with the inclusion of a basement, would be inappropriate development in the Green Belt. The harm arising from the inappropriateness of the development is a factor attracting substantial weight when regard is paid to paragraph 88 of the Framework. I consider that neither the existence of the extant permission nor the appellant's explanation for the basement's need weigh heavily for this development. Accordingly there are not the very special circumstances necessary to justify inappropriate development in the Green Belt. The development would therefore be contrary to Policies RE2 and H6 of the Local Plan and paragraphs 87 and 89 of the Framework. I also consider that this development could not be made to be acceptable by the imposition of reasonable planning conditions.
16. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR

⁵ Respectively APP/T0355/A/01/1080385 and APP/Y3615/A/11/2154113

⁶ APP/Y3615/A/08/2070892, APP/Q3630/D/12/2173497 and APP/Y3615/D/13/2190816