
Appeal Decision

Site visit made on 7 October 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal Ref: APP/A3655/W/19/3232689

South Paddock, Pyle Hill, Sutton Green, Woking, GU22 0SR

- 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 and Mrs Payne against the decision of Woking Borough Council.
 - The application Ref PLAN/2018/1365, dated 19 December 2018, was refused by notice dated 20 February 2019.
 - The development proposed is erection of a four bedroom family dwelling with integral garage following demolition of existing house and garage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The second reason for refusal refers to the potential for harm to protected species or habitats. In response, the appellant has provided further detailed surveys of the site. This is technical evidence which can be accepted as part of the appeal. It was clearly referred to in the appellants submissions, which the Council have had the opportunity to comment on.

Main Issues

3. The main issues are:
 - Whether the proposed replacement dwelling is inappropriate development within the Green Belt having regard to the National Planning Policy Framework ("The Framework") and relevant development plan policies; and
 - The effect of the development on protected species.

Reasons

Green Belt

4. The site is located in the Green Belt. Paragraph 145 of the Framework makes clear that the construction of new buildings in the Green Belt should be regarded as inappropriate development. However, an exception to this is the replacement of a building, provided that it is in the same use and not materially larger than the one it replaces. I refer to this as the 'most relevant exception'.

5. Policies in the Woking Core Strategy (2012) ("Core Strategy") and the Woking Development Management Policies Development Plan Document (2016) ("Development Management Plan") are consistent with this approach to development in the Green Belt and the application of the most relevant exception to inappropriate development. The supporting text to Policy DM13 of the Development Management Plan provides further guidance on what is meant by a material increase, in the context of the most relevant exception. It states that as a general rule a replacement building that is no more than 20-40% larger than the one it replaces will not usually be considered to be disproportionate.
6. In terms of this proposal, the existing building comprises a detached house which sits beside a 2-storey building comprising a garage with habitable living accommodation above. Whilst the explanatory text to the Development Management Plan states that outbuildings will not be counted towards the floorspace of existing buildings, case law¹ has established that multiple structures can in some circumstances be regarded as a single building for the purpose of the most relevant exception. Furthermore, the appellant makes reference to other cases where the Council have counted multiple buildings in the total floor area of the existing building for the purposes of the most relevant exception². In view of this, it is reasonable to take a view guided by the existing relationship between the buildings, on the ground.
7. In this case, both existing buildings are accessed from the same hardstanding. There is a clear gap of around 10 metres between the two structures at the closest point, but in the context of this large site they appear very close together. Accordingly, the garage reads as a domestic adjunct to the host building. The two structures should therefore be regarded as the same building, for the purpose of the most relevant exception.
8. Considering the new building, its width is broadly similar to the current building but it would have a greater depth, and a garage extending out to its front. However, the removal of the existing garage would limit the overall spread of built form on the site. It would also increase the size of the gap between the host building and the neighbouring property to the north. Overall, the consolidation of built form on the site means that, notwithstanding the increased depth of the building, upon completion of development the openness of the Green Belt would be preserved.
9. In percentage terms, on the measurements provided by the appellant, the increase in terms of Gross External Area would amount to 33%, and in terms of building footprint 30.1%, when both the garage and the host building are counted in the size of the original building. However, the works also involve the lowering of the ground level. This means that in volumetric terms the increase is around 54%.
10. The supporting text to the Development Management Plan acknowledges that the 20-40% rule may not be appropriate for every site. Furthermore, the appellant also cites an instance where a volumetric increase over 40% was accepted by the Council in the Green Belt, after the adoption of the

¹ Tandridge District Council v Secretary of State for Communities and Local Government, Jason Syrett [2015] EWHC 2503.

² See paragraph 7.13 and 7.14 of the Appellants appeal statement.

Development Management Plan³. Accordingly, some flexibility should be applied in how the requirements of this supporting text are implemented.

