
Appeal Decision

Site visit made on 11 November 2019

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2019

Appeal Ref: APP/E2734/D/19/3233628

Ninekyrkes, Follifoot Lane, Kirkby Overblow HG3 1EZ

- 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 Ben Crowther against the decision of Harrogate Borough Council.
 - The application Ref 19/00991/FUL, dated 6 March 2019, was refused by notice dated 17 June 2019
 - The development proposed is the erection of a single storey rear extension.
-

Decision

1. The appeal is allowed and planning permission is granted for a single storey rear extension at Ninekyrkes, Follifoot Lane, Kirkby Overblow HG3 1EZ in accordance with the terms of the application, Ref 19/00991/FUL, dated 6 March 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan Drawing No L01; Proposed Site Plan Scale 1:500; Existing Plans and Elevations Drawing No 100; and Proposed Plans and Elevations Drawing No 101.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Background and Main Issue

2. The appeal property is a detached house set in a substantial plot on the outskirts of Kirkby Overblow. It is located in the Green Belt and it is common ground that, due to the previous extensions to the original dwelling, the appeal scheme would represent inappropriate development within the Green Belt. In addition, in the light of the findings of the Inspector for a previous appeal¹ for an identical proposal, it is not disputed that the proposed extension would reduce the openness of the Green Belt.
3. In the light of this the main issue in the appeal is whether the harm by reason of inappropriateness and through the loss of openness, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

¹ Appeal Reference APP/E2734/D/18/3202671

Reasons

4. Paragraph 143 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should only be approved in very special circumstances.
5. The appellant has highlighted that since the appeal in 2018 two applications have been granted for extensions and alterations to the property. The first² was for whether prior approval was needed for a single storey rear extension to the dwelling. The Council determined, in September 2018, that prior approval was not required for this extension. Whilst the decision letter for this indicated that the development would need to be completed on, or before, 30 May 2019, since then the regulations allowing extensions of this size have been altered to make them permanent rather than temporary.
6. In addition, in January 2019, a lawful development certificate was granted³ for the conversion of the existing integral double garage to form living accommodation and the erection of a detached double garage.
7. The appellant has indicated that, although the appeal scheme represents the preferred development, should the current appeal be unsuccessful, it would be his intention to build these two alternative schemes. This is a fallback position which I am asked to consider. In addition, a Unilateral Undertaking has been submitted. Should the appeal scheme be granted permission this would prevent the construction of the fallback proposals and any other extensions or outbuildings pursuant to permitted development rights within the curtilage of the property.
8. The appeal scheme would provide a larger sitting room, kitchen/breakfast room and utility room to be provided at the property. The fallback scheme, although different, would equally allow the creation of an enlarged sitting room and kitchen/dining room. As such, I am satisfied that the fallback scheme would provide the appellant with the additional living accommodation he is seeking.
9. Costings have been provided for both schemes, and although the appeal proposal is more expensive to construct, there is no evidence to indicate that this would make it financially unviable.
10. The Council have highlighted that despite having the necessary permissions in place to build the fallback schemes for some time, construction has not commenced on either of them. However, it is clear from the Unilateral Undertaking that the appellant does not wish to pursue both schemes. To have made a start on either of the fallback schemes, whilst still pursuing what is the preferred option would have resulted in unnecessary expense and abortive work due to the differences in the schemes. It is also indicated that the preferred builder is unable to start any work at the house until summer 2020 due to existing work commitments.
11. As such, on the basis of the evidence before me, I am persuaded that there is a realistic prospect that the fallback schemes would be pursued should the appeal fail.

² LPA Reference 18/03581/PNX

³ LPA Reference 18/04775/CLOPUD

12. The appellant has indicated that the floor area created by the fallback scheme would be slightly larger than the appeal proposal. These figures have not been disputed by the Council. There is little visibility of the rear elevation from the public realm and so neither rear extension would be readily visible. However, the proposed detached garage that would form part of the fallback proposal, would be highly visible from the road. Whilst as a detached garage it would not add to the bulk and mass of the house itself, it would be in close proximity to the side elevation of the house, and would still add mass and bulk to the built form on the site.
13. Moreover, its position would result in the spread of the built form further to the east than at present. This would not occur with the appeal scheme. In addition, although not as wide as the appeal extension, the greater projection of the extension from the rear elevation would mean that the fallback scheme would extend further into the rear garden.
14. In the light of this I consider that, both spatially and visually, the fallback scheme would result in greater harm to the openness of the Green Belt than would be the case with the appeal scheme.
15. I note that the Unilateral Undertaking would not prevent the subsequent conversion of the existing garage to alternative uses in the future. However, any such conversion would have no impact on the Green Belt and the Unilateral Undertaking would prevent any replacement garage being constructed without planning permission being sought.
16. I have considered the submitted Unilateral Undertaking in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests set out in paragraph 56 of the Framework. The Unilateral Undertaking would prevent both the appeal scheme and the fallback scheme being implemented. Therefore, I consider it is necessary to prevent a level of development within the site that would be detrimental to the openness of the Green Belt. As such, it would accord with the statutory tests.
17. I accept that the *Planning Practice Guidance* makes clear that conditions to restrict permitted development rights should only be used in exceptional circumstances. However, in this case it is not proposed that such a condition should be used and I have assessed the Unilateral Undertaking against the appropriate statutory tests.

Conclusion and Conditions

18. The proposal would be inappropriate development in the Green Belt which is harmful by definition. According to the Framework (paragraph 144) substantial weight has to be given to any harm to the Green Belt. In addition, the proposal would result in a reduction in openness. However, I attach considerable weight to the fallback position, and in this case, as the fallback scheme would cause greater harm to the Green Belt, I consider that the fallback position would clearly outweigh the harm the appeal scheme would cause. As such, very special circumstances exist, and the scheme would not conflict with the Framework or with Policy EQ2 of the *Harrogate District Core Strategy (adopted February 2009)* or Policy H15 of the *Harrogate District Local Plan (adopted February 2001)* which seek to ensure the high quality of the

natural environment in the Green Belt is protected and that developments do not lead to any unacceptable loss of garden or amenity areas.

19. Consequently, I conclude the appeal should be allowed.
20. In addition to the standard implementation condition, I have imposed a condition specifying the relevant plans, as this provides certainty. In the interests of the character and appearance of the area, a condition is required to control the external appearance of the extension.

Alison Partington

INSPECTOR