



Appeal Decision

Site visit made on 7 June 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22/06/2022

Appeal Ref: APP/H2265/D/21/3289802

Shepherds Cottage, Offham Road, West Malling ME19 6RG

- 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 Claire Bishop against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/21/02336/FL, dated 23 August 2021, was refused by notice dated 19 November 2021.
 - The development proposed is the erection of replacement garage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) whether the proposed development would be inappropriate development in the Green Belt; and
 - (b) would 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

3. Policy CP3 of the Tonbridge and Malling Borough Council Core Strategy 2007 (CS) establishes the extent of the Green Belt in the district. Policy CP14 of the CS indicates that in the countryside, development will be restricted to a number of specific situations, including replacement buildings. The policy indicates that within the Green Belt, inappropriate development which is otherwise acceptable within the terms of the policy will still need to be justified by very special circumstances. The CS predates the National Planning Policy Framework 2021 (the 'Framework'), but Policy CP14 is generally consistent with the guidance in the Framework, and it should therefore be afforded substantial weight.
4. Paragraph 149 of the Framework states that Councils should regard the construction of new buildings as inappropriate development subject to a limited number of exceptions two of which, Paragraphs 149(d) and 149(g), are relevant to this case.

5. Paragraph 149(d) allows replacement buildings, provided it is in the same use and not materially larger than the one it replaces. Paragraph 149(g) permits partial or complete redevelopment of Previously Developed Land (PDL), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.

a) Replacement Building

6. The main parties agree that the proposed building would be some 42m² larger in footprint than the existing garage and the appellant indicates that the increase in volume would be just over 200m³. The existing and proposed buildings would be of similar height, with the ridge of the proposed building being slightly higher than that of the existing garage. However, given its greater bulk, aided by gable ends and two dormer windows, and overall scale, I conclude that the proposed building would be materially larger than the building it would replace. It would not therefore comply with the requirements of Paragraph 149(d).

b) Redevelopment of previously developed land

7. The main parties agreed that the site falls within the definition of PDL set out in the Framework. The determining factor in assessing the scheme in relation to this exception is therefore the effect of the proposal on openness. Openness is the absence of development and has both spatial and visual dimensions.
8. The increased footprint, height and bulk of the replacement building would give rise to a spatial loss of openness on the site. The replacement building would also be closer to the site's eastern boundary. This increased visibility would by definition have an urbanising effect although I consider this to be limited given the context of the site. Nevertheless, taking all of the above factors into account, I conclude that a noticeable reduction in openness would be evident as a result of the proposal.
9. Consequently, the proposed building would not fall within the exceptions listed in Paragraph 149(g) of the Framework.

c) Findings

10. Taking all the above into consideration, the development would be inappropriate development in the Green Belt. By definition, inappropriate development would be harmful to the Green Belt and should not be approved except in very special circumstances.
11. I therefore conclude that the proposal would be inappropriate development in the Green Belt, contrary to Policies CP3 and CP14 of the CS and the Framework which seek to protect it.

Other Considerations

12. The appellant has been granted two lawful development certificates for a number of buildings etc. within the curtilage of the dwelling and which include a swimming pool, pool house, an outdoor kitchen, a classic car garage, double garage, home office and a stable building. Two of those buildings are of particular relevance to this appeal: the double garage and the home office.

13. The appellant has signed a Unilateral Undertaking not to build either of these two buildings in exchange for being able to build the appeal proposal. It is suggested that the double garage and home office building would have a larger footprint and greater volume than that of the proposed appeal building (which the appellant indicates to be approximately 15% and 12% respectively). It is also suggested that the provision of the appeal building would be preferable to the sprawl of having the three separate buildings (existing garage, certificated double garage and home office) across the site. On this basis it is said that the appeal proposal would represent an improvement over the possible alternative arrangement.
14. The existing garage and double garage would be sited in close proximity to one another. Indeed, the double garage would block access to part of the existing garage, if it were to be built. The position of the appeal building would be similar to that of the double garage. Therefore, were the appeal to be allowed and this building to be erected, it would not be possible to construct the double garage in any event. Therefore, agreeing to not build the double garage as part of any approval is of no benefit in my assessment.
15. Furthermore, by virtue of its size, height and bulk, the replacement building the subject of this appeal would have an overall greater visual and physical presence than the existing and certificated double garage buildings combined. Therefore, building the double garage to sit alongside the existing garage would be less harmful visually than erecting the replacement building.
16. I acknowledge that the home office could be erected regardless of whether the appeal building was built and that this would have some spatial effect on openness. However, by virtue of being in the rear garden, the home office would have a more limited visual presence than either the existing garage, double garage or proposed replacement building. Therefore, not building the home office would not outweigh the harm caused by erecting the appeal building.
17. Whilst the appellant is willing to accept a condition relinquishing permitted development rights for future outbuildings, it would exclude those other buildings already covered by the Certificates of Lawfulness. Given the number of other outbuildings which could therefore be erected on site, the non erection of the home office would have a limited effect in terms of the overall sprawl of development across the site.
18. These other buildings which could be erected, inherently require space around them in order to properly function. As such, whether there is a real prospect of even more buildings being erected on the site were these certificated buildings to be built out seems doubtful. Thus, it is not clear to what extent the suggested condition to remove permitted development rights would realistically secure future benefit to the Green Belt and thus be reasonable and necessary.
19. Therefore, taking all of the above into account, I attach only moderate weight to the fallback position.
20. The appellant points to the support for the proposed development from neighbours, who it is said would be unaffected by the proposal. However, this in itself does not mean that the current scheme is acceptable and does not in any event absolve me from making an assessment as to its effects in regard to the main issues of the case.

21. The proposed building would use materials and be of a design which is said to be in keeping with the existing dwelling. However, these factors would represent a lack of harm which would accordingly be neutral in any balance.

Green Belt Balance

22. The proposed building would constitute inappropriate development in the Green Belt. Paragraph 148 of the Framework requires that the harm by reason of inappropriateness be given substantial weight and that inappropriate development should not be approved except in very special circumstances.
23. The existence of a 'fallback' position in itself does not necessarily amount to very special circumstances. This is because the circumstances cited in support of a proposal must not just outweigh the harm to the Green Belt but clearly outweigh it in order to constitute very special circumstances.
24. In this particular case, consolidating the garage and home office accommodation into a single building would have limited benefits. Furthermore, the removal of permitted development rights for additional outbuildings would seem unlikely to have much practical effect. Accordingly, it does not appear to me that greater harm to the Green Belt would be avoided as a result of the proposal as a whole.
25. For the reasons given above, I therefore find that the other considerations in this case do not, either individually or cumulatively, clearly outweigh the harm to the Green Belt that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

26. The development is contrary to the Framework and to the development plan which seek to protect the Green Belt from inappropriate development. I have considered all other matters raised but none clearly outweigh the conclusions I have reached.
27. For the reasons set out above, I dismiss the appeal.

Stewart Glassar

INSPECTOR