



Appeal Decision

Site visit made on 25 March 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2021

Appeal Ref: APP/P1805/D/20/3254449

399 Old Birmingham Road, Lickey B45 8EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Brooks against the decision of the Bromsgrove District Council.
 - The application Ref 20/00435/FUL dated 7 April 2020 was refused by notice dated 4 June 2020.
 - The application sought planning permission for the demolition of existing single storey side and rear extension and construction of two storey side extension without complying with two conditions attached to planning permission Ref 19/01205/FUL dated 11 November 2019.
 - The conditions in dispute are:
 - No 2, which states that: 'The development hereby approved shall be carried out in accordance with the following plans and drawings: 1000 LOCATION PLAN AND SITE PLAN; 001 EXISTING FLOOR PLANS; 002 EXISTING ELEVATIONS; 100 PROPOSED FLOOR PLANS; 101 PROPOSED ELEVATIONS; 200 EXISTING AND PROPOSED AREAS', and
 - No 5, which states that: 'No construction of the extension hereby permitted shall commence until the existing single storey extension as shown on Drawing No.111-001 together with any other extensions and outbuildings present on site constructed under the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order) that are not shown on Drawing No.111.100 have been demolished.'
 - The reason given for the conditions are:
 - No 2: To provide certainty to the extent of the development hereby approved in the interests of proper planning.
 - No 5: In order to protect the openness of the Green Belt.
 - This decision supersedes that issued on 28 September 2020. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing single storey side extension and construction of two storey side extension without complying with two conditions attached to planning permission Ref 19/01205/FUL dated 11 November 2019 at 399 Old Birmingham Road, Lickey B45 8EU in accordance with the terms of the application, Ref 20/00435/FUL dated 7 April 2020 subject to the following conditions:
 - 1) The development to which this permission relates shall begin not later than 3 years from 11 November 2019.

- 2) The development hereby permitted shall be carried out in accordance with the following plans and drawings: 111-503:Location Plan and Site Plan; 111-001:Existing ground, first floor and roof plans; 111-002: Existing Elevations; 111-500: Proposed ground, first floor and roof plans and 111-501:Proposed Elevations.
- 3) All new external walls and roofs shall be finished in materials to match in colour, form and texture those on the existing building.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no development included within Schedule 2, Part 1, Classes A to D shall be carried out without express planning permission first being obtained from the Local Planning Authority.

Preliminary Matter

2. Following the consent order quashing the previous appeal decision, the appeal is to be re-determined on the basis that the whole case is considered afresh.
3. The description of the development refers to the demolition of an existing rear extension. As this has already been removed, my Decision reflects this.

Background and Main Issues

4. The appellants have said that the single storey rear extension, which has already been constructed and replaces a smaller rear extension, has been undertaken under the provisions of permitted development, I have nothing before me to suggest otherwise.
5. The appeal site is located within the Green Belt. Planning permission was granted for a two-storey side extension under application 19/01205/FUL which was subject to a number of conditions, including the two conditions in dispute, set out above. The appellants are seeking to construct the two-storey side extension and not be required to remove the existing single-storey rear extension in non-compliance with condition No 5, and with condition No 2 varied to reflect the proposed drawings.
6. The appellants have also referred to a 'Householder Prior Approval'¹ granted on 20 March 2020 concerning the erection of a large rear extension alongside the retention of the existing single storey side extension. This has been offered as a 'fallback' scheme and would represent a larger floor space increase in relation to the original dwelling than what would flow from this appeal (which is the two storey extension approved under planning permission Ref 19/01205/FUL and the ability to retain the existing rear extension shown on the plans submitted with planning application Ref 20/00435/FUL).
7. The main issues therefore are whether the disputed conditions are reasonable and necessary in respect of the following matters:
 - Whether the proposal would result in inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the 'Framework') and relevant development plan policies;
 - The effect of the proposal on the openness of the Green Belt; and,

¹ 20/00161/HHPRIO

- If the proposal would result in inappropriate development, whether the harm to the Green Belt by way of inappropriateness and any other harm, would be clearly outweighed by other considerations, including the 'fallback' so as to amount to the very special circumstances necessary to justify it.

