



Appeal Decision

Site visit made on 6 October 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2020

Appeal Ref: APP/N5090/C/20/3254271

Land at Scratchwood Open Space, Barnet Way, London

- 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 Uhmer Ahmed against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 12 May 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding and associated fixtures and fittings outside.
- The requirements of the notice are:
 - 1) Demolish the outbuilding and all associated fixtures and fittings outside.
 - 2) Permanently remove all constituent material resulting from the works in 1 above from the property.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

The appeal on ground (a) and the deemed planning application

1. The main issues are:

- whether the development constitutes inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- if the development is inappropriate, would the harm by reason of inappropriateness and any other harm be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development

2. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Policy CS7 of the Core Strategy¹ sets out that the Council will protect open spaces, including Green Belt and Metropolitan Open Land and Policy 7.16 of the London Plan (2016) states that the strongest protection should be given to London's Green Belt, in accordance with national guidance. These policies are consistent with the Framework which states that inappropriate development is, by definition,

¹ Barnet's Local Plan (Core Strategy) Development Plan Document September 2012

- harmful to the Green Belt and should not be approved except in very special circumstances.
3. Policy DM15 of the DMP² states that in respect of the Green Belt, development proposals are required to comply with the Framework, albeit the referenced paragraphs have been superseded. Criterion iv of the policy states that extensions to buildings in the Green Belt or MOL will only be acceptable where they do not result in a disproportionate addition over and above the size of the original building or an over intensification of the use of the site. There is no reference in the Framework to intensification. Consequently, whilst this policy shares some elements of Green Belt policy with the Framework, the criteria within it are not entirely consistent with national policy as set out in paragraphs 145 to 146 of the Framework. Therefore, I attach only moderate weight to this policy in decision making terms.
 4. Paragraph 145 of the Framework indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt except in a number of clearly defined circumstances which includes, relevant to this case, 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.
 5. Whilst I note the Council's views, I observed at my site visit that the outbuilding is physically attached to the existing building and as such can be considered an extension.
 6. Neither the development plan nor the Framework provide any detailed guidance on how to determine whether an extension is 'disproportionate'. This is, therefore, ultimately a matter for the decision maker, with much being dependent upon circumstance. A conclusion cannot be derived purely from a function of arithmetic, or from consideration of a single factor. In my view, whether the development is a disproportionate addition is primarily a matter of the increase in floor area, scale and bulk.
 7. The appellant contends that the outbuilding represents a 35% increase in floor area, which to my mind is a reasonably significant increase, comprising an addition of over a third of the existing floor area of the premises, the extent of which is evident in the Google aerial image (June 2019) submitted by the Council. Although the scale is not necessarily excessive, combined with its flat roof form and height relative to the existing building, the outbuilding appears prominent and bulky.
 8. On balance, taking these factors into account, I conclude that the outbuilding constitutes a disproportionate addition over and above the size of the original building. Consequently, the outbuilding does not accord with the exception in paragraph 145 (c) of the Framework and constitutes inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt.

Other considerations

9. The appellant stated that the outbuilding provides much needed seating and is critical to allow the business to remain economically sustainable. Whilst undoubtedly the availability of additional space will aid the business in the current exceptional circumstances associated with the COVID-19 pandemic,

² Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012

given the need for social distancing, the outbuilding was erected before the pandemic and there is no substantive evidence about the economic benefits to the business at that time. In my view, it would not be reasonable to attribute significant weight to the economic benefits in the context of the current pandemic, given that there is no certainty about how long the associated restrictions will be required. In any event, there is no substantive evidence in this respect. For these reasons, the economic benefits can only be afforded modest weight.

10. The appellant contends that the outbuilding appears as a sensitive addition and is of a high standard of design, that it is well screened by tree cover and not readily visible from public vantage points. However, I observed that whilst wider views from outside the site are limited, given its location adjacent to an area of public open space, the outbuilding is clearly visible in public views.
11. In any case, the design merits of the development have no bearing on the assessment about whether the development constitutes inappropriate development. Consequently, whilst the Council have not identified specific harm in respect of the design, this is a neutral matter which cannot therefore weigh in favour of the development.
12. The lack of objections is a neutral matter which cannot weigh in favour of the development.

Green Belt Balance

13. Paragraph 143 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on at paragraph 144 to indicate that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
14. I have found harm to the Green Belt by way of inappropriateness and conflict with local and national policy. Having considered matters raised in support, I conclude that they do not clearly outweigh the harm that I have identified in relation to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, the development conflicts with the Green Belt protection aims of Policy CS7 of the Core Strategy, Policy 7.16 of the London Plan, Policy DM15 of the DMP and the Framework.
15. Given the harm to the Green Belt and conflict with local and national policy, the development cannot therefore be considered sustainable development for which the Framework or Policy CSNPPF of the Core Strategy presumes in favour.
16. For the above reasons and with regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (g)

17. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that the three months given in the notice is too short and suggested that 12 months would be a more

reasonable period having regard to the circumstances associated with the COVID-19 pandemic.

18. The purpose of the time period within the enforcement notice is to allow for the physical works associated with the notice to be removed. However, in cases involving business uses it is necessary to weigh the interests of the business, its employees and customers against the harm caused by the activities the subject of the notice.
19. The development enforced against causes harm by way of inappropriateness and such harm should not be permitted to go on for any longer than absolutely necessary.
20. Nevertheless, the additional space which the outbuilding provides will undoubtedly be useful to the business at this time, given the social distancing requirements associated with the pandemic.
21. Whilst there is no certainty about how long such distancing measures will be required, I am satisfied that having regard to these circumstances that even if account is taken of the need to remedy the harm, the requirement to undertake the works within three months would place a disproportionate burden on the appellant. However, there is no substantive evidence to support the appellant's request that the period for complying with the notice is extended to 12 months.
22. Taking this and all other matters into account I conclude that the period for compliance should be extended to five months. A period of five months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the appellant and their business. To this extent, the appeal on ground (g) succeeds.

Formal Decision

23. It is directed that the enforcement notice is varied by the deletion of three months and the substitution of five months as the period for compliance. Subject to this variation 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.

Felicity Thompson

INSPECTOR