



Appeal Decision

Site visit made on 26 October 2020 by Andreea Spataru BA (Hons) MA

Decision by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2021

Appeal Ref: APP/T3725/D/20/3256345

The Hay Barn, Packwood Lane, Lapworth, Solihull B94 6AU

- 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 Andrew Stone-Fewings against the decision of Warwick District Council.
 - The application Ref W/20/0271, dated 7 February 2020, was refused by notice dated 29 May 2020.
 - The development proposed is demolition of existing timber frame garage and construction of proposed double garage.
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary matter

3. An application for costs was made by Mr Andrew Stone-Fewings against Warwick District Council. This application is subject of a separate decision.

Main Issues

4. These are:
 - Whether the proposed development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the development plan policy;
 - The effect of the proposal on the openness of the Green Belt; and
 - If the development would be inappropriate, whether the harm to the Green Belt by way 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.

Reasons for the Recommendation

Inappropriate development

5. Policy DS18 of the Warwick District Local Plan 2011-2029 adopted in 2017 (the Local Plan) states that the Council will apply national policy to proposals within
-

the Green Belt. Framework paragraph 145 lists the types of developments that are not considered inappropriate in the Green Belt. One exception, paragraph 145 (d), is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.

6. The proposal involves the replacement of the existing outbuilding, which includes a garage and storage area, with a double garage. The replacement garage would occupy a similar position within the appeal site. There is no disagreement between the parties that the proposed building is in the same use as the existing. The matter of dispute between the Council and the appellant relates to whether the proposal is 'materially larger'.
7. Neither the Council's policies nor the Framework provide a definition for what would be considered a materially larger replacement building. Following an appeal decision¹, the Council applies an approach that an increase of up to approximately 5% may be held as not materially larger. The parties agree that the replacement double garage would have a floor area of approximately 58 square metres, which would represent an increase in footprint of approximately 26% when compared with the existing structure. Therefore, the Council considers, in this instance, it would be materially larger.
8. However, an assessment of whether a building is 'materially larger' in the context of paragraph 145 (d) is a matter of planning judgement. Whilst floorspace and/or volume calculations can be used to determine whether or not a proposal would be materially larger than an existing building, in my view, it is also important to consider the visual increase, taking into account any increase in the overall scale, bulk, mass, and height in comparison with the existing building. The site-specific circumstances and siting of buildings also need to be taken into account. This approach has also been used within the appeal decisions² referred to by the appellant and/or the Council.
9. The existing building is formed of 3 elements, which vary in terms of roof style and height. The storage areas located to the south and east are significantly lower in height than the main part that includes the garage. The proposal would consist of one rectangular structure, which, in addition to the larger footprint, would also exceed the highest part of the existing building. Thus, the replacement building would have a much greater visual bulk and mass.
10. Accordingly, due to its greater footprint, height, bulk, and mass, the proposed garage would be materially larger than the existing structure. As such, the proposal would not fall within the above exception listed in paragraph 145 (d).
11. The fact that the proposal would be viewed in association with the host dwelling does not make the replacement garage acceptable in terms of its overall scale in the context of paragraph 145 (d) of the Framework.
12. As the proposal constitutes a replacement building, it is clear to me that it is most appropriately dealt with under paragraph 145 (d). However, it has been put to me by the appellant that the development should also be considered under paragraph 145(g) of the Framework, which makes provision for limited infilling or partial/complete redevelopment of previously developed land.

¹ Appeal ref: APP/T3725/W/18/3210316

² Appeals ref: APP/T3725/W/18/3210316; APP/P2365/W/16/3151161; APP/W0530/W/17/3177456; APP/F0114/W/17/3178000; APP/Y3940/C/16/3141801; APP/G2245/W/19/3242228; APP/G2245/W/19/3224333; APP/D0121/W/18/3200907.

Previously developed land is defined in the Framework as land which is or was occupied by a permanent structure. However, under the provision of paragraph 145 (g) the proposal would be required to have no greater impact on the openness of the Green Belt than the existing development. It is to this matter that I now turn.

Openness

13. The Framework indicates that openness is an essential characteristic of the Green Belt. The Supreme Court in *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3 considered that the word openness is open textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. However, how to take account of the visual effects is a matter of planning judgement rather than one of legal principle. Whilst therefore visual impact can be relevant to openness it is not necessarily relevant in every case.
14. Notwithstanding the siting of the replacement garage on the existing hardstanding, the proposal would increase the bulk, mass and height of built development on site. Although there is a degree of tree cover, I observed on my visit that the appeal site is visible from the nearby footpath. Therefore, due to the increased size, mass and height of the proposed garage, it would be more prominent in views from the footpath through the vegetation and trees than the existing buildings.
15. As a result, both in spatial and visual terms, the openness of the Green Belt would be reduced, and consequently the proposal would have a greater impact on openness than the existing development and therefore the proposal would not comply with paragraph 145 (g) of the Framework. While the harm would be moderate, it would be contrary to the requirements of the Framework.

Other considerations

16. I note that the initial scheme has been amended in order to reduce the footprint of the garage. Nevertheless, as set out above, the amended scheme is inappropriate development.
17. The appellant referred to Policy H14 of the Warwick District Local Plan and indicated that this policy allows for existing dwellings to be extended by up to 30%. Notwithstanding this, the proposal before me would not be an extension to the dwelling, but a replacement of an outbuilding. As set out above, there are other matters to be considered apart from the footprint when assessing the scale of a replacement building. Given my findings above, the proposal is inappropriate development.
18. The appellant has drawn my attention to the fact that, when considering the planning application the subject of the appeal decision the Council now relies on for its 5% limit, the officers report to Committee considered that a 9% increase in floor space was not materially larger. Whilst I note that different increase percentages have previously been considered acceptable by the Council, this scheme is not directly comparable to the proposal before me due to the differences in the nature, scale and siting of buildings. Likewise, whilst higher increase percentages than 26% have been found not inappropriate in various areas of the country, the site-specific circumstances and details of each

case are important in identifying whether a replacement building is materially larger than the one it replaces.

19. The appellant considers that the proposal would represent an improvement in terms of materials and overall appearance. I note that the Council did not object to the proposal on the basis of its effect on the character and appearance of the area. Nevertheless, this matter carries limited weight in favour of the scheme.
20. The Council found that the proposal would not have a harmful impact on the Canal Conservation Area. Given the nature and siting of the proposal, I am satisfied from all I have seen and read that it would have a neutral impact on the significance of the heritage asset. Accordingly, it would meet the requirements of S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Nonetheless, this is a neutral matter rather than one that carries weight in favour of the scheme.

Very special circumstances

21. The proposal would be inappropriate development in the Green Belt, which would, by definition, be harmful to the Green Belt and would cause harm to openness. The Framework requires that substantial weight is 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.
22. Having regard to all the other considerations put before me, I consider that taken together, these considerations do not clearly outweigh the harm the scheme would cause. Consequently, very special circumstances do not exist, and the proposal would conflict with the Framework.

Conclusion

23. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

24. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Zoe Raygen

INSPECTOR