Reasons

Inappropriate Development

8. Policy BDP4.4 of the Bromsgrove District Plan 2011-2030 (2017) (DP) considers the development of new buildings in the Green Belt to be inappropriate, except in certain circumstances. Such exceptions are broadly similar to those identified under Paragraph 145 of the Framework. Part c) of this paragraph lists 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, as one such exception.
9. Criteria c) of DP Policy BDP4.4 sets out that the local interpretation of the above 'as extensions to existing residential dwellings up to a maximum of 40% increase of the original dwelling or increases up to a maximum total floor space of 140m² ('original' dwelling plus extension(s)) provided that this scale of development has no adverse impact on the openness of the Green Belt'.
10. There is no disagreement between the main parties that the already approved two storey side extension would represent just over 40% of the original floor area of the original building. As such, the proposed scheme, as it would also allow the retention of the existing rear extension, would therefore result in a floor area in excess of the 40% threshold set out within DP Policy BDP4.4. Accordingly, it would result in disproportionate additions over and above the size of the original building.
11. Therefore, the proposal would result in inappropriate development in the Green Belt and conflicts with DP Policy BDP4.4. Paragraph 143 of the Framework says that inappropriate development is harmful by definition and in accordance with Paragraph 144 of the Framework, this is given substantial weight.

Openness

12. Criteria c) of DP Policy BDP4.4 requires an assessment of the impact of the proposal on openness. The Framework advises that openness and permanence are the essential characteristics of the Green Belt. The extent to which a proposal may cause harm to openness, might depend on factors such as the scale of the development, its locational context, and its spatial and/or visual implications.
13. The proposed scheme includes a two-storey side extension, the first-floor element of this would be more widely visible, thereby resulting in an adverse impact on the visual openness of the Green Belt. By not requiring the removal of the existing rear extension, this would have an additional impact on the openness of the Green Belt, but this is limited because of its scale and siting.
14. For the above reasons, the proposed development would result in harm to the openness of the Green Belt.

Other Considerations

15. The Framework states that inappropriate development should not be approved except in very special circumstances. These circumstances will not exist unless the development's harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In this regard the appellants have referred me to their fallback position.
16. For significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out in the event that this planning permission were to be refused, but it would also need to be more harmful than what would be allowed by the scheme for which permission is sought. The appellants have advised that if planning permission was not forthcoming, for the scheme before me, they would still need the fourth bedroom and so the accommodation possible through the prior approval consent would be built out. On this basis and in the absence of any clear reasons to the contrary from the Council, I am satisfied that there is a reasonable prospect of the fallback position being carried out in the event that this appeal was to be dismissed.
17. When what could be allowed from the appeal scheme is compared to the fallback, the former has a greater effect on visual openness because of its first-floor element. However, having regard to the locational context such an extension has already been approved at the appeal property, albeit subject to conditions. Therefore, I attach limited weight to the harm to openness arising from this particular element of the proposal.
18. In terms of overall floor area, the appeal scheme is a smaller addition to the original dwelling and so is not so disproportionate as what is shown under the fallback option. Consequently, the fallback would have a greater impact on the spatial openness of the Green Belt. Moreover, the Framework emphasises that 'inappropriate development' (rather than development that causes other harm) should not be approved except in very special circumstances. Consequently, by occupying a larger floor area, the fallback option would conflict to a greater, more clear extent with criterion c) of Paragraph 145. For this reason, the fallback position is, therefore, a material consideration of significant weight in this case, and in the overall Green Belt balance.

Green Belt balance

19. Having regard to the development plan and national planning policy, the proposal comprises inappropriate development in the Green Belt. There would also be harm arising from the proposal on the openness of the Green Belt. However, for the above, reasons, I consider that the fallback scheme to be an other consideration of sufficient weight to clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness and any other harm. Thus, very special circumstances necessary to justify the development proposed have been demonstrated. Accordingly, whilst there would be conflict with DP Policy BDP4.4, having regard to paragraph 144 of the Framework, the balance of other considerations in this case means that the appeal should succeed.
20. In light of the above, the disputed condition No 2 can be amended to reflect the drawings submitted under application Ref 20/00435/FUL dated 7 April 2020 and disputed condition No 5 is neither relevant nor necessary.

21. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) should also repeat the relevant conditions from the original planning permission. None of the other relevant conditions require discharging and I have imposed all those for the reasons originally stated.
22. Section 73(5) of the Act says planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted, by extending the time within which development must be started. Therefore, condition No 1 of this permission runs from the date of the original consent².

Other matters

23. A third party has raised concern about alterations to a boundary and an allegation that this has resulted in the enclosure of additional land which is not within the appellants' ownership. This would be a civil matter between the relevant parties and does not alter my findings on the main issues.

Conclusion

24. For the above reasons, I conclude that this appeal should succeed.

M Aqbal
INSPECTOR

² 19/01205/FUL