



Appeal Decision

Site visit made on 19 November 2020

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2020

Appeal Ref: APP/K3605/D/20/3255170

7 The Island, Hatha, Wey Meadows, Weybridge, KT13 8GJ

- 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 Ms A Aldridge against the decision of Elmbridge Borough Council.
 - The application Ref 2020/0459 dated 19 February 2020, was refused by notice dated 17 April 2020.
 - The development proposed is retrospective application for single-storey side extension, raised decking and 1.8m high fence.
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Decision

1. The appeal is allowed, and planning permission is granted for a single-storey side extension, raised decking and 1.8m high fence at 7 The Island, Hatha, Wey Meadows, Weybridge, KT13 8GJ in accordance with the terms of the application ref: 2020/0459, dated 19 February 2020, subject to the following conditions:
 - 1) The development hereby approved shall be carried out in accordance with the following approved plans: 2020-01-410-004 (proposed fence elevation, ground floor and block plan) and 2020-01-410-003 (proposed elevations, roof and site plan).
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no further extension or enlargement shall be erected on the site under or in accordance with Schedule 2, Part 1, Class A to that Order.

Procedural Matters

2. I have utilised the Council's description of the proposal as it is more concise than that on the original application form.
3. The appellant has submitted a Flood Risk Assessment with this appeal. Given that the Council have had an opportunity to respond to this I have, on this occasion, taken the information into account as I do not find any party is prejudiced by its acceptance.

Main Issues

4. The main issues are:
 - i) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2019 (the Framework) and relevant development plan policies. In this respect the issue is

whether the fencing would be inappropriate development; ii) The effect on the openness of the Green Belt; iii) If the proposal would be inappropriate development, whether the 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 necessary to justify it and; iv) The impact of the proposal upon flood risk.

Reasons

Whether the proposal is inappropriate development in the Green Belt

5. The extension itself is not considered to be inappropriate development by the Council. I find no reason to conclude differently. The reason for refusal, relating to the Green Belt, relates solely to the fencing. The Framework is clear that construction of new buildings in the Green Belt should be regarded as inappropriate. Exceptions to this are listed within paragraphs 145 and 146 of the Framework. Fences are regarded as buildings for the purposes of the Framework – they stand within the definition of a structure or erection within S336 of the Town and Country Planning Act 1990.
6. The proposal would not fall under any of these exceptions. The proposal would be inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. The proposal would be contrary to Elmbridge Development Management Plan 2015 Policy DM17 which seeks to uphold the fundamental aims of the Green Belt and prevent inappropriate development unless the applicant can demonstrate very special circumstances. This is consistent with the objectives of the Framework. Policy DM18 is concerned with development of existing buildings which I do not find to be of direct relevance to the fence which forms the basis for the second reason for refusal.

The effect on the openness of the Green Belt

8. Whilst the fencing is visible within the street scene of The Island itself I noted that many of the properties benefit from a range of structures and additions. The front boundary treatments are also varied, even if simply contained by vegetation. The Council do not, I find, fully justify their conclusion that the fencing would have spatial and visual impact referring only to its siting and height. Openness can be assessed as having both visual and spatial impact. There are no open views beyond or through the appeal site. The dwelling and extension stand visually above the proposed fencing with an established vegetation background. I find, given the site context and relatively enclosed feel, that there is a lack of visual intrusion beyond the immediate boundary of the appeal site.
9. There would of course be some spatial impact as a result of the fencing but change does not necessarily result in impact on openness of the Green Belt. In considering the impact or harm wrought by the change, given the site context described, I find that the impact upon openness would be very limited given the scale, locational context and general development in the immediate area.

Other Considerations

10. The Council's submissions do not dispute that the appeal site, as it stands, benefits from permitted development rights but instead contend that the

fencing is adjacent to a highway and thus exceeds that allowed under permitted development. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) allows, in Schedule 2, Part 2, Class A the erection of a gate, fence, wall or means of enclosure (no more than 2 metres above ground level).

