
Appeal Decision

Inquiry Held on 7 January 2020

Site visit made on 7 January 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/R1845/C/18/3216916

Easter Cottage, Hill Farm, Northwood Lane, Bewdley, Worcestershire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Robert Dyke against an Enforcement Notice (EN) issued by Wyre Forest District Council.
 - The enforcement notice was issued on 18 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a two-storey extension to the dwelling.
 - The requirements of the notice are: Demolish the extension and remove all materials and waste arising from such demolition from the land.
 - The period for compliance with the requirements is: Six months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the EN is upheld. Planning permission is refused on the planning application deemed to have been made under s177(5) of the 1990 Act.

Procedural Matters

2. In the lead up to the Inquiry, the Council had sought to submit a letter from Worcestershire County Council (WCC) dated 24 December 2019 which raised concerns about the impact of the extension on a bank at the rear of Easter Cottage which supports Northwood Lane. Part of the bank had collapsed during heavy rain in mid-November 2019 in the vicinity of the extension. The Council was keen for me to have the letter as it may have questioned the appellant's assertion that the works of building the extension had strengthened the support for the lane. The appellant considered that it was late evidence and objected to the letter's submission. After seeking the views of the parties, I decided to accept the letter. I shall consider it later in my decision.
3. Given that matters of fact were explored at the Inquiry, particularly under the ground (d) appeal, all witnesses gave their evidence under oath.

The ground (d) appeal

4. An appeal on this ground is based on the claim that at the date the EN was issued, no enforcement action could be taken in respect of any breach of

planning control which may be constituted by those matters. S171B(1) of the 1990 Act sets out that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. In this appeal, therefore, the appellant needs to show that on the balance of probability the extension had been substantially completed by at least 17 October 2014, hereafter referred to as the material date. In legal grounds of appeal such as this, the burden to make out the case rests with the appellant.

5. In the judgement of *Sage v SSETR & Maidstone BC [2003] UKHL 22*, which was considered at the Inquiry, it was held that “*regard should be had to the totality of the operations which the person originally contemplated and intended to carry out*”. Moreover, “*if it is shown that he has stopped short of what he contemplated and intended when he began the development, the building as it stands can properly be treated as an uncompleted building against which the four year period has not yet begun to run*”. Whilst the development in *Sage* concerned the erection of a dwellinghouse and not an extension to a dwellinghouse, the principles established in the judgement hold good for assessing whether a development that has been carried out without planning permission has been substantially completed for more than four years.
6. I accept that the state of the original cottage is not within the scope of this consideration as the EN clearly attacks just the two storey extension. Furthermore, whilst I heard arguments about the lack of a link between the extension and the former cottage at roof level, I have focussed on the state of the extension itself. For reasons that I shall explain later in my decision, I intend to assess first the extent of completion of the extension as it is now.
7. In terms of the ‘undercroft’ area, this clearly acts as a foundation and support to the floor above which is at the same level as the former cottage. Nevertheless, there is a level space/room in the ‘undercroft’. Even if the appellant did not intend this to be habitable, and leaving aside the Council’s assertion that it may have been intended to put in an internal staircase to link the two levels of the extension, in the context of *Sage* the plans submitted by the appellant with the original grounds of appeal when the procedure was still by way of written representations show this space was intended to be a plant room and storage. There would also be a central set of double doors giving access into the space with a small window to each side of these.
8. At the Inquiry the appellant confirmed the intended use of this space was as set out above. The storage would be for items such as gardening equipment and that a wooden floor is intended to be inserted. There is also an intention for this space to house an external gas boiler for the central heating system. Presently, there is no proper floor and the earth floor has lying water over it. The appellant accepts that the undercroft space is not watertight. The window and door openings do not have any frames or glazing and while there might be electric wiring and gas connections in place, there is no boiler needed to heat the upper floor of the extension. To my mind, the undercroft is in an unfinished state and some way off what the appellant had contemplated and intended for this space.

