
Appeal Decision

Site visit made on 7 January 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/K2230/C/19/3220892

Hartshill Bungalow, Thong Lane, Shorne, Gravesend, Kent DA12 4AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Santokh Gill against an enforcement notice issued by Gravesham Borough Council.
 - The enforcement notice was issued on 19 December 2018.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission the unauthorised construction of a single storey rear and side extension to the property and raised patio to the rear of the property.
 - The requirements of the notice are:
 - a) Demolish the unauthorised single storey rear and side extension and raised patio to the rear of the property;
 - b) Remove all resultant debris from the property
 - The period for compliance with the requirements is nine calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. An application for costs was made by Gravesham Borough Council against Mr Santokh Gill. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant has not submitted the appeal on the basis of ground (g), which is that the period for compliance with the Enforcement Notice falls short of what is reasonable. However, the appellant has briefly addressed this ground in their submission. As the Council has reviewed the appellant's appeal statement and has had the opportunity to comment on this, I have considered this ground below as it would not cause injustice to the Council.

The ground (a) appeal and the deemed application

4. The ground of appeal is that planning permission should be granted.

Main Issues

5. The site is in the Metropolitan Green Belt. The National Planning Policy Framework (the Framework) sets out the Government's policy in relation to Green Belts. Inappropriate development is, by definition, harmful and should not be approved other than in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
6. The main issues are therefore:
 - Whether the development is inappropriate development in the Green Belt;
 - The effect of the development on the openness of the Green Belt;
 - The effect of the development on the character and appearance of the site;
 - If the development is inappropriate, whether any 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 required to justify the development.

Reasons

Whether inappropriate development

7. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The construction of new buildings should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 145. One such exception 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.
8. Saved policy C13 of the Gravesham Local Plan First Review 1994 (LPFR) sets out an interpretation of Green Belt policy that was in place at that time. It gives an overall limit of one third of the gross floor area of the original dwelling, and requires that the appearance, massing, scale, form and materials of any extension shall be appropriate to the existing dwelling and the Green Belt setting. Policy CS02 of the Core Strategy 2014 (CS) relates to the scale and distribution of development in the Borough, and requires development in the Green Belt to be compatible with planning policies. The policies follow the broad approach set out in the Framework and are consistent with it.
9. The extension has resulted in a substantial increase in floorspace and volume, significantly in excess of the guide contained in LPFR policy C13. In view of the modest size of the original bungalow, the extension has substantially increased its proportions by increasing the width and depth of the building. It has resulted in a disproportionate addition over and above the size of the original building and as a result the development is inappropriate development in the Green Belt, and in conflict with LP Policy C13. My conclusion reflects that of a

previous Inspector who dismissed an appeal against refusal of planning permission for the extension.¹

Openness

10. A fundamental aim of Green Belt policy, as set out in paragraph 133 of the Framework, is to keep land permanently open. The development has resulted in substantial additional built form on the site, which has had both a spatial and visual impact on the openness of the Green Belt, although the impact is limited due to its relatively small scale.

Character and appearance

11. The original bungalow is modest in scale, and while the roof form of the extension has minimised its bulk so that the original pitched roof form is still apparent, it has added a substantial extension that wraps around two sides of the property. This has resulted in a dominant extension with a roof form that does not reflect the appearance of the host dwelling. Although it is well screened from the surrounding area, it has a harmful effect on the character and appearance of the bungalow.
12. I appreciate that a certificate of lawfulness has been granted² been granted for single storey rear and side extensions incorporating a raised patio and flue. From the evidence before me I am satisfied that there is a more than theoretical probability that these permitted development rights would be used if the appeal fails. However, these extensions would have a reduced bulk when compared to the existing development. They would not wrap around the elevations of the property but would appear as two separate extensions, with one of them having a reduced depth. The appellant has suggested that the roof material and roof form of the extension could be altered to match the main pitched roof with red tiles. This would not overcome the concern with dominant scale and bulk of the extension.
13. The resulting additions would have a less dominant and bulky appearance than this development. The development is therefore in conflict with LPFR policy CS19, insofar as it seeks to ensure that new development is locally distinctive.

