
Appeal Decision

Site visit made on 13 November 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/N3020/D/19/3235898
107 Mansfield Road, Papplewick NG15 8FJ

- 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 Alan Cassey against the decision of Gedling Borough Council.
 - The application Ref 2019/0391, dated 10 April 2019, was refused by notice dated 31 May 2019.
 - The development proposed is: double garage with 1st floor removing incomplete balcony.
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Decision

1. The appeal is allowed and planning permission is granted for double garage with 1st floor removing incomplete balcony at 107 Mansfield Road, Papplewick NG15 8FJ, in accordance with the terms of the application, Ref 2019/0391 dated 10 April 2019, and the plans submitted with it, subject to the following condition:

1) Within 3 months of the date of this approval the existing first floor balcony shall be removed and replaced with the Juliette balcony shown on drawing ref CC13/12/08.

Procedural Matter

2. I have amended the description of development to omit 'retain existing', which is unnecessary.

Main Issues

3. These are: whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and the relevant development plan policies; and if the development is inappropriate, 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 required to justify the proposal.
4. The Council's second reason for refusal relates to the effect of a first-floor balcony on the living conditions of the occupiers of neighbouring property at 109 Mansfield Road. The proposal before me has been amended to remove the existing balcony and replace it with one of a Juliette type. The Council has made no comment on the amendment to the type of balcony, and at the application stage the neighbour at no 109 wrote to the Council to state that they had no objection to the proposal, including the installation of the Juliette balcony. Therefore, I do not consider this matter further.

Reasons

5. The appeal property (the property) is one of line of houses situated on the A60 Mansfield Road, around 2 km east of the village of Papplewick. It is within the Green Belt. The double garage plus first floor storage (the building) forming the subject of the appeal is located to the rear of the appellant's house, within the curtilage of the property. There are some stables close to the garage, beyond which is open countryside.
6. The building which has been erected is a 2 storey structure, containing a room within the roof space. It is built of red brick with sloping grey tiled roofs to front and rear and flat centre section. There is a window at first floor facing towards the open countryside and a what was originally intended to be a projecting balcony, but which under the proposal would be replaced with one of a Juliette type.

Whether Inappropriate Development and openness

7. The Framework establishes that the Government attaches great importance to Green Belts, the essential characteristics of which are their openness and permanence. The Green Belt serves five purposes including assistance in safeguarding the countryside from encroachment.
8. For the purposes of the Framework, with certain exceptions, the construction of new buildings within Green Belts is inappropriate. Inappropriate development is, by definition, harmful to the Green Belt and should only be approved in very special circumstances. A number of exceptions to this general principle are set out within the Framework¹, including:
 - d) the replacement of a building, provided that the new building is in the same use and not materially larger than the building it replaces;
 - e) limited infilling with villages;
 - g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would not have greater impact on the openness of the Green Belt than the existing development.
9. The appellant accepts that d) is not applicable since the building is materially larger than the garage it replaced. However, it is suggested that e) and g) are engaged and that I should conclude that the proposal is not inappropriate development.
10. With regards to exception e) the Framework does not describe what, in this context, is meant by a village. The line of houses within which the property lies is not defined as a settlement in the local plan. To my mind it is a hamlet but not a village. The term village normally has connotations of a settlement consisting of a significant number of dwellings but also containing at least some services, or at least having done so in the past. That is not the case here.
11. In the case of g) the Framework defines Previously Developed Land (PDL) to exclude gardens in built up areas. The Policies map of the Papplewick Neighbourhood Plan 2018 (the PNP) defines the area of housing within which

¹ National Planning Policy Framework (NPPF) February 2019 paragraph 145

the property lies as part of the built up area. Therefore, the site of the garage cannot be considered as PDL and sub paragraph g) is not engaged.

12. The building is a greater distance from the house than the previous garage, and therefore closer to the open countryside and more visible from there. It is also flanked by a large steel building to one side, and the stables. Both these structures are lower in height than the building. Although publicly accessible locations where the scale and mass of the building would be apparent are limited, when seen in the context of existing development the effect on openness is not negligible.
13. The Council has referred to case law which reinforces the point that consideration of effects on openness must not be confined to visual impacts alone, and it is well established law that spatial effects must also be taken into account. It is not argued that the building is no larger than the garage that existed previously on the site, therefore there is some spatial impact on openness.
14. Therefore, I conclude that the proposal constitutes inappropriate development, which the Framework establishes should not be approved except in very special circumstances and would also be in conflict with Policy LD15 of the Gedling Borough Local Planning Document Part 2 Local Plan² (the GBLP) and Objective B of the PLP which seek to protect the Green Belt from inappropriate development.