11. The increase in volume here would be significantly less than another dismissed appeal decision cited by the Council, where the volumetric increase was 73%⁴. Here, the reduction in the ground levels around the building would not be of a scale that is readily apparent in either localised or longer views. The plans show that the maximum existing height above ordnance datum would be maintained, which also serves to demonstrate the limited visual impact of the replacement building in relation to its surroundings.
12. Overall, despite the breach of the 20-40% guideline, in the circumstances of this case the replacement of two buildings with a single structure would not result in the creation of a materially larger building than those which it replaces. Accordingly, the proposal meets the terms of the most relevant exception. It is not inappropriate development and there would be no harm to the Green Belt. There is no conflict with policies CS6 of the Core Strategy and DM13 of the Development Management Plan which seek, amongst other things, to prevent inappropriate development in the Green Belt.
13. As I have found that the proposal meets the most relevant exception to inappropriate development there is no need to consider whether the proposal meets other exceptions to inappropriate development. Nor is there any need to demonstrate very special circumstances to justify the proposed development. Accordingly, I have not considered these matters further.

Protected species

14. The additional ecological surveys submitted with the appeal indicates that there is negligible potential for great crested newts on the site. However, it confirms that there are bats present in the main building, concluding that the roost is of local importance. The demolition of the main building, as proposed, would almost certainly lead to significant disruption to these bats. The appellant acknowledges that a European Protected Species Mitigation licence from Natural England will be required, before any works can take place that affect these bat roosts.
15. In these circumstances the Conservation of Habitats and Species Regulations 2017 ("Habitats Regulations") require me to have regard to the 3 tests set out in the European Habitats Directive. These are:
 - (a) Preserving public health or public safety or other imperative reasons of overriding public interest;
 - (b) There is no satisfactory alternative; and
 - (c) The action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
16. It is suggested that the existing building does not meet the needs of the current owner and their family. However, very little detail is provided to explain why this is the case. Furthermore, it is unclear why total demolition of the building, including the bat roost, is necessary to achieve the desired improved living accommodation. There is no detailed technical evidence supporting the

³ See Paragraph 7.20 of the Appellants appeal statement.

⁴ APP/A3655/W/16/3143089

view the building is structurally unsound. None of these arguments justify the proposal in the interests of public health or public safety, nor do they constitute an imperative reason of overriding public interest. For similar reasons I am not persuaded there is no satisfactory alternative to the proposed development.

17. The survey indicates that the bat roost is of a modest size and mitigation measures are proposed that could be secured by planning condition. As such, it is unlikely that the action would be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range. However, for the reasons set out above, the evidence before me does not demonstrate with certainty that the first 2 out of the 3 relevant tests set out in the Habitats Directive would be met.
18. Accordingly, whilst I acknowledge the various measures to improve biodiversity on and around the site, I am not in a position to conclude that there is a reasonable prospect of a license being granted. I am uncertain the proposal would meet the requirements of the Habitats Directive and a precautionary stance is therefore justified. On the evidence before me the proposal would lead to harm to protected species. It conflicts with policy CS7 of the Woking Core Strategy (2012), which requires that development anticipated to have a potentially harmful effect on features of interest for biodiversity will be refused.

Other Matters and Conclusion

19. The proposal would provide a well-designed replacement dwelling, providing a high standard of living accommodation including sustainable design features⁵. It would be landscaped, with a reduction in hardstanding and new trees would be planted. However, these, and the other benefits in favour of the development including the identified relevant local finance considerations do not outweigh the harm identified to protected species. Overall, the proposal conflicts with the requirement in the Framework to conserve and enhance the Natural Environment and I attach substantial weight to the harm that would arise, in consequence.
20. Overall, whilst there would be no harm to the Green Belt, there would be unacceptable harm to protected species. The proposal conflicts with the development plan when it is considered as a whole and there are no other considerations that outweigh this finding. The appeal should be dismissed.

Neil Holdsworth

INSPECTOR

⁵ As set out in the design and access statement.