9. As for the upper floor this is intended to have two en-suite bedrooms, a WC and a kitchen/dining area. Although the internal plasterboard partitions for the rooms are in place, they are unfinished and there is no kitchen, toilet, bathroom or washing facilities. There is no central heating installation and the electrics remain incomplete. The windows on the back wall do not either have any glazing or frames to them with the spaces covered by plastic sheeting to shield the rooms from inclement weather. There is also daylight showing inside above one of the windows because the soffit has not been finished. Whilst much of the intended work may be only internal, it is far from being habitable which is clearly the appellant's intention as a residential extension to an existing dwelling.
10. As far as the outside is concerned, the face of the building is covered by a membrane to protect OSB boarding which the appellant accepts is an inner leaf of the external fabric. Whether that would be covered by a thin render as confirmed at the Inquiry, or timber cladding as previously suggested which could be required by one of the Council's proposed planning conditions if planning permission was to be granted, either way the outside of the building is in a materially unfinished state. There is much more work building work to do before the extension could be considered mostly finished.
11. Taking all the above in the round, there is no doubt that the appellant originally contemplated and intended to have an extension that in total would enlarge the living accommodation to the original cottage with some storage space and a plant room below. As a matter of fact and degree, for the reasons given, whilst the extension does not have to be finished to meet the four year 'rule', the building and fitting out works are well short of achieving this aim. As such, the extension the subject of the EN is not substantially complete even now.
12. Given this finding, there is no need for me to consider the appellant's evidence submitted to support what the extension was like at the material date when the extension would have had less work done on it. Even if I did, the photographs from Kidderminster Foreign Parish Council showing the basic extension in place are dated October 2015 which is of course not early enough. The letters from Northside Roofing Ltd in March and August 2014 do pre-date the material date, but whilst the extension must have been in a state making it capable of being roofed around that time, the letters give no indication about its state of completion. Furthermore, whilst I note the appellant's chronology of events showing how far the extension had got by around the material date, this does not help the case given that over four years later the extension is still not substantially complete.
13. Therefore, the appellant has been unable to show on the balance of probability that the extension was substantially complete for the required four years. Consequently, the Council was able to take enforcement action against the breach of planning control alleged in the EN. Accordingly, the ground (d) appeal must fail.

The ground (a) appeal

14. The main issues are:

- Whether the extension is inappropriate development in the West Midlands Green Belt having regard to the National Planning Policy Framework (NPPF) and relevant development plan policies. In this respect the issue is whether

the extension is a disproportionate addition over and above the size of the original building;

- The effect of the extension on the openness of the Green Belt and on the character and appearance of the area;
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would that amount to the very special circumstances needed to justify the development.

Inappropriate Development

15. In respect of Green Belt policy, the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore, a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt, subject to several exceptions. One of those is the "extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building". Consistent with this approach is policy SAL.UP1 *Green Belt* from the adopted Wyre Forest Site Allocations and Policies Local Plan (LP).
16. Neither the NPPF nor policy SAL.UP1 define what may be a disproportionate addition or not, but criterion (c) from the LP policy states that "applications for extensions to dwellings will be considered on a case by case basis". There is nothing unusual about considering the individual circumstances of every development. It is a basic tenet of making fair planning decisions. The policy does not, however, and nor does the NPPF, set out that the matter of size of the extension is one to be considered within the landscape setting. That will be a matter for me to consider under the next main issue in terms of the extension's effect on the openness of the Green Belt and the character and appearance of the area. Here, the 'test' is about comparing the size of the extension to the size of the original dwelling/building.
17. It is agreed that the additional floorspace created by the extension is 108 sqm. Even if I was to take the floorspace of the original building as being 56 sqm, which is the higher of the two floorspace figures referred to in the Statement of Common Ground, the extended building is not far off 200% larger than the original. Even if there is a slight difference between the floorspace of the original building and the original dwelling, based on such an increase alone, the extension is a disproportionate addition. On a more subjective basis, the sheer scale, two storey height and its forward projection, compared to the much more discrete and diminutive scale of the former single storey cottage, means that the extension swamps the size of the original building. The appellant also accepts that the extension is clearly very large and that it is not subservient to the original building. Whichever way the size of the extension is looked at, it is a disproportionate addition over and above the size of the original building/dwelling.
18. Consequently, the extension is inappropriate development in the Green Belt. There is harm to the Green Belt by definition.

