
Appeal Decision

Site visit made on 21 January 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th February 2020

Appeal Ref: APP/T3725/D/18/3217513

West Hill, Westhill Road, Cubbington, CV32 6RA

- 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 Gavin Raeburn against the decision of Warwick District Council.
 - The application Ref W/18/1550, dated 10 August 2018, was refused by notice dated 10 October 2018.
 - The development proposed is the erection of a garage.
 - This decision supersedes that issued on 18 April 2019. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are as follows:
 - Whether the development would be inappropriate development in the Green Belt;
 - The effect of the development on the openness of the Green Belt; 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 necessary to justify the development.

Reasons

Inappropriateness

3. The appeal site is located within the Green Belt. Policy DS18 of the Warwick District Local Plan (LP) 2017 states that the Council will apply national planning policy to proposals within the Green Belt.
4. The National Planning Policy Framework (the Framework) states that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances. Paragraph 145 of the Framework states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. One exception to this is the extension or alteration of a building provided it does not result in disproportionate additions over and above the size of the original building.

However, this exception, or any others listed in paragraphs 145 and 146 of the Framework, does not refer to outbuildings within the curtilage of the dwelling as being not inappropriate development.

5. The crux of the matter is whether or not the proposed garage would be considered to be an extension or alteration to a building. I do not consider that this should be assessed on simply whether or not the proposed building would be physically detached from the dwelling.
6. The proposed garage would be located to the front of the dwelling, on what is currently a tennis court. Whilst the use of the garage would be ancillary to the dwelling, it would be some distance from it, positioned on the opposite side of the driveway/turning area, which would act as a physical barrier between the two buildings. As such, although located within its curtilage, given its distance from the dwelling and its separation by the driveway/turning area, the garage would clearly be read as a detached building, separate from the dwelling. Therefore, it would amount to the erection of a new building rather than an extension or alteration of an existing building.
7. I have had regard to the two appeal decisions referred to me by the appellant¹. However, the details of the two developments are not before me, in particular the distance between the proposals and their host dwellings. Therefore, I cannot be certain that there are direct similarities with the proposal before me.
8. I acknowledge the appellant's argument that the proposed siting of the garage would be logical in terms of the layout of the overall site. However, whether or not it would be a logical site for a garage has no bearing on whether or not it would be inappropriate development in the Green Belt.
9. The garage would result in only a relatively small increase in the overall floor area of the original dwelling. However, as I have found that it would be a building and not an extension or alteration to a building, the question of whether or not it would be a disproportionate addition is not relevant.
10. As I have found that the proposal would constitute the erection of a building and not the extension or alteration of a building, it would fail to accord with the exceptions set out in paragraphs 145 and 146 of the Framework, and by consequence Policy DS18 of the LP. I conclude therefore that it would be inappropriate development, which, by its very definition, is harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

11. Paragraph 133 of the Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness has both a visual and spatial dimension and the absence of visual intrusion does not, in itself, mean that there is no impact on the openness of the Green Belt.
12. The existing tennis court comprises a surfaced area enclosed by high, chain link fencing. The visual permeability afforded by the fence and the lack of any other built form above the surfaced area results in the tennis court having very little effect on the openness of the Green Belt.

¹ Appeal Ref APP/Y3615/D/16/3148621 and APP/Y3615/D/15/3128756

13. The proposed garage building would accommodate four cars within it and a further four cars in the walled forecourt to the front. There would also be a gardener's storeroom to the rear of the building.
14. The proposal would be surrounded by existing landscaping, including hedging and trees, that would screen it from public views and from within much of the site. Overall, I find that the development would not represent an unacceptable visual intrusion.
15. However, despite my finding that no visual harm arises from the development, I find that the erosion of three-dimensional space arising from the overall size of the building would in itself result in an erosion of openness. The solid construction of the building would result in it having a significantly greater bulk than the tennis court and consequently it would reduce the openness of the Green Belt.
16. Overall, whilst it would not represent a visual intrusion, it would diminish the openness of the Green Belt. I attribute moderate weight to the effect it would have on openness. I conclude therefore that the development would unacceptably harm the openness of the Green Belt, contrary to Policy DS18 of the LP and the Framework.
17. As the building would be sited on an existing hardstanding that is evidently associated with the tennis court, it would not conflict with the purposes of the Green Belt, which includes safeguarding the countryside from encroachment. As such, in this respect, it would accord with paragraph 134 of the Framework.

Other Considerations

18. Paragraph 144 of the Framework states 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, and any other harm, is clearly outweighed by other considerations. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from inappropriate development in the Green Belt and the erosion of openness so as to provide the very special circumstances required to justify a grant of planning permission.
19. There is an extant certificate of lawful development² (CLD) for a garage building to be erected to the rear of the dwelling. This garage would be larger than the current proposed garage and would be sited on what is currently an undeveloped part of the garden of the dwelling. Therefore, it would have a greater impact on the openness of the Green Belt than the proposed garage, which the Council allude to in its Planning Committee Report.
20. The Council asserts that significant weight should not be afforded to alternatives which could be built under permitted development rights. However, the consideration of a fall-back position, including extant planning permissions and what could be erected under permitted development rights, is a well-established principle. In this instance, the appellant has made the effort of applying for a CLD and a planning application, followed by the lodging of this subsequent appeal, for a garage. Therefore, it is evidently clear that the appellant wishes to erect a garage. Were I minded to dismiss this appeal, I am

² LPA Ref W/18/0959

satisfied that there is a reasonable likelihood that the CLD would be implemented and therefore attribute it significant weight as a fallback position.

21. Notwithstanding the prospect of the above fallback position, were I minded to allow the appeal, there is the possibility that the CLD garage could be constructed and then the approved garage constructed afterwards. The two garages would be on separate parts of the site and the construction of one would not prohibit the construction of the other. The construction of the two garages would have an even greater overall impact on the Green Belt.
22. In the event that I allow the appeal, to prevent the two garages being constructed, the appellant has suggested a condition that would remove permitted development rights pertaining to outbuildings. However, this would be attached to the planning permission and would only come into effect once that permission had been implemented. It would not prevent the construction of the CLD garage before the implementation of the planning permission. Therefore, such a condition would be ineffective. I acknowledge the appellant's contention that he does not wish to construct two garages and his preference is for the current proposal. However, as there is nothing to prevent him from constructing them both, it remains a reasonably realistic proposition.
23. I recognise that the CLD garage would have greater harm on the Green Belt than the appeal proposal and represents a realistic fallback position. However, in the absence of any mechanism before me that would prevent the construction of the CLD garage and the garage that is the subject of this appeal, I conclude that allowing this appeal could have even greater harm on the openness of the Green Belt than the fallback position, as I have identified above.

Summary

24. The appeal scheme has harmful implications for the Green Belt in terms of inappropriate development and the erosion of the openness of the Green Belt. In accordance with national policy, such harm carries substantial weight. The extant CLD represents a realistic proposition that would have greater harm on the Green Belt. However, the construction of the two garages, which, based on the evidence before me could not be prevented, would have even greater harm.
25. Therefore, I am not satisfied that the fallback position amounts to the very special circumstances necessary to outweigh the significant harm the proposal would have to the Green Belt. As such, the appeal proposal would fail to accord with Policy DS18 of the LP and paragraph 144 of the Framework.

Conclusion

26. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR