



Appeal Decision

Site visit made on 18 April 2023

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 April 2023

Appeal Ref: APP/P1805/D/23/3314456

5 Warren Lane, Lickey, Worcestershire B45 8ER

- 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 Marie Fattorini against Bromsgrove District Council.
 - The application Ref 22/01144/FUL, dated 18 August 2022, was refused by notice dated 21 December 2022.
 - The development proposed is erection of double storey rear extension and a single storey rear extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal was amended before the Council determined the application and this necessitated a change to the description of development which is used on the appellant's appeal form and the Council's Decision Notice. I have used this in my banner heading above and determined the appeal on this basis.

Main Issues

3. 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 relevant development plan policies, including its effect on openness;
 - the effect of the proposed development on protected species; 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 the development.

Reasons

4. The appeal property is a semi-detached dwelling set well back from Warren Lane behind a mature hedgerow and the wider area is characterised by substantial greenery and mature trees. The property has a two storey extension on the gable and the appeal proposal seeks a further two storey rear extension and single storey conservatory alongside.

Whether inappropriate development in the Green Belt

5. The Framework establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions. Under Paragraph 149 c), the extension or alteration of a building is allowed provided that it does not result in disproportionate additions over and above the size of the original building. Policy BDP4 of the Bromsgrove District Plan 2017 (BDP) reflects the Framework in this regard.
6. The Framework does not provide a definition of 'disproportionate' additions. However, BDP Policy BDP4 interprets this as proposals in the Green Belt which would increase the size of the original dwelling by 40% or exceed a maximum total floor space of 140m². The scale of the development must also have no adverse impact on the openness of the Green Belt. Extensions not meeting these criteria would be viewed as inappropriate development and would only be permitted where very special circumstances exist.
7. The existing side extension has enlarged the original building by just over 36%, increasing the total floor space to approximately 151m², figures not disputed by the appellant. Whilst the size of the proposal has been substantially reduced, it would still extend the building by a further 31m², representing total extensions well in excess of the 40% threshold, as well as exceeding the prescribed maximum total floor space.
8. Ultimately, what is regarded as a disproportionate extension is a matter of planning judgement considering the size of the building and its context. However, whilst Paragraph 149 of the latest version of the Framework postdates the Council's policy, I have already found that this Policy is consistent with the Framework and under Paragraph 12 of the Framework where a planning application conflicts with an up-to-date development plan permission should not normally be granted. However, in any event, with an existing two storey side extension and a further proposed two storey rear extension as well as a proposed conservatory, the totality of the appeal proposal would clearly represent a disproportionate addition.
9. The Framework advises that openness is an essential characteristic of Green Belt policy and has a spatial and visual dimension. Whilst the proposal would not increase the width of the building and would have the effect of 'squaring off' the rear area, nevertheless, in spatial terms they would increase the footprint, form, and massing of the existing building. In doing so, the scale of the development would result in a harmful loss of openness. In visual terms, the proposed extensions would not be seen from the road, and their position and proximity to boundaries and mature vegetation would substantially limit any public viewpoints. Consequently, there would be a negligible impact on visual openness.
10. The appeal proposal would be a disproportionate addition and therefore inappropriate development in the Green Belt; it would also harm the openness of the Green Belt. It would conflict with BDP Policy BDP4 and the Framework. Inappropriate development is, by definition, harmful to the Green Belt and the Framework directs that substantial weight should be given to this harm.

Protected species

11. The Natural Environment and Rural Communities Act 2006 (the Act) places a duty on all public authorities to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. In addition, Circular 06/2005 (the Circular) states that the presence of protected species is a material consideration when a development proposal would be likely to result in harm to the species or its habitat. It goes on to say that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. It advises that surveys should only be required by condition in exceptional circumstances.
12. The site comprises mature trees, hedges and shrubs to the boundaries and in the immediate area are substantial tracts of woodland. The proposed two storey extension would be close to the boundary and would involve the disturbance of the roof. In the absence of a protected species survey and having viewed the nature of the proposal and the site context, there is a reasonable likelihood of the surroundings having a significant potential to provide habitats for protected species, such as for bats. Also, the potential for those habitats to be affected by the proposal.
13. Whilst a survey could be conditioned, this approach is not supported by the Circular for the reasons given above. Furthermore, if protected species were affected, even with best practice measures, I cannot be certain as to what mitigation, if appropriate, may be required. There is no evidence before me that would lead me to take a different view.
14. I therefore cannot conclude that the proposal would not adversely affect protected species. Although the Council has not cited a relevant development plan policy in its Decision Notice, I have been provided with BDP Policy BDP1 which states that regard will be had to any potential impacts on biodiversity. It would also be contrary to the Act and the Circular, as well as Paragraph 174(d) of the Framework which amongst other things, seeks to minimise impacts on biodiversity.

Other considerations and very special circumstances

15. Very special circumstances would need to exist to justify granting permission for the development because it would constitute inappropriate development in the Green Belt and harm the openness. Paragraph 148 of the Framework advises that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless that harm, and any other harm, is clearly outweighed by other considerations.
16. No very special circumstances are put forward by the appellant. There are no concerns in relation to design and appearance, no adverse impact on residential amenity and no neighbour objections were received. However, these are neutral matters neither weighing in favour or against the proposal.
17. In concluding, therefore, the harm by reason of inappropriateness, and any other harm, would not be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal. As

such the proposal would be in conflict with BDP Policy BDP4 and the Framework.

Conclusion

18. For the reasons set out above, having regard to the development plan as a whole and all other material considerations, including the Framework, the appeal is dismissed.

G Bayliss

INSPECTOR