Openness and Character and Appearance

19. The extension is large and in spatial terms it has inevitably adversely affected the openness of the Green Belt. Furthermore, whilst the locality is not devoid

of other chalet style buildings many of which have been adapted and enlarged, the broad two storey gable end projection out from the front face of the former cottage is at odds with the simple narrow oblong form of the original cottage, and the predominantly linear and single storey height of the other nearby dwellings. Consequently, whilst it is not taller than neighbouring buildings, and it is in a gap between dwellings, it is nevertheless prominent in views particularly from the track that serves other houses on Severn Meadows. As such, from spatial and visual dimensions, the extension has in my view caused serious harm to the openness of the Green Belt.

20. Furthermore, the excessive size of the extension means that it is nowhere near subservient to the much smaller scale of the original building. The extension overwhelms and visually dominates the former cottage, which has now become the minor part. There is no substantive evidence that a single storey extension built as permitted development would have been at the same level. Even if it did, there is nothing to show that permitted development rights would have allowed a two storey extension with a footprint that projects well forward of the original dwelling thus overdeveloping the site, which are factors why the appeal extension is visually prominent and incongruous.
21. The extension could be timber clad to match the other wooden buildings nearby. That might also assist in assimilating the building into the landscape. Or it could be rendered/white painted to pay respect to appearance of the former cottage, albeit that might make the extension and the enlarged house stand out even more. However, neither external finish would sufficiently ameliorate the adverse impact of the extension on the character and appearance of the area or the visual amenity of the Green Belt arising from its excessive size, and inappropriate two storey form and layout.

Other Considerations

22. I acknowledge that the small size of the former cottage means it needed enlarging to provide a suitable size for viable modern-day living standards. It is understood that the appellant had in mind the works would have allowed his daughter and grandchildren to move into Easter Cottage. However, the small size of the building should have dictated that in design terms, and the planning policy context, any extension should have had a more limited size. It also seems to me, looking at the general size of the other former and altered chalets, that many are being lived in without such sizeable extensions.
23. Viable living accommodation to meet set space standards for a smaller overall dwelling could probably have been achieved and the Council seemed open to such a lesser scheme at least coming forward. Such a proposal could have led to the unused and semi-derelict appearance of the original cottage also being improved without it being overextended with the harmful consequences outlined above. For these reasons, I give limited weight to this consideration.
24. As for the bank at the rear of the extension, there is no technical or detailed structural evidence to show that the works have either strengthened or weakened the ground that supports Northwood Lane. Even if there had been an improvement it would be a consideration of only limited weight.
25. Having regard to the appellant's age and financial circumstances, I am conscious that a decision to dismiss the appeal and uphold the EN will have serious personal consequences. However, I consider that it would be a justified

and proportionate decision given the need to uphold the aims of planning policies in a democratic society that seek to protect the function and purpose of the Green Belt and to achieve well designed development.

Green Belt Balance and Conclusion

26. I have found harm to the Green Belt by definition because the extension is inappropriate development. I have also found harm to the openness of the Green Belt. Substantial weight must be given to any harm to the Green Belt. Furthermore, the character and appearance of the area has been harmed to which I also attach substantial weight. For the reasons given above, the other considerations in this appeal do not clearly outweigh these harms. Accordingly, the very special circumstances needed to justify the development do not exist.
27. Therefore, the development conflicts with the Green Belt protection aims of the NPPF and policy SAL.UP1 from the LP. Furthermore, the scheme conflicts with the aims of LP policies SAL.UP7, SAL.UP8, and SAL.UP12 insofar as they seek development to have an appropriate footprint and not overdevelop the site, for extensions to be in scale and keeping with the form of the original building and be subservient to and not overwhelm it so that the original building retains its visual dominance. Also, chalet extensions should not have a significant adverse impact on the surrounding landscape and comply with all other relevant policy.
28. As such, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Gareth Symons

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr Riley-Smith of Counsel

He called	Mr Robert Dyke (the appellant)
	Mr John Jowitt BSc(Hons) DipTP MRTPI - PJ Planning

FOR THE LOCAL PLANNING AUTHORITY: Mr Hawley of Counsel

He called	Mr Richard Jennings - Development Control Officer WFDC
	Mr Paul Round DipTP MRTPI - Development Manager WFDC

DOCUMENTS

- Doc 1 Letter from WCC dated 24 December 2019
- Doc 2 Opening Statement from WFDC
- Doc 3 Opening Submissions from the appellant
- Doc 4 Closing Statement from the Council
- Doc 5 Closing Submissions from the appellant