11. Such proposals are, however, not permitted under Class A where the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed in any other case, 1 metre above ground level (A.1 (a) (ii)).
12. S336(1) of the Town and Country Planning Act 1990 provides that, for that act, "highway" has the same meaning as in S328 of the Highways Act 1980. Common Law has established that a highway is a defined route over which the public can pass and repass without hindrance or charge. The use must be "as of right", meaning without force, secrecy or permission. In the absence of any contrary statutory definition, a privately-owned or maintained or unmaintained way may be a highway if the public can use it "as of right". This applies to the GDPO (except in relation to part 1).
13. The appeal site is located at the end of a private road, and given the gated access, I have no evidence before me that suggests it can be utilised by the public as of right. It is only utilised by residents of the neighbouring properties and, presumably, their visitors with permission. This would, therefore, place it outside of the definition of a highway for the purposes of schedule 2, part 2, of the GDPO. The fencing as erected would therefore fall under the scope of permitted development being under 2 metres.
14. The 1.8m fencing, in the case of the appeal site, would not require planning permission and could be erected under Schedule 2, Part 2, Class A of the GDPO.

Very Special Circumstances

15. Other considerations do not have to be rare or uncommon to be special. Given that the fencing could be constructed outside of this appeal and outside the control of the Council I find that on this occasion the limited harm to the Green Belt (which must still be given substantial weight) is clearly outweighed by these other considerations.
16. I find that the other considerations in this case clearly outweigh the limited harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.

Flood Risk

17. The appellant has submitted, with this appeal, an updated Flood Risk Assessment (FRA)¹. This is far more detailed than that originally submitted within the Design and Access Statement. The new FRA considers risk of flooding from various sources, includes modelled flood events and climate change and contains topography and geology information. The FRA also provides evidence of Environment Agency Data and shows site levels within the topographical survey.

¹ Lanmor Consulting, June 2020 – 201286/FRA/MK/RS/01

18. It concludes, for reasons set out in section eight, that the proposal is not considered to present any increased flood risk as a result of drainage from the site and that there will be negligible impact on the flow of flood water and loss of flood storage volumes. It is also concluded that the extension does not increase risk to life, does not result in additional sleeping accommodation and that safe access can be achieved to and from the site (as, presumably is the case with the existing development and site). The Council have not provided any comment on the FRA and I have no evidence before me to conclude differently to the findings of the report before me.
19. I note the appellant's contention that, should this appeal fail, that the appellant would give consideration to amending the extension and placing it on the rear of the appeal site where it is stated to be able to be constructed under permitted development. The Council do not dispute this possibility. The appeal proposal is elevated with voids below and likely represents, based on the evidence before me, a preferable proposal than one on a solid base on the other side which would result in loss of a greater storage capacity.
20. In the event the appeal is allowed there is nothing to prevent the appellant constructing further extensions, as outlined in the submission as a fallback position, on the other side of the appeal site which could cumulatively result in an impact to flood risk which would then be outside of the control of the Council. I find that a condition removing permitted development rights under GDPO Schedule 2, Part 1, Class A (enlargement, improvement or other alteration of a dwellinghouse) would overcome this and enable the Council to assess, and mitigate, flood risk relating to any future proposals.
21. I find that the proposal would be consistent with Elmbridge Core Strategy 2011 Policy CS26 which requires that development must be designed and laid out to ensure that it is safe and the risk from flooding minimised whilst not increasing flood risk elsewhere. The proposal would also be consistent with the guidance contained within the Flood Risk Supplementary Planning Document 2016 which requires new development to be made safe without increasing flood risk elsewhere and applicants to demonstrate a full consideration of flood risk.
22. The proposal would also be consistent with paragraph 163 of the Framework which requires that flood risk is not increased elsewhere and that applications should be supported by a site-specific FRA.

Other Matters

23. I note a number of objections to the original application with one objection being submitted in direct response to this appeal, however, it is a duplicate of that from the original application process. Material planning matters have been assessed above within this decision letter. Each case must be considered on its own merits removing concern of precedent and, in any case, fear of a precedent is insufficient reason to justify refusal.
24. Site licencing is not a material planning consideration. The comments regarding the site being governed by a site licence under the Caravan Act 1960 should be raised as a private matter with the occupiers of the appeal site. Matters relating to previous applications do not fall to be considered as part of this appeal. The only matters which fall to be considered are the current proposals before me.

25. Matters relating to land ownership are private. The Council considered they have sufficient information before them to be able to determine the application and I have no reason before me to conclude differently. Concerns regarding the processing of the application are not issues that I can assess as part of this appeal. The validity or not of such matters does not affect the planning merits or effects of the proposal before me.

Conditions

26. The Council have not suggested any conditions. A condition requiring the development to be in accordance with the approved plans is required in order to control and define the development which is granted consent. A condition removing permitted development rights, for further extension to the appeal site, is required in order to prevent further development without appropriate assessment of the potential cumulative impacts of proposals upon flood risk.

Conclusion

27. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

Eleni Randle

INSPECTOR