

Appeal Decision

Site visit made on 23 August 2021

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2021

Appeal Ref: APP/G5180/D/21/3270505

Fairlawn, Viewlands Avenue, Westerham TN16 2JE

- 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 Graham Simpkin against the decision of the Council of the London Borough of Bromley.
 - The application, Ref. DC/20/02686/FULL6, dated 30 July 2020 was refused by notice dated 12 February 2021.
 - The development proposed is a single storey rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey rear extension at Fairlawn, Viewlands Avenue, Westerham in accordance with the terms of the application, Ref. DC/20/02686/FULL6, dated 30 July 2020 and the plans submitted therewith.

Procedural Matter

2. The extension has been built and the appeal application is therefore for retrospective permission.

Main Issues

3. The main issues are (i) whether the extension is inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2021 ('the Framework') and any relevant development plan policies; (ii) the effect of the extension on openness and visual amenity, and (iii) whether any harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate development

4. The Council considers that the single storey extension is inappropriate development in the Green Belt and has a detrimental impact on openness and amenity. For these reasons it is considered to be contrary to Policies 49 and 51 of the Bromley Local Plan 2019 and Policy 7.16 of the London Plan 2016. Policy 7.16 has now been incorporated into the London Plan 2021 and does little more than support the principle of Green Belt. I refer further to Local Plan Policies 49 and 51 in paragraph 6 below.
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5. Paragraph 149 of the Framework says that although a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt, there are exceptions including '*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*'.
6. The Council's development plan adopts a similar approach in the form of Policies 49 & 51 of the Bromley Local Plan 2019 but proviso 'a' of Policy 51 specifies a limit of 10% net increase in floor area of the original dwellinghouse as ascertained by external measurement. In addition, proviso 'b' requires the development not to harm the visual amenities or the open or rural character of the area, whilst 'c' seeks to ensure that the development would not result in a significant detrimental change in the overall form, bulk, or character of the original dwelling.
7. Firstly in respect of issue (i), the officer's report explains that the property has previously been extended in the form of extensions to the side and rear and that with its floor area of 8.8m² the appeal extension would result in a cumulative increase in floorspace of 67%. As this considerably exceeds the 10% limit in Policy 51, I conclude that the development is inappropriate development in the Green Belt which conflicts with Local Plan Policy 51 and which paragraph 147 of the Framework says is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Whether any harm to openness or other harm

8. Turning to the effect on openness and visual amenity in issue (ii), in the main aspect from Viewlands Avenue, the appeal extension is read in conjunction with both the side and rear elevations of Fairlawn and to some degree the rear elevation of 'Stella Maris', the other half of the semi-detached pair. The extension is set in from the main flank elevation to Viewlands Avenue and is in part inset behind the existing kitchen side extension closer to the road. There is also screening from the road in the form of a trellis fence and a mature boundary hedge.
9. Taking these factors into account together with the external painted render matching the lower part of the rear two storey gable, I do not consider that the extension draws the eye or appears disproportionate to the host dwelling as already extended. In my view whilst there is a technical loss of openness because of the additional built form, this loss is not in fact noticeable and cannot therefore reasonably be considered as harmful. In addition, there is no adverse effect on visual amenity because it is proportionate with matching external materials.
10. I therefore see no conflict with provisos 'b' and 'c' of Policy 51 and do not agree with the Council that '*the additional bulk would be significant and would extend significantly onto currently open areas of the site as it would project further into the rear garden land which is highly visible from the road*'. In this context I have noted the appellant's assertions firstly that the Council officer did not carry out a site visit (albeit no doubt due to the constraints of Covid-19) and secondly that in any event the officer's report appears to include some contradictions to this finding. Both factors can be argued as affecting the soundness of the Council's appraisal and decision.

Other Considerations

11. My conclusion on openness and visual amenity notwithstanding, the harm by definition in issue (i) remains and must be clearly outweighed by other considerations for very special circumstances to exist and permission to be given. The Courts have consistently held that there is effectively no limit to the matters that can be considered in this regard, provided the argument has sufficient merit to be meaningful in weighing the Green Belt balance.
12. In this instance the Grounds of Appeal set out the chronology of the appellant's engagement with the Council. Under reference 19/01043/HHPA submitted on 19 March 2019, the appellant sought confirmation from the Council that prior approval was not needed for the single storey extension the subject of this appeal. The Council confirmed that prior approval was not required on 26 April 2019.
13. Pursuant to this, an application for approval under the Building Regulations was submitted in August 2019, with consent subsequently granted by the Council. Construction of the extension then took place during the winter of 2019 / 2020 including the normal routine inspections by Building Control officers and was signed off on 24 March 2020 as having been satisfactorily completed.
14. On 13 July 2020 the extension was inspected by Council planning enforcement officers who followed this up with an email on 16 July advising that the extension was unauthorised and that a planning application for retrospective permission should be submitted to '*regularise the extension*'. The application, dated 30 July 2020 was received by the Council on 3 August 2020 but not determined until 12 February 2021 when a Notice of Refusal was issued.
15. The officer's report for this appeal application refers to 19/01043/HHPA (see paragraph 12 above) -as a '*Single storey rear extension (with the relevant dimensions set out) 42 day Notification for Householder Permitted Development Prior Approval - Prior approval not required. However, the site is situated within an AONB and therefore the development may not comply with permitted development tolerances and a Lawful Development Certificate has not been submitted*'.
16. There is no other reference in the report to the Council's incorrect determination of the prior approval application or the fact that the appellant had on the basis of the information formally given, proceeded in all good faith to construct the extension. I consider that the Council's failure to address this error as part of its appraisal is unreasonable, particularly as the report concludes that the extension does not have any adverse effect on the AONB.
17. The grounds of appeal also refer to the building control application being an opportunity for the Council to recognise that it had made an error. However, liaison between planning and building control officers is good practice rather than a statutory requirement and without further information as to the Council's organisation and internal procedures I give this argument limited weight.

Whether very special circumstances exist: weighing the Green Belt balance

18. The development is inappropriate development in the Green Belt which by definition is harmful, although there is no harm to openness and no harm to

visual amenity. Other considerations are that the appellant was informed that prior approval was not required, whereas he should have been informed that this procedure was not available because the AONB designation of the area required an application for planning permission. This error was compounded by the failure of the officer's report on the appeal application to at least consider whether the circumstances warrant materiality in the decision-making process.

19. In the light of these points, I conclude that other considerations clearly outweigh the harm by reason of inappropriateness and that in this case very special circumstances exist.

Conclusion

20. For the reasons explained the appeal is allowed and planning permission granted. As the building has been constructed and as the Council has not raised any issues of inconsistency with the approved plans, I consider that no conditions need to be imposed.

Martin Andrews

INSPECTOR