Other considerations

14. The appellant has put forward the 'fallback' position of the extensions that are the subject of the certificate of lawfulness. The difference in floor area between these extensions and the development which is the subject of this appeal, is stated to be 42.74 square metres. The permitted development scheme excludes the connecting section between the side and rear elements of the extension, with one of the extensions having reduced depth.
15. A further application for a certificate of lawfulness for a proposed outbuilding has been refused and is currently at appeal³. It relates to the erection of an outbuilding of 100 square metres within the residential curtilage of the dwelling. I understand from the Council's Delegated Report and decision notice that their concerns centred on whether the building would be incidental to the

¹ Ref APP/K2230/C/19/3220892

² Ref 20190013

³ APP/K2230/X/19/3241778

enjoyment of the dwelling due to its size. It would therefore be reasonable to assume that permitted development rights for an outbuilding exist.

Green Belt Balance

16. The extension is inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, it causes limited harm to the openness of the Green Belt and the character and appearance of the bungalow.
17. I attach limited weight to the fallback position in terms of the extensions to the dwelling using permitted development rights. While this scheme would add built form to the bungalow, the addition would result in substantially less floor space and volume than the existing extension, with a correspondingly reduced impact on the openness of the Green Belt. I do not therefore find that the fallback position would be less desirable than the existing extension.
18. I note the appellant's wish to erect an outbuilding under permitted development rights, but this could be in addition to rather than instead of the extension. I therefore attach very limited weight to this consideration.
19. The substantial weight to be given to Green Belt harm, and the harm to the character and appearance of the area, are not clearly outweighed by other considerations. The very special circumstances necessary to justify the development do not, therefore, exist. It is therefore in conflict with the Framework, LPFR Policy C13 and CS Policy CS02 in relation to Green Belt.

Conclusion in relation to the Ground (a) appeal

20. For the reasons given above and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed application should be refused.

Ground (f) appeal

21. This ground of appeal is that the steps for compliance with the notice are excessive. The purpose of the enforcement notice is clearly to remedy the breach, as it requires the removal of the works in their entirety. However, there is established case law in the *Tapecrowns*⁴ judgement that any obvious alternative to full demolition which would overcome the planning difficulties at less cost and disruption than total removal should be considered. The appellant suggests that some of the works could be undertaken using permitted development rights. The Council has stated that rather than varying the requirements of the notice, it could choose instead to under enforce.
22. Article 3(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, provides that the permission granted by Schedule 2 shall not apply if "in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful." The Council has nonetheless granted the certificate of lawfulness, and it is not for me to look further into its lawfulness.
23. However, it has not been demonstrated that the alternative permitted development scheme is realistically achievable in terms of adapting and partly

⁴ *Tapecrowns Ltd v First Secretary of State and Anr* [2006] EWCA Civ 1744

demolishing the existing extension. Moreover, to vary the requirements to allow the appellant to adapt the extension to comply with permitted development would lack the necessary degree of precision. As a result, the appeal fails on ground (f).

Ground (g) appeal

24. The ground of appeal is that the period for compliance is unreasonably short. The notice provides for a 9 month compliance period, and the appellant requests the longest time frame possible in order to comply with any requirement for demolition/making good. The reason for this is that the appeal site is anticipated to be the subject of a Compulsory Purchase Order to make way for works to facilitate the Lower Thames Crossing.
25. However, there is a balance between bringing the identified harm to an end without unnecessary delay, and the interest of the appellant. I consider that 9 months is sufficient to enable the works to be carried out. Should there be some cause for delay in this process, under s173A(1)(b) of the Act it is open to the Council to relax a requirement of the notice, and in particular they may extend the compliance period. For the reasons set out above, the appeal on ground (g) fails.

N Thomas

INSPECTOR