



Appeal Decision

Site visit made on 9 November 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2022.

Appeal Ref: APP/P1805/D/21/3283477

9 Parish Hill, Bourneheath, Bromsgrove B61 9JH

- 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 Amie Holden against the decision of Bromsgrove District Council.
 - The application Ref 21/01088/FUL, dated 5 July 2021, was refused by notice dated 30 August 2021
 - The development proposed is described as 'two-storey side extension'.
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Decision

1. The appeal is allowed and planning permission is granted for 'Two storey side extension. Demolition of workshop and modern garage. Removal and excavation of existing hard surface and replace with garden area with tiered retaining walls' at 9 Parish Hill, Bourneheath, Bromsgrove B61 9JH in accordance with the terms of the application 21/01088/FUL, dated 5 July 2021 and subject to the schedule of conditions at the end of the decision.

Preliminary Matters

2. The description of the development in the heading above is taken from the application form. However, the appellant has used the Council's description from the refusal notice and in doing so has agreed to it. As this more fully describes the proposed development I have determined the appeal on this basis.

Main Issues

3. As the site is located within the West Midlands Green Belt, the main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the 'Framework') and any relevant development plan policies,
 - The effect of the development on the openness of the Green Belt, and
 - If the proposed development constitutes inappropriate development in the Green Belt, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development in the Green Belt

4. The Framework identifies that the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. The Framework makes it clear that 'inappropriate development' in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
5. The Framework regards the construction of new buildings as inappropriate development in the Green Belt, subject to various exceptions set out in paragraph 149. Exception 149c) allows for the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original¹ building.
6. Bromsgrove District Plan² (BDP) Policy BDP4 and its sub-parts state, amongst other things, that the development of new buildings in the Green Belt is inappropriate development except in the circumstances listed. The Framework does not define 'disproportionate' but Policy BDP4.4 provides the Council's interpretation of it to aid its decision-making. The policy allows 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 the scale of development has no adverse impact on the openness of the Green Belt. I am satisfied that Policy BDP4 is broadly consistent with the Framework, even if it does include more detail.
7. The appeal site comprises a modest detached two-storey period cottage, set back from the road and partially obscured by the detached old brick workshop, and a 1970s flat-roof double garage attached to the front/side of the dwelling. Due to changing levels across the site a large tarmac driveway slopes up from the road. As a result, the ground floor of the garage is substantially higher than the ground level of the cottage and the garage roof is higher than the cottage eaves. At the rear of the property there is a small patio, and at the rear and side a grassed garden area slopes up steeply to the boundary with the adjacent property. The site is located outside the Council's defined village settlement boundary along a rural lane of sporadic residential development in the countryside. There are a mix of dwellings styles, designs and ages.
8. The proposal involves the erection of a two-storey side extension to the cottage following demolition of the brick workshop and the 1970s double garage. The made-up ground on which the garage sits and some of the garden would be excavated out to the ground level of the cottage to facilitate the extension. A larger slabbed patio area would be created around the extended property on the excavated flat ground. The large tarmac drive would be laid to grass while the site of the brick workshop would become a gravel drive. The sloping garden to the side would be tiered or terraced and retaining walls constructed. The proposed works would reveal the entire front of the cottage to the road.

¹ In the Framework glossary 'original building' is defined as "a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally."

² adopted January 2017

9. There is no dispute between the parties that the 'original dwelling' includes the cottage plus the old brick workshop and that they have a combined floor area of approximately 114.5m². The parties are also in agreement that a 40% increase in the original floor area would equate to 45.8m². Hence, this would allow the property to have an overall floor area of 160.30m². The parties also agree that the previously built extension has a floor area of about 10m² and the proposed extension would have a floor area of 59.9m².
10. The appellant has set out floor area calculations and concludes the extension would amount to a 41.9% increase in floor area, although it is unclear how this figure has been arrived at in the absence of explicit calculations. The Council contends that the existing and proposed extensions would amount to a 61% increase³ in floor area and so would exceed the 40% policy limit and be inappropriate development.
11. The 160.30m² floor area that would be allowed under the 40% policy allowance takes account of the workshop being part of the original floor area. However, the workshop would be demolished and it would not be unreasonable for the workshop floor area to be transferred, in a compensatory manner, to the floor area allowance for extending just the cottage. The Council recognises this approach.
12. On this basis, if the floor area of just the cottage (82m²) and the existing extension (10m²) are deducted from the total 160.30m² floor area allowed, this would mean an additional 68m² of floor area could be added to the cottage to fall within the 40% increase allowed. The floor area of the proposed extension (59.9m²) would be less than this and would therefore comply with the policy limit. Put another way, the resulting floor area of the cottage with the existing and proposed extensions would amount to 151.9m² (i.e. 82 + 10 + 59.9) taking into account the demolition of the workshop. This would be less than the 160.30m² floor area allowed and hence would not amount to a disproportionate addition.
13. However, the Council goes on to suggest that where the original dwelling is of a modest size a more appropriate approach would be to apply the 140m² maximum floor area limit instead. On this basis, the new floor area of the extended cottage calculated above (i.e. 151.9m²) would exceed the maximum floor area limit and hence would be a disproportionate addition.
14. There is no indication in Policy BDP4.4 or the supporting text as to any criteria to determine which approach to use - the 40% increase or 140m² maximum. Nor is there anything to suggest that the 140m² maximum floor area approach should be applied to modest sized properties or any factors to determine what is a 'modest' property. Furthermore, there is nothing to suggest which approach to apply if a proposal falls within the limits of one approach but contravenes the other, as is the case here. There appears to be a flexible application of the policy. My reading of Policy BDP4.4 and its supporting text leads me to conclude that either approach can be used and if a proposal meets either one of the approaches, i.e. the 40% increase **or** maximum 140m², it complies with the requirements of the policy.

³ The existing and proposed extensions together as a % of the original floor area i.e. $(69.9 \div 114.5) \times 100\%$

15. I have found that the proposed extension would not extend the property beyond the 160.30m² floor area allowed under the 40% floor area increase and hence would not be a disproportionate addition to the original dwelling. Accordingly the proposal would not constitute inappropriate development under the terms set out in the Framework and would accord with BDP Policy BDP4.4.

Openness

16. The Courts⁴ have held that where development is found to be 'not inappropriate' when applying paragraphs 89 and 90 of the original Framework⁵ (now paragraphs 149 and 150 of the revised Framework published July 2021) the development should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt. In other words, the impact on openness is implicitly taken into account in the listed exceptions unless there is a specific requirement to consider the actual effects on openness. Therefore, for those exceptions within paragraph 149, where the effect of the development on openness is not expressly stated as a determinative factor in gauging inappropriateness, there is no requirement to assess the impact of the development on the openness of the Green Belt.
17. There is no 'openness' requirement for an extension or alteration to a building under Framework exception 149c). Therefore, I do not need to consider the impact of the proposed extension and other works on the openness of the Green Belt. However, the Council has raised openness because Policy BDP4.4 includes an additional proviso that an extension to a residential dwelling also must have no adverse impact on the openness of the Green Belt.
18. Openness requires consideration of both spatial and visual effects. The proposed extension would increase the footprint of the cottage, although the actual ground floor footprint of the extension is about the same as the footprint of the garage that would be demolished. The height, bulk and mass of the extension would increase the volume of the cottage. However, the spatial increase arising from the extension itself would be off-set by the demolition of the workshop building and garage. There would be an overall reduction in built form on site. There would also be an overall reduction in hard surfaces around the site, as more grassed area would be created by grassing over the expanse of sloping tarmac drive and removing the concrete steps to reconfigure the sloping garden.
19. Visually, the extension would alter the appearance of the cottage, as the ground excavations would reveal the whole front elevation to the road and there would be new built form effectively occupying the space seen above the existing garage. However, the roof of the extension would be set down from the main roof ridge, and the projecting gable would be narrower and set back from the existing front elevation creating an extension that would, in my view, appear subservient to the main cottage.
20. Despite the increase in built form to the cottage, the removal of the built forms of the workshop and garage together with the removal of the tarmac driveway from the site would have a marked effect on increasing openness. This would be further aided by the greater expanse of visually prominent grassed areas

⁴ *Lee Valley Regional Park Authority, R v Epping Forest District Council & Anor (Rev 1)* [2016] EWCA Civ 404

⁵ Published March 2012

that would be created to the front of the cottage adjacent to the road and to the reconfigured garden area to the side.

21. I find there would be an overall increase in openness and an improvement to the overall character and appearance of the property which in turn would lead to an enhancement of the area. Therefore, even if I were to consider the impact on openness, I would find the proposed development would not have an adverse impact on it. As I have found the development would not be inappropriate, it is not necessary for me to consider whether very special circumstances exist.

Conditions

20. In addition to the three standard conditions that limit the lifespan of the planning permission, specify the approved plans for the avoidance of doubt, and that materials must match the existing dwelling, the Council has suggested a further 6 conditions, which the appellant is aware of. I have considered these against the tests set out in the Framework and the Planning Practice Guidance. Where appropriate I have amended any wording for reasons of precision.
21. The Council's condition 1 requires the permeable paving areas, which are shown as the slabbed area around the sides of the new extension, to remain as such. However, I have not been presented with any evidence to suggest there are particular drainage issues in the area. Nonetheless, the Council suggests withdrawing permitted development⁶ rights for hard surfacing (see paragraph 23 below) which would cover this. Therefore this condition is unnecessary.
22. Condition 2 requires a Level 1 Historic Building Research Recording to be undertaken before any development takes place. The workshop is an old nailer's workshop and listed as an undesignated heritage asset, although the Council's Conservation Officer advises the building is of low significance and therefore does not object to its demolition. Nonetheless, the condition would ensure a proper record is made before the heritage asset is removed.
23. Condition 3 would remove specific permitted development rights. These would affect any future extensions, dormer windows and other roof alterations, porches, buildings within the curtilage of the dwelling e.g. garden sheds or garages, hard surfacing, and preventing additional two storeys being added. Permitted development rights can in some circumstances permit sizeable extensions that would exceed the disproportionate test in Framework paragraph 149c) and Council Policy BDP4.4. However, in the GPDO permitted development rights have not been withdrawn in the Green Belt and the Framework advises (at paragraph 54) that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this instance I consider it would be justified to remove certain permitted development rights bearing in mind the modest size of the cottage and the amount of built development being demolished to facilitate and justify the extension and openness. The result of the condition would be that express planning permission would need to be sought from the Council for any of the development types specified above.
24. Condition 4 requires the demolition of the workshop and 'any other buildings or extension constructed under the GPDO which are not shown on site survey

⁶ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – or the 'GPDO'.

drawing no. 544.01B'. This condition would benefit from more explicitly saying that both the garage and workshop are to be demolished, so I shall re-word it accordingly.

25. The Council's condition 5 requires provision of bird boxes and condition 6 requires the development to be carried out in accordance with the recommendations of the Preliminary Ecological Appraisal. Both will help provide a net gain in biodiversity in line with Framework paragraph 170 that states that planning decisions should minimise impacts on, and provide net gains for, biodiversity.

Conclusion

26. The proposed extension would not amount to inappropriate development in the Green Belt under the terms set out in the Framework and there would be no conflict with the development plan. For the reasons given above I conclude that the appeal should succeed and planning permission should be granted subject to conditions.

K. Stephens
INSPECTOR

Schedule of Planning 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 approved plans:
 - Existing Plans Drawing 544 02;
 - Existing Outbuilding Plans and Elevations Drawing 544 03;
 - Floor Area Calculations Drawing 544 05A;
 - Elevation Comparison Drawing 544 06A;
 - Hard Surface Comparison Drawing 544 07B;
 - Streetscene Drawing 544 8A;
 - Historic Aerial View Drawing 544 9; and
 - Proposed Plans and Elevations Drawing 544 15.
- 3) No development including demolition of the workshop shall take place until a Level 1 Historic Building Recording (as defined by Historic England), with an enhanced written account (based on research undertaken and published in the 2020 Heritage Statement) has been completed in accordance with the guidelines laid out in the Standards and Guidelines for Archaeological Projects in Worcestershire and submitted to the County Historic Environment Record.
- 4) Construction of the extension hereby approved shall not commence until condition 3 above has been fully complied with and the workshop and the existing double garage have been demolished and resulting materials and debris removed from site.
- 5) The materials to be used in the construction of the external surfaces of the extension hereby approved shall match those used in the existing building.
- 6) Within 6 months of the completion of the extension hereby approved, 2 no. Schwegler bird boxes or equivalent shall be placed on site in suitable locations at least 3 metres above ground level facing to the south or east and kept thereafter in perpetuity.
- 7) The development shall be carried out in accordance with the recommendations as set out in the Preliminary Ecological Appraisal by Cotswold Wildlife Surveys dated 12 August 2020.
- 8) 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, AA, B, D, E and F shall be carried out without express planning permission first being obtained from the Local Planning Authority.

End of conditions