



Appeal Decision

Site visit made on 18 September 2019

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2020

Appeal Ref: APP/B5480/W/19/3231749

Four Oaks, The Chase, Upminster RM14 3YB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr Aemonn Dunlea against the decision of the London Borough of Havering.
 - The application Ref P1176.18, dated 29 July 2018, was refused by notice dated 19 December 2018.
 - The development proposed is the demolition of existing dwelling to be replaced with 1. No. new dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwelling and its replacement by a new dwelling at Four Oaks, The Chase, Upminster RM14 3YB in accordance with the terms of the application Ref P1176.18, dated 29 July 2018, subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for costs was made by Mr Aemonn Dunlea against the London Borough of Havering in connection with this appeal. This application is the subject of a separate Decision.

Preliminary Matter

3. An appeal against refusal of an earlier planning application seeking permission planning permission for demolition of Four Oaks and its replacement by a 2-storey, 5 bedroomed dwelling on the same site was dismissed in 2018 (APP/B5480/W/18/3207976).

Main Issues

4. The main issues are:
 - Whether or not the proposal would be inappropriate development in 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 development.

Reasons

Whether inappropriate development in the Green Belt

5. The Framework states that new buildings are inappropriate within the Green Belt unless they comprise one of the exceptions set out in paragraph 145. These include exception d) that allows the replacement of a building, provided the new building is in the same use and is not materially larger than the one it replaces.
6. The proposed development comprises the demolition of the existing 2-storey, four bedroomed, detached dwelling with integral garage space, and its replacement by a 2-storey, four-bedroomed, detached house with integral garage space. The new dwelling would have a very similar aspect towards The Chase as the existing building. However, it would be positioned a few metres further south, away from the boundary with the neighbouring Old Rectory to the north.
7. In terms of size one can measure a building by reference to footprint, floorspace and volume. According to the appellant the proposed development would be 23.7 metres wide, 11.4 metres deep (maximum) and 9.7 metres high. Its footprint would measure 209.7 square metres which would be an increase of 17.6% over that of the existing dwelling.
8. Again, according to the appellant, the floorspace of the development proposal would be around 25% larger than the existing one, and around 35% larger than the 'original' building. From the evidence presented to me it is not clear as to what the basis of the discrepancy is between the size of the existing and the original building. However, I note a reference to a remeasurement of the building undertaken by the Council in November 2018. This discrepancy feeds through to the volumetric measure, with the overall increase from the existing and original building being, according to the appellant, around 33% and 52% respectively.
9. The Council contends that the proposed scheme is little different from that which was refused on appeal in 2018 (APP/B5480/W/18/3207976) and, therefore, that decision is an important material consideration in the determination of this appeal. According to the appellant, the scheme subject to the previous appeal measured 1606 cubic metres in volume against the current proposal which measures 1391 cubic metres. Consequently, I do not attach great weight to the earlier appeal decision since it related to a scheme that was materially larger than the proposal subject to this appeal.
10. I consider that the determination of what is materially larger is a matter of fact and degree. I was directed to the summaries and abstracts from several judicial authorities as to what constitutes 'materially larger'. In the absence of the full judgments, however, I am unwilling to draw any conclusions from them. I consider that in determining whether a building is materially larger one must have regard to the footprint, the floorspace and / or the volume of the structure.
11. The Council contends that the yardstick against which the proposal for an extension of a building in the Green Belt is measured is different to that which applies to a replacement building in the Green Belt. For an extension the

Framework at paragraph 145c) advises that the resultant building should not be disproportionate over and above the size of the original building.

