The Planning Inspectorate

Appeal Decision

Site visit made on 27 March 2023

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Appeal Ref: APP/H2265/D/22/3297828
Brambledown, 7 Windmill Park, Wrotham Heath, Sevenoaks, TN15 7SY

- 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 Satvinder Shoker against the decision of Tonbridge and Malling Borough Council.
- The application Ref TM/21/02034/FL, dated 19 July 2021, was refused by notice dated 16 February 2022.
- The development proposed is the erection of an outbuilding within the curtilage of a residential dwelling for ancillary use as a home office and store.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has highlighted that the proposal only requires planning permission because the permission[1] for the replacement dwelling now built on the site removed permitted development rights for, amongst other things, outbuildings. It is argued that this condition is not reasonable. However, whether or not this condition is reasonable or necessary is not a matter before me in the context of this appeal. It is open to the appellant to have this matter determined under section 73 of the Town and Country Planning Act 1990.

Main Issues

3. The main issues in the appeal are:

    - Whether or not the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the *National Planning Policy Framework* (the Framework) having regard to the effect of the proposal on the openness of the Green Belt;

    - Whether or not the proposal would be a suitable form of development in the countryside; and

    - If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

[1] Application Reference TM/16/01429/FL

Reasons

Whether inappropriate development

4. The appeal site is located in the Green Belt as defined by the *Tonbridge and Malling Core Strategy (adopted September 2007)* (CS) where Policy CP3 indicates that proposals will be assessed against national Green Belt policy. Paragraphs 149 and 150 of the Framework set out the forms of development that are not inappropriate in the Green Belt. Paragraph 149 of the Framework indicates that new buildings in the Green Belt are not inappropriate unless they are for one of a limited number of exceptions.

5. The appeal scheme proposes a detached building in the rear garden of the host property which the appellant has indicated would be used as a home office / store. Paragraph 149 c) of the Framework allows 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. Case law[2] indicates that extensions can include structures which are physically detached from the building of which they are an extension. However, case law does not set a distance at which a freestanding building should, or should not, be considered an extension. In addition, there is no evidence before me to indicate that the development plan provides any guidance for when a detached outbuilding may be considered to form part of a dwelling. As such, this is a matter for the decision maker to assess.

7. The proposed home office would be an L-shaped building located towards the rear boundary of the property, not far from an existing summer house and shed. Both parties have stated that the building would be around 30m from the rear elevation of the house. Whilst the function of the proposed building is related to the main dwelling, given the distance between it and the host property, spatially and visually ,there would be a conspicuous disconnection between them. Therefore, I do not consider it is reasonable to regard the proposed building as an extension to the host property, and so it would not fall under exception c) of paragraph 149 of the Framework.

8. It has also been suggested that the scheme could be considered under paragraph 149 g) of the Framework which concerns the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt. It is not disputed that as the appeal site lies in the countryside as defined by the CS, the garden is previously developed land. I see no reason to come to a different conclusion.

9. The Framework does not define "limited infilling" or "infilling". However, infilling is generally taken to be the development of a small gap in an otherwise built up frontage. Located in the rear garden of the property the proposal would not fill a small gap along a road frontage. The appellant has argued that as the proposal would be located between the host property and the property on the far side of Windmill Hill to the rear it would be infilling. However, this does not represent a small gap, as the distance between these 2 houses is substantial,

[2] Warwick DC v SSLUHC, Mr J Storer & Mrs A Lowe [2022] EWHC 2145 (Admin) and Sevenoaks District Council v Secretary of State for Environment and Dawe [1997] EWHC Admin 1012

nor is it along an otherwise built up frontage. Therefore, I do not consider that the proposal represents limited infilling.

10. However, on the basis that the appeal scheme represents the partial redevelopment of this part of the garden, to fall within this exception, the development must also not have a greater impact on the openness of the Green Belt than the existing development.

11. Openness is an essential characteristic of the Green Belt that has visual as well as spatial aspects. The mature vegetation, much of which is evergreen in nature, means there would be very little visibility of the building from the gardens of the adjacent dwellings, and no visibility of it from the road beyond the rear boundary. Nevertheless, the construction of a building would take place on land that is currently open, and although modest in size, the proposal would be an additional building on the site. It would also give the bottom of the rear garden a more 'cluttered' appearance to the detriment of its openness. The proposal would mean that this part of the garden would not be 'open' in any equivalent or comparative sense to its present condition.

12. Notwithstanding the limited visual impact, spatially the proposal would still reduce the openness of the Green Belt through the introduction of a new building and the spread of development across the bottom of the rear garden.

13. Consequently, as the proposal would have a greater impact on the openness of the Green Belt, it would not fall within the paragraph 149 g) exception.

14. In the light of the above, the proposal would result in a new building that does not accord with any of the exceptions given in paragraph 149 of the Framework. It would therefore be inappropriate development, which according to paragraph 147 of the Framework is, by definition, harmful to the Green Belt. In addition, there would be a degree of harm arising from the loss of openness.

Whether a suitable form of development in the countryside

15. The appeal site is located outside of any settlement boundaries and in the open countryside as defined by the CS. Policy CP14 of the CS restricts development within the open countryside unless it is for one of a limited number of forms of development. Whilst these include an appropriate extension of an existing dwelling, I have concluded above, that the distance the proposal would be from the house means it cannot be considered as an extension to it. As such, it does not fall within this exception and none of the other exceptions apply to this proposal.

16. Therefore, the proposal would not be a suitable form of development in the countryside and would be contrary to CS Policy CP14.

17. In support of the appeal my attention has been drawn to the Officer's report for another proposal in the district which considered that a detached carport for a property in the open countryside that was 14m from the dwelling did fall under this exception. Be that as it may, this proposal is more than twice this distance from the host property and so the suggested case does not represent a direct parallel to the appeal scheme.

Other Considerations

18. The appellant has highlighted that various family members are now working and studying at home more and the proposal would provide a home office to facilitate this as well as providing some additional storage space. It is stated that this would reduce unnecessary trips that currently have to be made to their workplaces. However, I have not been provided with any evidence to show that this additional space could not be provided in other ways that would not require the construction of a new building within the rear garden some distance from the dwelling. As a result, I give this limited weight.

Planning Balance and Conclusion

19. The proposal would be inappropriate development in the Green Belt which is harmful by definition. In addition, there is a degree of harm arising from the loss of openness. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt. In addition, the proposal would not be a suitable form of development in the open countryside.

20. Overall, I consider that the benefits cited in the scheme's favour do not clearly outweigh the harm it would cause. Consequently, the very special circumstances necessary to justify the development do not exist. As a result, it would be contrary to Policy CP3 of the CS and the Framework.

21. The appellant has argued that CS Policy CP14 is not consistent with the Framework which does not restrict domestic outbuildings in the countryside. However, even if I had concluded that the proposal accorded with this policy, an absence of harm in this regard would be a neutral factor and which would not alter the planning balance. Therefore, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR