



Appeal Decision

Site Visit made on 11 May 2021

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2021

Appeal Ref: APP/N2739/D/21/3266739

Hazelnut Cottage, Middlefield Lane, Kirk Smeaton, Selby WF8 3JU

- 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 Diane Willoughby against the decision of Selby District Council.
 - The application Ref 2020/0990/HPA, dated 11 September 2020, was refused by notice dated 17 November 2020.
 - The development proposed is alteration and extension of an existing dwelling and replacement of existing domestic outbuilding.
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Decision

1. The appeal is allowed and planning permission is granted for alteration and extension of an existing dwelling and replacement of existing domestic outbuilding at Hazelnut Cottage, Middlefield Lane, Kirk Smeaton, Selby WF8 3JU, in accordance with the terms of the application Ref 2020/0990/HPA, dated 11 September 2020, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 242-02B (Proposed Site Layout, Outbuilding Elevations and Views); 242-10B (Existing Plans & Elevations); 242-11B (Proposed Plans & Elevations).
 - 3) The materials to be used in the external finishes of the extension to the dwelling and replacement outbuilding hereby approved shall be those detailed on the application form and approved plans.
 - 4) Within 3 months of the replacement outbuilding being substantially completed, the existing outbuilding to be replaced and the outbuildings at the northern end of the garden shall be removed from the site.

Preliminary Matter

2. The application as made included both proposed extensions to the dwelling on the appeal site and replacement of an outbuilding. The appellant has confirmed that permission has already been granted in May 2020 for the extensions to the dwelling under Ref 2020/0049/HPA, and they were included under this application only to avail of a free re-submission. The appellant confirms that permission is only required for the outbuilding. Nonetheless, I have determined the appeal on the basis of the application as made.

Main Issue

3. The appeal site lies within the Green Belt. Therefore, the main issues in this case are:
- Whether the proposal would be inappropriate development in the Green Belt having regard to relevant development plan policies and the National Planning Policy Framework (the Framework);
 - The effect on the openness of the Green belt and the purposes of including land within it;
 - If the proposal would be inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate development in the Green Belt

4. The Government attaches great importance to Green Belts. Paragraph 145 of the Framework states that the construction of new buildings within the Green Belt is inappropriate development, but lists certain forms of development which are not regarded as inappropriate. This includes c) 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, and d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.

Extension to dwelling

5. The proposed extension to the dwelling would see the roof raised to provide first floor accommodation to what is presently a bungalow. The Council indicates the original volume of the bungalow to be 346.7m³, with the extension proposed to add 115.5m³, an increase of some 33%. The Council adds that since this permission was granted, a notification for a larger householder extension has been approved, which would see a further rear extension of 116.5m³. However, the test in the Framework is a comparison with the 'original building', and whilst any previously built extensions would be taken into account in judging the cumulative enlargement, the same is not the case where extensions which theoretically could be built, such as under permitted development, have not been built, as is the case here. Therefore, I have not taken this other extension into account.
6. The Framework does not specify what might be a disproportionate addition over and above the size of the original building, nor does the Council point me to any adopted guidance in this respect. Therefore, there is discretion in the assessment of whether the proposal would meet the Framework exception in this case. The increase in volume would be one-third, through the raising of the roof, with the footprint effectively remaining the same, and the general shape of the building also maintained. This would not result in a building of excessive scale or massing, and would not amount to disproportionate additions over and above the size of the original building. This element of the proposal would therefore satisfy exception c) of Paragraph 145.

Replacement outbuilding

7. The proposal seeks to replace an existing outbuilding within the rear garden with a new structure for the same ancillary purposes of domestic storage. The new structure would have the same size footprint, but would be located immediately to the rear of the position of the existing building. The main difference between the two would be the height, with the proposed building some 1.9 metres taller to the ridge height than the existing.
8. The Council contends that the proposed building would be inappropriate development as it would be materially larger than the existing. The volume of the existing building is given as 154m³, and the proposed as 228.25m³, an increase of some 48%. Again, the Framework does not define 'materially larger' in respect of this exception to inappropriate development, nor has the Council pointed to any definition in the development plan. However, an increase of nearly 50% volume, together with a 59% increase in height would be significant, and on these measures I find that the replacement structure would be materially larger than the one it would replace, and would not therefore meet with exception d) of Paragraph 145.

Conclusions on inappropriate development

9. The proposed extension of the dwelling would meet with exception c) of Paragraph 145 of the Framework and would not amount to inappropriate development in the Green Belt. This would accord with Policy SP3 of the Selby District Core Strategy (October 2013) (the CS) which reflects the Framework approach to the Green Belt to resist inappropriate development unless very special circumstances exist to justify it. With respect to openness and the purposes of the Green Belt, given my findings that the proposal would not be inappropriate development in the Green Belt, the proposal would, by definition, not have an adverse impact on the openness of the Green Belt or the purposes of including land within it.
10. However, the proposed replacement outbuilding would not meet with exception d) of Paragraph 145 of the Framework and would amount to inappropriate development in the Green Belt. This would conflict with the aforementioned aims of Policy SP3 of the CS. Inappropriate development is, by definition, harmful to the Green Belt and the Framework directs that substantial weight should be given to any harm to the Green Belt.

Effect on openness and Green Belt purposes - outbuilding

11. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect.
12. As set out above, the proposed replacement outbuilding structure would be larger in height and volume. As a result, in spatial terms, the proposal would result in larger built development than at present. In visual terms, the proposed outbuilding would be visible from the neighbouring property and from a dwelling at the rear of the appeal site. The additional height of the structure would also make it partly visible from Middlefield Lane above the hedge line. Consequently, the proposal would result in a loss of openness in both visual and spatial terms. This would also lead to further encroachment of

development into the countryside and would impact on the related Green Belt purpose.

Other Considerations

13. In respect of the outbuilding, the appellant sets out that permitted development (PD) rights exist which would allow construction of a building of significantly greater effect on the openness of the Green Belt than would the proposed building. A potential alternative structure is illustrated which would see the footprint of the existing building increased by 50%, resulting in a volume of 268m³, an increase of 74% over the existing. The eaves and ridge heights would be lower than the appeal scheme at 2.5m and 4m respectively, in order to meet PD limits.
14. The Council concedes that such a structure could be undertaken under PD, but argues that despite the increase in volume being greater than proposed under the appeal scheme, the fall-back option would have less effect on the openness of the Green Belt owing to its lower overall height. However, the fall-back scheme would occupy a larger footprint, and would be larger in volume than the appeal scheme by some 39.75m³. The lower roof height may mean the resulting structure would be slightly less visible from the public realm, as suggested by the Council, but its greater overall footprint and massing would still be visible from neighbouring properties. In both spatial and visual terms, therefore, the fall-back scheme would have a greater impact on the openness of the Green Belt than the appeal proposal. This is a significant material consideration to be factored into the planning balance. The proposed removal of other, smaller outbuildings to the rear of the garden is a further, minor factor weighing in favour of the proposal.
15. The Council concluded that the appeal scheme would not be harmful to the character and appearance of the area, the surrounding landscape or neighbours' living conditions. Given the distance of the proposed outbuilding from neighbouring dwellings, and the screening provided by existing tree lines, I have no reasons to disagree. Accordingly, these are neutral matters weighing neither for nor against the proposal.

Planning Balance

16. The proposal would result in a materially larger replacement outbuilding and so would comprise inappropriate development in the Green Belt. There would also be harm to the openness of the Green Belt. However, I give significant weight to the potential fall-back scheme which may be implemented under PD, which would have a greater effect on the openness of the Green Belt, and limited weight to the removal of existing outbuildings on the site.
17. I find that these other considerations are of sufficient weight to clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness and effect on openness. Consequently, very special circumstances exist to justify inappropriate development in the Green Belt. Although there would be conflict with the development plan in respect of the proposed outbuilding, the balance of planning considerations in this case leads me to the view that the appeal should succeed.

Conditions

18. The appellant has suggested conditions in the event the appeal is allowed, which I have considered in light of the tests of conditions within the Framework and guidance of the Planning Practice Guidance and amended where necessary to meet those tests.
19. I have imposed the standard time limit condition and a condition requiring development to be carried out in accordance with the approved plans, to provide certainty. I also find that a condition requiring the proposed materials to match those set out in the application is needed in the interests of the appearance of the dwelling and wider area.
20. I have found the proposal acceptable on the basis that the outbuilding is a replacement for existing outbuilding, and not an extension of it, which it would be if the original was left in place. This would have a materially different effect on the character of the area and the openness of the Green Belt. Therefore, a condition is required to ensure the existing outbuildings are removed from the site within three months of the substantial completion of the replacement outbuilding.
21. The Council requests a condition removing PD rights to construct further extensions, garages or outbuildings on the site. The Framework states that planning conditions should not be used to restrict national PD rights unless there is a clear justification to do so. The Planning Practice Guidance adds that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity and should be precisely defined. The reason given by the Council is to retain control in the interests of preserving the Green Belt. However, PD rights have not been withdrawn, in total or in part, in the Green Belt under the GPDO¹, and there is no reason provided why the appellant should be denied these rights when neighbouring properties would retain them, and where there is no indication that further works beyond those sought under this proposal are intended. I see no justification, therefore, in withdrawing PD rights in this case.
22. Finally, I note the Council imposed a condition on the previous permission relating to the retention of the existing access and hardstanding area to the front of the dwelling for access, parking and turning. It is unclear why an existing access and parking area was subject to this condition, given there is no indication on the plans that it would be altered in any way. I see no justification for its imposition and have not done so.

Conclusion

23. For the foregoing reasons and taking all other matters into consideration, I conclude that the appeal should be allowed.

K Savage

INSPECTOR

¹ Town and Country Planning (General Permitted Development) (England) Order (2015) (as amended)