



Appeal Decision

Site visit made on 19 May 2022

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Appeal Ref: APP/M3645/C/21/3281869

Land at Russetts, Old Lane, Tatsfield, Surrey, TN16 2LH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Jacqueline Newark against an enforcement notice issued by Tandridge District Council.
- The notice was issued on 23 July 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an extension to the garage, in the approximate position outlined in blue on the attached plan.
- The requirements of the notice are to:
 - i. Alter the side extension outlined in blue on Plan B to be in accordance with drawing reference number NJ 1802-01 B which was approved under the conditional planning permission 2018/1769 on 25 October 2018 (as attached at Appendix 1).
 - ii. Permanently remove from the land all materials arising from those works and restore the land to its original condition.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected by:

Deletion of the words 'which was approved under the conditional planning permission 2018/1769 on 25 October 2018', and after the word 'with', substitution with the words 'the terms and conditions of planning permission ref 2018/1769 and', in requirement i.

2. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The appeal site comprises a detached dwelling set behind a garden which slopes down steeply to Old Lane. There is an existing garage to the front, close to the edge of Old Lane. A side extension to the garage was built and planning permission for it was refused in May 2018¹. A subsequent application was approved² to build a smaller side extension to the garage in October 2018.

¹ Ref 2018/486

² Ref 2018/1769

Matters concerning the notice

4. Requirement i. requires the extension to be altered to be in accordance with the drawing approved under planning application ref 2018/1769. However, once complied with, the extension would have deemed planning permission under s173(11) of the Act and the conditions imposed on the original planning permission would not have effect. The requirement can be corrected without causing injustice to require that the development is modified in accordance with the terms and conditions of the planning permission, which is clearly what the Council intended to seek.

The appeal on ground (a) and the deemed planning application

5. The site is in the Green Belt, where the National Planning Policy Framework (the Framework) sets out the Government's policy. Inappropriate development is, by definition, harmful and should not be approved other than in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
6. Having regard to the reasons for issuing the notice, the main issues are:
 - Whether the development is inappropriate development in the Green Belt;
 - If the development is inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate

7. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The construction of new buildings should be regarded as inappropriate, subject to a number of exceptions set out in paragraph 149. One such exception is in paragraph 149(c), the extension or alteration of a building provided that it does not result in a disproportionate addition over and above the size of the original building.
8. Policies DP10 and DP13 of the Tandridge Local Plan Part 2: Detailed Policies Adopted 2014 (TLP) set out the District's relevant Green Belt policies. The TLP predates the latest version of the Framework and consideration therefore needs to be given to whether the relevant policies are consistent with it, as set out in paragraph 219 of the Framework.
9. TLP Policy DP10 sets out the extent of the Green Belt and states that planning permission for any inappropriate development will normally be refused. It will only be permitted where very special circumstances exist, to the extent that other considerations clearly outweigh any potential harm to the Green Belt by reason of inappropriateness and any other harm.
10. TLP Policy DP13 relates to buildings in the Green Belt. It identifies exceptions to the policy of restraint and states that the extension or alteration of buildings (is not inappropriate) where it does not result in a disproportionate addition over

and above the size of the original building. It also identifies that the limited infilling or the partial or complete redevelopment of previously developed land (is not inappropriate) where it would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. Both policies are broadly consistent with the Framework.

11. The Council has calculated that the original garage has a volume of approximately 84 cubic metres, while the extension adds a further 74 cubic metres, so that the resulting building would have a volume of approximately 158 cubic metres. I calculate that this represents an increase of approximately 88% (rather than 85% as suggested by the Council). I agree with the Council that this represents a disproportionate addition over and above the size of the original building and the development does not benefit from this exception.
12. The appellant has argued that the development could be seen as limited infilling of previously developed land, an exception under paragraph 149(g) of the Framework. The relevant paragraph sets out that such development is not inappropriate if it would not have a greater impact on the openness of the Green Belt than the existing development. The site is a garden in a rural area and therefore amounts to previously developed land.
13. The extension adds built form where previously the site was open, and inevitably causes a reduction in openness in spatial terms. The extension is clearly visible from Old Lane, so that the garage fills the width of the plot where previously there was a noticeable gap. The appellant argues that the location of the garage extension is already enclosed on three sides, as there is a large retaining wall to the rear and a neighbouring garage to the side, and that therefore it does not affect the openness of the site in a harmful manner. However, the infilling of the gap results in continuous built form along the frontage of the site which has a greater visual impact on the openness of the Green Belt than the original garage. I consider this to cause moderate harm to openness. The development does not therefore benefit from the exception set out in paragraph 149(g) of the Framework. In coming to this conclusion, I have had regard to the judgement in *Euro Garages Ltd v Secretary of State for Communities and Local Government* [2018] EWHC 1753 Admin which has been referenced by the appellant.
14. For the reasons set out above, the extension represents inappropriate development in the Green Belt. It is also harmful to the openness of the Green Belt.

Other considerations

15. The appellant argues that the smaller extension (2018/1769) would result in a barely discernible gap between the garage as extended and the neighbour's adjacent garage, and that therefore the two schemes would have an identical or similar impact on openness. The extension as built results in an enlarged building that fills the width of the plot, while the approved extension would retain a noticeable, albeit diminished, gap between its side wall and the boundary, that contributes to the openness of the Green Belt. This would be discernible from Old Lane. It is not the case therefore that they have identical or similar impacts on openness.
16. The appellant also claims that a fully detached building could be built in the location, either through the express grant of planning permission or the use of

permitted development rights. I have seen no evidence that a detached outbuilding would be acceptable to the Council, and note that they consider it unlikely that they would grant planning permission for a detached building in this position. It is not clear how permitted development rights could be used to obtain an outbuilding, which would be forward of the principal elevation of the dwellinghouse. It would thereby be in conflict with the limitation in paragraph E.1(c) of Class E Part 1 Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 as amended. I do not therefore consider that there is a real prospect of fallback development being built that would have similar or worse effects on Green Belt openness than the appeal development.

17. For these reasons I give the fallback positions advanced by the appellant limited weight.
18. The neighbouring occupier has raised concerns regarding the lack of agreement for works to the party wall and the damp that has been caused by rainwater lying between the extended garage and the neighbour's garage. This is a matter between the parties and does not have any bearing on my decision.

Green Belt balance

19. The development is inappropriate and is therefore harmful to the Green Belt by definition. There is also moderate harm to openness. I give substantial weight to the Green Belt harm. The limited weight given to the considerations put forward by the appellant does not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and the other harm resulting from the development. The very special circumstances necessary to justify the development do not, therefore, exist. It is therefore in conflict with the Framework and TLP Policies DP10 and DP13 in relation to the Green Belt.

Conclusion in relation to the ground (a) appeal and the deemed application

20. For the reasons given above, and with regarding to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed application should be refused.

The appeal on ground (g)

21. The ground of appeal is that the period for complying with the requirements of the notice falls short of what is reasonable. The period for compliance is six months, and the appellant requests that it be extended to 12 months. The appellant identifies that there is high demand for builders due to post lockdown factors, with most builders and tradesmen being fully booked until the following year. The work is a specialist task that cannot be undertaken by the appellant himself. The process of tendering for the work, appointing a suitable builder and completing the works would be difficult to complete within six months.
22. The works required by the notice are relatively small scale and it seems to me that a period of six months strikes a reasonable balance between the interests of the appellant and the public interest of the notice being complied with expeditiously. The appeal on ground (g) therefore fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

N Thomas

INSPECTOR