



Appeal Decisions

Site visit made on 14 July 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal A: APP/P1940/X/19/3241153

**The Annex, Green Hedges, Templepan Lane, Chandlers Cross,
Rickmansworth WD3 4NH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Steve Brownsell against the decision of Three Rivers District Council.
 - The application Ref: 19/0284/CLPD, dated 5 February 2019, was refused by notice dated 5 April 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a rear extension and enlargement of existing roof dormer window.
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Appeal B: APP/P1940/D/19/3241180

**The Annex, Green Hedges, Templepan Lane, Chandlers Cross,
Rickmansworth WD3 4NH**

- 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 and Mrs Steve Brownsell against the decision of Three Rivers District Council.
 - The application Ref: 19/0825/FUL, dated 5 February 2019, was refused by notice dated 5 July 2019.
 - The development proposed is a rear extension and enlargement of existing roof dormer window.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal A

Main issue

3. The main issue in this case is whether the Council's decision to refuse to grant a lawful development certificate for a rear extension and enlargement of existing roof dormer window was well founded.

Reasons

4. Green Hedges is a detached dwellinghouse at the end of Templepan Lane. The Annex is a detached building that was once a garage for Green Hedges and which has been converted into ancillary accommodation.
5. The layout of the Annex comprises a ground floor with an open plan living, kitchen and dining area with a partly separated space at one end. There is a lobby area, leading out to a covered external area. A spiral staircase leads to the first floor where there is a bedroom and an en-suite shower room. French doors lead onto the flat roofed area and then another spiral staircase (external) allows access to the ground level. The submitted existing plans do not show the external spiral staircase or the lean-to single storey element, which I understand is not accessible from the internal annex space. There is a raised patio area to the rear of the Annex, albeit that the submitted proposed plans do not show the change in levels to the rear of the building or the raised patio. The landscaped garden area and parking/access are available to both the occupants of Green Hedges and the Annex.

Assessment under Class E of the GPDO.

6. The Council have assessed the proposal under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
7. The proposal is for a single storey flat roofed extension to the rear of the building, partly over the existing patio, to provide a child's bedroom and an enlarged dormer window within the roof.
8. Planning permission was granted for the use of the garage as an annex in 2014 and that permission (reference 14/1036/FUL) is subject to the following condition:

"The converted garage and extension hereby permitted shall not be occupied or used at any time other than incidental to the enjoyment of, and ancillary to, the residential dwelling located on the site and the building shall not be used as an independent dwelling at any time."
9. The appellant considers that this condition supports the view that it would be correct to apply Class E permitted development rights to the building as its incidental use is confirmed by the condition. Or in the alternative this condition serves no useful planning purpose. While I note the appellant's alternative contention that the condition serves no useful purpose the necessity of the condition or whether there is any existing breach of that condition is not before me in this appeal.
10. The Annex is within the curtilage and is accepted as being within the same planning unit of the principal dwelling of Green Hedges. There are no limitations or restrictions that I have been made aware of on Green Hedges. As such, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) rights for development within the curtilage of a dwellinghouse, that being Green Hedges, are available.
11. Class E of Part 1 of Schedule 2 requires that a building should be built for purposes incidental to the enjoyment of the house. For the purposes of the

GPDO a building is defined as including any structure or erection¹ and includes any part of a building. Thus, an extension, improvement or other alteration to the Annex would be a part of a building and its purpose would need to be for purposes incidental to the enjoyment of the house known as Green Hedges, for development to be permitted development under this class.

12. The Government has produced a document entitled Permitted development rights for house holders Technical Guidance (September 2019) (the Guidance). The Guidance states that a purpose incidental to a house would not cover normal residential uses such as separate self contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom. The rear extension in Appeal A is to be used as a bedroom and the Annex is currently self-contained accommodation. As such, the proposed development cannot benefit from permission granted under Class E.
13. Notwithstanding my conclusions in relation to whether the proposal would be incidental to the dwelling known as Green Hedges, it would also be contrary to other limitations within Class E of Part 1 of Schedule 2 the GPDO. In particular, limitation E.1.(e)(i) excludes development where the height of the building would have a dual pitched roof in excess of 4 m. The Annex has a dual pitched roof and its height is stated to be 5m. Therefore the height of the building which is proposed to be extended is over 4m in height and thus, even if the Annex were to be considered an incidental building, the development would require planning permission as it would fail to comply with limitation E.1.(e)(i).

Other Matters

14. An LDC application must relate to a specific existing or proposed use, operation or activity. In an application under section 192 of the Act there is no power to modify the terms of the application. The description of development in the application form is stated to be a rear extension and enlargement of existing roof dormer window. Therefore, whether or not the Annex amounts to a lawful dwellinghouse for the purposes of the GPDO is not before me in this appeal. The Annex has not been certified as a lawful dwellinghouse and the appeal does not seek to establish this.
15. In the alternative, the appellant suggests that the converted garage is a dwelling and so Class A of Part 1 of the GPDO applies. However, the application for a certificate is not to certify the lawful use of the annex and so, whether or not the annex amounts to a dwellinghouse for the purposes of Class A is not for me to determine as part of this appeal. To do so, would expand the scope of the application; in an application under s192 there is no power to modify the terms of the application.
16. In any event, Part 1 of Schedule 2 only applies to development within the curtilage of a dwellinghouse. The relevant planning permission requires the use of the annex building to remain ancillary to the use of the dwellinghouse. No certificate of lawfulness has been evidenced to suggest that occupation of the building without compliance with this condition is

¹ The full text in section 2 (1) of the GPDO is
"building"—

(a) includes any structure or erection and, except in Class F of Part 2, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16 and Class T of Part 19, of Schedule 2, includes any part of a building; and
(b) does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure".

lawful. Furthermore, there is no evidence to suggest it enjoys a separate curtilage. Accordingly, the appellant has failed to demonstrate, on the balance of probability, that Class A applies.

17. I have had regard to the appeal decision (reference APP/Z0116/C/18/3207388) provided by the appellant. Unlike that appeal, I am not being asked to certify that the conversion of the existing garage to provide self-contained accommodation was not development. I acknowledge that the Inspector in that case appears to conclude that Class A could apply to an ancillary building, having found it contains all the facilities for day to day living. For the reasons set out above and on the basis of the evidence before me, I disagree.

Conclusions on Appeal A

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a rear extension and enlargement of existing roof dormer window was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

Main Issues

19. The main issues in this case are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the development plan;
- The effect of the development on character and appearance of the area; and
- Whether any harm by way of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether there exist very special circumstances that justify the development.

Planning Policy

20. The development plan includes the Core Strategy (CS) (adopted October 2011) and Three Rivers Development Management Policies (adopted July 2013) (DM). The most relevant policies are CS Policy CP11 and DM Policies DM1 and DM2 and Appendix 2 of the DM.
21. CS Policy CP11 sets out a general presumption against inappropriate development that would not preserve the openness of it or would conflict with the purpose of including land within it. DM Policy DM2 resists extensions to buildings in the Green Belt that are disproportionate in size (individually or cumulatively) to the original building.
22. DM Policy DM1 requires residential development to satisfy design criteria in Appendix 2 to maintain, protect and enhance the quality of the built environment.
23. The National Planning Policy Framework (the Framework) regards the extension or alteration of a building as not inappropriate only where it does not result in disproportionate additions over and above the size of the original building. The Framework states that inappropriate development in the Green Belt is by

definition harmful and should not be approved except in very special circumstances.

Reasons

24. A garage was granted planning permission in 1988 subject to it being used for the accommodation of private motor vehicles of the occupier of Green Hedges and only for purposes incidental to the enjoyment of the dwelling. The Framework defines original building as a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally. I therefore consider the 1988 garage structure is the original building.
25. In 2014 planning permission (reference 14/1036/FUL) was granted for use of the building as an annex and a single storey side infill extension and was subject to the condition on use set out earlier in this decision.
26. The original footprint of the garage is stated to be 42 m² and the internal floorspace 36 m². The height of the original garage is stated to be 5 m. The proposal would result in the footprint of the building increasing to 100 m² and the internal ground floorspace increasing to 70 m². The proposal would therefore result in cumulatively disproportionate extensions to the original building. This would not fall within the range of development that is not inappropriate set out in the Framework.
27. I therefore find the proposals would be inappropriate development in the Green Belt. Paragraph 143 of the Framework records that this is, by definition harmful and should not be approved except in very special circumstances. Thus, the development would be contrary to CS Policy CP11 and DM Policy DM2 and the Framework.

Character and Appearance

28. The proposed extension would be single storey, flat roofed and to the rear of the building. Due to its limited scale and depth it would have a negligible effect on the character and appearance of the building or the area. It would comply with the design criteria in DM Appendix 2 on single storey extensions.
29. The proposed dormer would extend almost the full width of the roof slope occupying a large proportion of the roof. Due to the scale and dominance of the dormer it would fail to be either proportionate within the roof area or subordinate to the roof. As such it would be contrary to the design guidance in DM Appendix 2. It would fail to maintain, protect or enhance the quality of the built environment and would thus harm the character and appearance of the area and thus be contrary to DM Policy DM1.

Other considerations

30. The appellants have stated that the proposed rear extension is required to provide a bedroom for their child. The dormer enlargement would allow wardrobes to be installed in the first floor bedroom. This would enable the appellants to have sufficient accommodation for their family and thus to support the occupier of Green Hedges to remain independent. I appreciate that provision of more habitable space for the appellants and their child would enable the current situation of support and care to be continued for the occupier of Green Hedges. I also accept that the proposals are not extensive

development. However, the personal circumstances of the appellants would provide only limited support for the development.

Conclusions on Appeal B

31. The proposal is inappropriate development which is by definition harmful to the Green Belt. The Framework states that inappropriate development should not be approved except in very special circumstances. I have also found harm to the character and appearance of the area due to the size and scale of the dormer window. In contrast the other considerations do not outweigh the harm I have identified. I therefore conclude that there are no considerations sufficient to outweigh the harm to the Green Belt. There are therefore no very special circumstances to justify the development which conflicts with CS Policy CP11, DM Policies DM1 and DM2 and the Framework.
32. For the reasons given above I conclude that Appeal B should be dismissed.

Hilda Higenbottam

Inspector