Other considerations

15. The circumstances which preceded the appeal are a little unusual. In 2013 a new replacement garage of a similar design to the building was included in a planning application for other works at the property. The building was to be sited in a position close to the original garage, within a group of mature trees in the garden area of the property. It is possible that the building would have been within permitted development allowances³ and at the time of the 2013 application the Council did not consider the garage as inappropriate development.
16. However, it is reasonable to consider the building against the structure shown in the 2013 application, since this constitutes a fallback position in the event that I do not allow the appeal. The length and width of the building materially accord with the 2013 plans, but it is higher and has a first floor. Although the height as built could be taken as being approximately 1m higher than that in the 2013 application, it is suggested that if the original ground levels are taken into account the height difference is limited to around 0.5m. The Council does not challenge the appellant's point on height in response to the appeal.
17. It is not possible to say whether the Council considered the fallback position in its decision on the appeal proposal. The 2013 application is not mentioned in the planning officer report, although it was listed in an earlier planning permission for the retention of the building, also refused⁴.

² Adopted 2018

³ The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2 Part 1 Class E requires that such incidental buildings should not exceed 4m with pitched roof or be two storey; or exceed 2.5m in height if within 2m of any boundary.

⁴ Planning application reference 2019/0058

18. In Green Belt terms the concept of openness encompasses both the visual and spatial aspects of development. However, the building would have no greater footprint than that approved, and even given the change in location would not have a greater impact on the openness of the Green Belt in purely spatial terms.
19. The Framework sets out the five purposes of the Green Belt, all of which would be contravened according to the reason for refusal. However, of the five, only the third purpose, assisting in safeguarding the countryside from encroachment, is directly relevant to the proposal.
20. Whilst the building is within the garden area of the property and in close proximity to other buildings, it adds to the cumulative effect of the structures in the rear areas of the properties in this part of Mansfield Road. However, for the reasons I have already given, including the existence of the fallback position, I do not consider the proposal to compromise the above purpose of the Green Belt to any significant degree.
21. The appellant has raised a number of other matters in support of the appeal. These include the retention of the trees which would have been lost had the garage been constructed in the approved position; questions over the legal interpretation of what constitutes material enlargement; advice from the Council's officers that the application would be approved if the balcony was removed and also, at one point, that the file had been closed; and that the building is only used as a garage and storage for the appellant's needs and ancillary to the domestic use of the dwelling. I give these matters limited weight.
22. The appellant also suggests that there would be no more detriment to views into or out of the site than would be caused under the 2013 approved works. The Council does not disagree that the visual impact is minimal. The effect in this respect is very limited, given the comparative heights and positions of the building included in the 2013 application and that which has been erected. This is a matter which I give very substantial weight, given that the appellant could construct a garage of similar size in the position shown in the 2013 planning permission, were the building to be removed.
23. GBLP Policy LD15 permits infill development in the Green Belt subject to a number of criteria which must be satisfied, including that there must be no detrimental effect on openness, and that the proposal is in keeping with surrounding character in bulk, form and general design. The criteria also include that the site should be enclosed by buildings on at least 2 sides. The supporting text to the policy suggests that proposals of up to 150m² are considered to be limited, significantly more than the size of the building.
24. However, the exceptions under Policy LD15 cannot apply, since the site is not within a village or a previously developed site⁵. It seems to me that the main thrust of Policy LD15 is to assist in determining whether infill development is inappropriate or not. Whilst the proposal is inappropriate development, I do not find there to be a significant detrimental effect on openness, given the location of the building and the context of other nearby development.

⁵ The GBLP contains the same definition of previously developed land as the Framework, which excludes gardens within built up areas.

Other Harm

25. In terms of the impact of the development on the setting of Papplewick, the PNP identifies key vistas which should be protected. These vistas do not include the property, therefore there is little, if any, impact in this respect.

Conditions

26. The building is substantially complete and the only outstanding matter is the removal of the existing balcony and replacement with a Juliette type balcony, as shown on the submitted plans. I therefore attach only a condition requiring this work to be undertaken with 3 months of the date of the permission.
27. The Council suggests a condition removing the full range of permitted development rights for dwellinghouses but does not explain why it considers that such a condition is necessary. The Framework requires that planning conditions should be kept to a minimum and only used where necessary, and the Planning Practice Guidance is clear that conditions which restrict the use of permitted development rights should only be used in exceptional circumstances. I am not persuaded that the exceptional circumstances necessary to justify such a condition exist in relation to the proposal.

The Green Belt Balance

28. The Framework sets out that substantial weight should be given to any harm to the Green Belt, and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness or any other harm resulting from the proposal, is clearly outweighed by other considerations.
29. I have found that the proposal would be inappropriate development in the Green Belt. The building erected on the site, in visual terms, has greater impact on the openness of the Green Belt than the previous development although to a limited extent. Therefore, the proposal conflicts with Policy LD15 of the GBLP and Objective B of the PLP which seeks to protect the Green Belt from inappropriate development. The Framework is clear that the development plan is the starting point for decision taking and if there is conflict with an up to date development plan, permission should usually not be granted unless material considerations indicate otherwise. For the reasons given, I find that such material considerations exist in favour of the proposal.
30. The Green Belt harm, although limited, is a matter which must attract substantial weight. However, other considerations advanced in favour of the proposal, in particular the existence of the 2013 planning permission showing a development of similar size, slightly higher, and in a position close to the building, carry very substantial weight in its favour and, in the balance, clearly outweigh the Green Belt harm.

Conclusion

31. For the reasons set out above, and taking into account all other matters raised, the appeal is allowed.

Tim Wheeler

INSPECTOR