12. I do not consider that there is any real substantive difference between the need to ensure that an extended building is not disproportionately larger than the original building from the need to ensure that any replacement building is not materially larger than the original of the one to be demolished. The terms 'not disproportionately larger' and 'not materially larger' are interchangeable.
13. In correspondence with the appellant in October 2018 the Council stated that a building up to 55% larger than the original volumetric capacity would comply with policy DC45 of its Core Strategy and Development Control Policies Development Plan Document 2008 (CS). However, this was subject to the qualification concerning the distribution of the additional space. A relatively small increase in size over the original might appear as a significant addition when viewed from certain perspectives.
14. At the previous appeal the Inspector opined that the reference to volumetric measures in DC45 of the CS is not compliant with the later adopted Framework and thus the 50% figure specified in that development plan policy no longer has any relevance. As I have said, I take a different view and consider that the term 'materially larger' is intrinsically connected with 3-dimensional, as well as 2-dimensional, size. Furthermore, the advice within the Framework does not prohibit a Council from specifying a threshold in a development plan policy.
15. According to the appellant, a large part of the volumetric increase would be accounted for by the increased height of the proposed roof. The appellant contends that the existing roof profile is unusually low. From inspection of the drawings I would not agree with this. Nevertheless, the proposed roof would only be marginally higher than the new roof of the approved extension scheme.
16. Based upon my inspection of the drawings showing the comparison between the original and the proposed scheme, my visit to the site and my examination of the Council's development plan policy, I find that the proposal would not appear to be materially larger than the original dwelling. I arrive at this view when considering the proposal from both a 2-dimensional and a 3-dimensional perspective. Consequently, I conclude that the development would not be inappropriate development in the Green Belt.
17. The proposal is therefore consistent with the advice set out in the Framework that development that is not inappropriate development in the Green Belt should be supported. Consequently, it also accords with Policy 7.16 of the London Plan 2016 which seeks to support appropriate development in the Green Belt which also helps to secure other relevant objectives set out in the Framework. Finally, it also accords with Policy DC45 of the CS which allows replacement buildings in the Green Belt that are not more than 50% greater than the volumetric capacity of the original building. For the reason set out earlier, I still consider this policy to be relevant to the determination of this appeal.
18. I have found that the appeal proposal does not constitute inappropriate development within the Green Belt. It follows that it would not be harmful to the openness of the Green Belt or to the purposes of including land within it. There is, therefore, no requirement to show that the proposal constitutes a very special circumstance to justify development.

Other Matters

19. I note that, contrary to the statement made by the appellant, the Council states that it has received an objection to the proposal. However, the only comment from a third party that I have seen is supportive of the scheme.
20. The appellant referred to a planning permission granted in March 2012 for the demolition of the existing dwelling and its replacement by a 2-storey house with a triple garage (ref P1139.11). This has now lapsed, and I have not had regard to it in determining this appeal.

Conclusion and Conditions

21. For the above reasons, I conclude that the appeal should be allowed subject to the conditions attached in the Schedule of Conditions. In addition to the standard time limit I have imposed conditions requiring that the development be implemented in accordance with the submitted and approved plans, including those for cycle storage and vehicle access, for the avoidance of doubt and in the interests of certainty.
22. I have also required that the appellant secure permission from the Council for the materials to be used to ensure that the development is in harmony with its surroundings. In order to ensure that adequate car parking is available for the development it is necessary to impose a condition requiring car parking spaces to be laid and then kept unobstructed and permanently available for the parking of vehicles.
23. To protect the living conditions of neighbours, I have attached conditions relating to the construction method, the hours of construction and the cleansing of vehicles engaged in the construction process. I have attached conditions requiring the appellant to submit to, and have approved by, the Council plans for landscaping and boundary treatment in the interests of the character and appearance of the neighbourhood. However, I have decided that there is no need for a condition requiring the preparation of a contamination assessment prior to construction since I have seen no evidence to support its inclusion. I have attached a condition requiring the provision of a pedestrian visibility splay to minimise the risk of accidents and injuries to pedestrians.
24. Exceptionally, and to protect the privacy of neighbours, I have attached a condition withdrawing permitted development rights for the installation of any flank windows. Finally, I have attached a condition requiring adherence to implementation of the Building Regulations in relation to water efficiency in the interests of environmental sustainability.

William Walton

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development to which this permission relates must be commenced not later than three years from the date of this permission.
2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the following approved plans: K1054-PL-001 Rev A; K1054-PL-027 Rev B; K1054-PL-020 Rev A; K1054-PL-021 Rev A; K1054-PL-022 Rev A; K1054-PL-023 Rev A; K1054-PL-003 Rev A; K1054-PL-010 Rev A; K1054-PL-012 Rev A; K1054-PL-011 Rev A; K1054-PL-002 Rev B; K1054-PL-004 Rev B; K1054-PL-006 Rev B; K1054-PL-013 Rev B; K1054-PL-014 Rev B; K1054-PL-015 Rev B; K1054-PL-024 Rev B; K1054-PL-025 Rev B; K1054-PL-026 Rev B; and K1054-PL-005 Rev A.
3. No works shall take place in relation to any of the development hereby approved until samples of all materials to be used in the external construction of the building(s) are submitted to and approved in writing by the Local Planning Authority and thereafter the development shall be constructed with the approved materials.
4. Before the dwellings hereby permitted are first occupied the car parking provision as indicated in drawing no.' K1017-PL-004 Rev B' shall be laid out and implemented to the full satisfaction of the Local Planning Authority and thereafter this car parking provision shall remain unobstructed and permanently available for use, unless otherwise agreed in writing by the Local Planning Authority.
5. Before development is commenced, a scheme shall be submitted to and approved in writing by the Local Planning Authority making provision for a Construction Method Statement to control the adverse impact of the development on the amenity of the public and nearby occupiers. The Construction Method statement shall include details of: a. parking of vehicles of site personnel and visitors; b. storage of plant and materials; c. dust management controls; d. measures for minimising the impact of noise and, if appropriate, vibration arising from construction activities; e. predicted noise and, if appropriate, vibration levels for construction using methodologies and at points agreed with the Local Planning Authority; f. scheme for monitoring noise and if appropriate, vibration levels using methodologies and at points agreed with the Local Planning Authorities; g. siting and design of temporary buildings; h. scheme for security fencing/hoardings, depicting a readily visible 24-hour contact number for queries or emergencies; i. details of disposal of waste arising from the construction programme, including final disposal points. The burning of waste on the site at any time is specifically precluded. And the development shall be carried out in accordance with the approved scheme and statement.
6. All building operations in connection with the construction of external walls, roof, and foundations; site excavation or other external site works; works involving the use of plant or machinery; the erection of scaffolding; the delivery of materials; the removal of materials and spoil from the site, and the playing of amplified music shall only take place between the hours of 8.00am and 6.00pm Monday to Friday, and between 8.00am and 1.00pm on Saturdays and not at all on Sundays and Bank Holidays/Public Holidays.

7. The dwellings hereby permitted shall not be occupied until refuse and recycling facilities are provided in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. The refuse and recycling facilities shall be permanently retained thereafter.
8. The dwellings hereby permitted shall not be occupied until cycle storage is provided in accordance with details previously submitted to and approved in writing by the Local Planning Authority. The cycle storage shall be permanently retained thereafter.
9. Before the development hereby permitted is first commenced, vehicle cleansing facilities to prevent mud being deposited onto the public highway during construction works shall be provided on site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be retained thereafter and used at relevant entrances to the site throughout the duration of construction works. If mud or other debris originating from the site is deposited in the public highway, all on-site operations shall cease until it has been removed. The submission will provide;
a. A plan showing where vehicles will be parked within the site to be inspected for mud and debris and cleaned if required. The plan should show where construction traffic will access and exit the site from the public highway.
b. A description of how the parking area will be surfaced, drained and cleaned to prevent mud, debris and muddy water being tracked onto the public highway;
c. A description of how vehicles will be checked before leaving the site - this applies to the vehicle wheels, the underside of vehicles, mud flaps and wheel arches.
d. A description of how vehicles will be cleaned.
e. A description of how dirty/ muddy water be dealt with after being washing off the vehicles.
f. A description of any contingency plan to be used in the event of a break-down of the wheel washing arrangements.
10. No part of the development hereby approved shall be occupied until access to the highway has been completed in accordance with the details that have been previously submitted to and approved in writing by the Local Planning Authority.
11. The proposals should provide a 2.1 by 2.1 metre pedestrian visibility splay on either side of the proposed access, set back to the boundary of the public footway. There should be no obstruction or object higher than 0.6 metres within the visibility splay.
12. No works shall take place in relation to any of the development hereby approved until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and shrubs on the site, and details of any to be retained, together with measures for the protection in the course of development. All planting, seeding or turfing comprised within the scheme shall be carried out in the first planting season following completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local Planning Authority.

13. Prior to the commencement of the development hereby approved, details of all proposed walls, fences and boundary treatment shall be submitted to, and approved in writing by, the Local Planning Authority. The boundary development shall then be carried out in accordance with the approved details and retained permanently thereafter to the satisfaction of the Local Planning Authority.
14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order), no window or other opening (other than those shown on the submitted and approved plans), shall be formed in the flank wall of the building(s) hereby permitted, unless specific permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.
15. The dwelling hereby approved shall comply with Regulation 36 (2)(b) and Part G2 of the Building Regulations - Water Efficiency.

