
Appeal Decision

Site visit made on 16 March 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Appeal Reference: APP/M5450/W/21/3279524

Mallory, Priory Drive, Stanmore HA7 3HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 (the Act) for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Veenay Shah against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/0848/21, dated 3 March 2021, was refused by notice dated 7 May 2021.
 - The application sought planning permission for the variation of condition 2 (approved plans) attached to planning permission P/5568/15 dated 26/01/2016 to allow amendments to the layout including revised footprint of basement and ground floor, revised internal layout, revised fenestration and rooflight details and removal of balcony over front porch, without complying with a condition attached to planning permission Ref P/1404/18, dated 3 August 2018.
 - The condition in dispute is No 2 which states that:
This permission shall have the effect of varying condition numbered 2 on the full planning permission reference P5568/15 dated January 2016 as follows:
The development hereby permitted shall be carried out in accordance with the following approved plans: SH05.114, SH05.105 Rev. A, SH05.106 Rev. A, SH05.100 Rev. A, SH05.101 Rev. A, SH05.102, SH05.103, SH05.104, Site Location Plan.
 - The reason given for the condition is:
For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by London Borough of Harrow against Mr Veenay Shah. This application is the subject of a separate Decision.

Background and Procedural Matters

3. The appeal was originally due to be determined by way of a hearing, and a pre-hearing meeting was held on the 8 February 2022 to seek clarification on a number of preliminary matters. However, the Council requested that the appeal be dealt with via the written representation (WR) procedure, and the appellant confirmed in writing that he was agreeable to this. The parties were also given the opportunity to submit any further submissions in writing before this decision. As such, I am satisfied that neither party has been prejudiced by the change in procedure.

4. The Council's decision notice (Ref: P/0848/21) referred both to the original 2016 planning permission for a replacement two storey dwelling (Ref: P/5568/15) and the subsequent 2018 planning permission for an alternative scheme for the replacement two storey dwelling (Ref: P/1404/18). When an application made under s73 of the Act is successful a new permission is created, and the original permission remains extant and unaltered (along with the conditions attached to it). The effect of the decision will have been to create a second permission. The appellant clarified during the pre-hearing meeting that the current appeal seeks to vary condition 2 of the 2018 planning permission, which they state was implemented.
5. This appeal relates to a S73A, retrospective development. This is where development authorised by a planning permission has been carried out without compliance with one or more conditions. In particular, this appeal seeks to substitute the previously approved plans agreed in relation to a replacement dwelling within the Green Belt.
6. The description of the development varies between the application form and the Council's decision notice. During the pre-hearing meeting, Counsel for the appellant explained that the amendments sought include a revised footprint of basement and ground floor, revised internal layout, revised fenestration, revised roof¹. In addition, section 2 (Proposal) of the Planning Statement provides a more detailed explanation of the proposed works which also includes works relating to an extension at first floor level. At the time of my site visit, works on the dwelling were in progress. Since the above description of works were clearly set out on the planning statement, which was before the Council when they made their decision, I am satisfied that neither party would be prejudiced by this, and I have determined the appeal on this basis.
7. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). Both parties have been given the opportunity to comment on the new Framework, and so have not been prejudiced. I have therefore not assessed the development against the superseded National Planning Policy Framework, 2019.

Main Issues

8. The main issue is whether condition 2 on planning permission P/1404/18 dated 3 August 2018 remains reasonable and necessary having regard to the reason for imposing the condition in addition to:
 - Whether or not the development is inappropriate development in the Green Belt;
 - The effect on the openness and purposes of the Green Belt;
 - The effect on the character and appearance of the area; and
 - Whether the harm to the Green Belt 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 development.

¹ Taken from the main heading of the appellant's Planning Statement.

Reasons

Whether or not the proposal is inappropriate development

9. The site lies within the Green Belt. National policy on Green Belt development is set out in Part 13 of the Framework. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Of particular relevance to this appeal is Paragraph 149 which states that the construction of new buildings is inappropriate development in the Green Belt subject to a number of exceptions. Reference has also been made to Policy G2 of the London Plan, 2021 (London Plan), Core Policy CS1(F) of the Harrow Core Strategy, 2012 (CS) and Policy DM16 of the Harrow Development Management Policies Local Plan, 2013 (LP), which is also consistent with the Framework. Accordingly, I have assessed this appeal based upon the Green Belt policies contained in the London Plan, CS, LP and the Framework.
10. The appellant considers the development falls within the exceptions listed under Paragraph 149 c) and/or d) of the Framework, which I shall consider in turn. Exception c) of paragraph 149 relates to 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. However, the current appeal seeks to vary condition 2 of the 2018 permission which relates to a replacement dwelling. This is made clear from the application form submitted (s73), and the Planning Statement which states that "*Mallory is a replacement dwelling in course of construction authorised by planning permission P/1404/18 (03/08/2018)*". I also observed during my site visit that works in the construction of the dwelling were ongoing.
11. In addition, an application made under s73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission. Under a s73 application, the description of development in an existing planning permission cannot be amended at all. Furthermore, the description of development specified in the decision is that taken from the original planning permission and not from the subsequent application to vary any of the conditions. In any event, any amendment can only be made provided the new condition does not fundamentally alter the original planning proposal for which permission had been granted. Therefore, given the type of application made, and that the development has not been built in accordance with either of the previous 2016 and 2018 permissions, the current appeal does not relate to extensions and alterations of a building, previously completed and lawful. Such a proposal would therefore clearly go beyond the scope of s73. Consequently, the development does not fall within the exception c) of paragraph 149.
12. Exception d) of paragraph 149 relates to a replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. The proposed development is for a replacement dwelling and as such, would not be inappropriate development provided that it is not materially larger than the one it replaces. My attention has been drawn to the planning history of the site, which includes a dismissed appeal decision² which also sought to substitute the previously approved plans agreed in relation to a replacement dwelling within the Green Belt. In that case, the Inspector considered that

² Appeal Ref: APP/M5450/W/19/3243648 dismissed on 18 September 2020.

whilst other assessment methods have been put forward which include built frontage, site coverage and height, there is nothing unreasonable in making the assessment in relation to test required by paragraph 145 d) [now paragraph 149 d)] in terms of floor area. I also agree that floor area is a reasonable physical dimension for this test. The floor area associated with this current development represents a significant 48%³ increase over the floor area of the dwelling that the development replaced. Based on this, the current development is materially larger than the building it replaced, and therefore, I am not convinced that the development falls within the exception d) of paragraph 149.

13. I therefore conclude that, the development does not satisfy any of the other exceptions in paragraphs 149 or 150 of the Framework. As such the development amounts to inappropriate development, which by definition, is harmful to the Green Belt.

Openness of the Green Belt

14. Paragraph 137 of the Framework states that 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. The Courts have held that openness includes both visual and spatial dimensions.
15. I note that the appellant states that the development results in a sun gap of 18m to the side of the dwelling. Nevertheless, the additional floorspace provided by the development results in additional bulk and mass at ground and first floor level, and hence in spatial terms there is a reduction in openness of the site and hence this part of the Green Belt. Furthermore, the additional bulk and floorspace at first floor level is particularly noticeable and prominent in views from Priory Drive. Therefore, in both spatial and visual terms, the development affects the openness of the Green Belt. Overall, I consider that the harm caused to the openness of the Green Belt is a limited one, but nevertheless has an impact. The development therefore conflicts with the Green Belt Protection aims of The Framework, Policy DM16 of the LP, Policy CS1(F) of the CS, and Policy G2 of the London Plan.

Character and appearance

16. Priory Drive is characterised by detached dwellings with generous front and rear gardens. Whilst there is some variation in architectural style and size of properties in Priory Drive, a particular characteristic and feature of the area are the prominent roof forms, many contain front gables and/or chimney stacks. Together, these characteristics contribute positively to the area. The previously permitted 2016 and 2018 permission also included well-proportioned hipped roofs above the main part of the dwelling and the side extension, which reflected the general pattern of development in the area.
17. In contrast, the reduced eaves to ridge height of the appeal development (over both the main part of the building and side extension), in combination with the increased height of the building from ground to eaves level has resulted in a relatively short and 'squat' roof form, which distorts the overall proportions and appearance of the building. In this respect, the current development has

³ Percentage taken from the Officer's Report. The appellant's Planning Statement and Appeal Statement states that the increase is greater at 49%.

resulted in a roof form that no longer successfully integrates with the host dwelling nor its surroundings.

18. Therefore, the development results in an incongruous addition, which is harmful to the character and appearance of the dwelling and area, contrary to Policy CS1 of the CS, Policy DM1 of the LP and Policy D3 of the London Plan. Amongst other things, these state that proposals which fail to achieve a high standard of design and layout or harm the character of suburban areas will be resisted, and that development proposals should respond to existing character of a place by identifying the special and valued features and characteristics that are unique to the locality. Furthermore, the development does not meet the aims of part 12 of the Framework, which requires development to be sympathetic to local character and history.

Other considerations

19. My attention has been drawn to other planning permission approved to nearby properties. However, the approvals granted for Cedar Trees and Green Verges appears to relate to extensions and alterations to an existing dwelling, and therefore would not have been subject to the same policy assessment as the current development, which is for a replacement building. I therefore attach no weight to those developments.
20. The appellant also refers to planning permission for a replacement dwelling at Bentley Hyde. For that case, the Officer's Report stated that the proposed replacement of the dwellinghouse and associated outbuildings, swimming pool, boundary wall and gates can be lawfully achieved over time as separate projects and that the same development can equally be achieved through this composite planning application which would achieve significant and materially quantifiable benefits by reducing the time taken for constructions to the benefit of residential amenity whilst safeguarding the openness and attributes of the Green Belt. The appellant considers that the very special circumstances (VSC) accepted by the Council then, also apply to the current appeal, given that the appeal site has extant planning permission for the dwelling and extant approvals under permitted development for a) the swimming pool complex and b) for the triple garage.
21. However, it is unclear how the current appeal development attempts to consolidate these earlier approvals. Indeed, no substantive evidence has been provided to demonstrate that the current development, which includes enlargement of the ground and first floor of the dwelling and modifications to the roof, have been approved in these earlier permissions. Furthermore, at the time of my site visit, the triple garage and gym development appears to have been built and I note that the planning statement submitted with that application stated that "*the gymnasium is in place of the approved swimming pool complex*". Therefore, there is no evidence to demonstrate that the swimming pool complex could still be implemented now that the gym and triple garage development is built. In any event, there is no mechanism before me which would revoke these other approvals if the current appeal development was allowed. Thus, the other considerations amounting to VSC set out in the Bentley Hyde permission do not apply in this appeal, and I have determined the appeal on its own merits.
22. In support of the current development, the appellant's personal circumstances have been raised which states that the dwelling and outbuildings provide both

permanent accommodation and sporting facilities for the appellant's parents and children. However, the previous planning permissions for the dwelling outbuilding also appear to show significant facilities provided for the family in terms of both living accommodation and sporting facilities. I therefore give very limited weight to the family circumstances advanced by the appellant.

23. The appellant states that the presumption in favour of sustainable development in Paragraph 11(d) of the Framework should prevail. However, no explanation has been given as to why the appellant considers that paragraph 11(d) of the Framework has been engaged, nor has any evidence been submitted to demonstrate that the Council is failing to meet its housing targets. Having regard to the provisions of footnote 7 of the Framework, paragraph 149 constitutes a specific policy that, in this instance, indicates that inappropriate development in the Green Belt should be restricted. In such circumstances, the presumption in favour of sustainable development does not apply and it is necessary to balance benefits and harms in an ordinary, unweighted planning balance.

Green Belt Balance and Conclusion

24. *Sefton Metropolitan Borough Council v SSHCLG & Jerry Doherty* [2021] EWHC 1082 (Admin) held that the exercise of planning judgement was not an artificially sequenced two-stage process but a single exercise of planning judgement, to assess whether there were very special circumstances which justified the grant of permission notwithstanding the particular importance of the Green Belt.

25. I have found that the development amounts to inappropriate development in the Green Belt, and that limited harm has been caused to the openness of the Green Belt. These are matters to which I afford substantial weight. In addition, I have found that the development also harms the character and appearance of the area, to which I attach moderate weight. The adverse impacts need to be weighed against the identified other considerations, noting that there are no significant benefits.

26. In conclusion, the substantial weight to be given to Green Belt harm, and the other identified harm arising from the development, is not clearly outweighed by the other identified considerations. Consequently, the very special circumstances necessary to justify the development do not exist. I therefore find that condition 2 on planning permission P/1404/18 dated 3 August 2018 remains reasonable and necessary having regard to the reason for imposing the condition and the matters outlined above.

27. Therefore, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

R Satheesan

INSPECTOR