



Appeal Decision

Site visit 25 April 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/E3715/D/22/3303202

Marston House, Heath Lane, Brinklow, Warwickshire CV23 0NX

- 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 Mrs A Smith against the decision of Rugby Borough Council.
 - The application Ref R22/0104, dated 7 February 2022, was refused by notice dated 26 April 2022.
 - The development proposed is the demolition of the existing garage and construction of a new garage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - The effect on the openness of the Green Belt, and;
 - If inappropriate, would the 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. Amongst other things, policy GP2 of the Rugby Borough Council Local Plan 2011-2031, June 2019 (LP) states that new development in the Green Belt will be resisted, and only where national policy on Green Belt allows will development be permitted. The National Planning Policy Framework (the Framework) states that the construction of new buildings in the Green Belt is inappropriate development save for listed exceptions in paragraph 149. Sub-paragraph 149d) includes the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces, amongst the stated exceptions.

4. The proposal would demolish the existing detached single garage and replace it with a triple garage with a pitched roof. The resultant building would be markedly larger in footprint, height and volume compared with the existing structure. Consequently, I find the proposed building would be materially larger than the existing garage, which would disqualify it from falling within the sub-paragraph 149d) exception.
5. Neither is it part of the appellant's case that the proposal would fall within any of the exceptions set out in paragraph 149 of the Framework¹. It follows that the proposal would be inappropriate development in the Green Belt, which as paragraph 147 of the Framework confirms, is by definition harmful.

Openness

6. Marston House is a detached dwelling set within generous grounds at a point along Heath Lane where development is tapering out into the countryside. The presence of buildings on the western side of the lane is somewhat sporadic, with otherwise rural spacious surroundings. The proposal would introduce an increased volume of built form into the grounds of Marston House thereby causing spatial harm to the openness of the Green Belt.
7. Furthermore, although the proposed building would partially overlap the siting of the existing garage, the longer rear elevation would present closer to the road, and as such it would have a more obvious presence. This would exacerbate the visual impact of the built form on the openness of the Green Belt.
8. In combination, these factors would result in limited harm to the openness of the Green Belt.

Other considerations

9. The appellant refers to a fallback position that she considers would be less preferable than the appeal proposal, and points to case law² that has established that a fallback development may be a material planning consideration. In that case, it was held that there should be a "real prospect" of a fallback development being implemented and that the decision-maker should exercise their planning judgment as to whether that would be the case depending on the particular circumstances.
10. The fallback position proposed by the appellant is illustrated on drawing 2136-01A and shows a detached triple garage with a broadly similar footprint to the appeal proposal, but with a lower flat roof that would be 2.97m in height. The appellant asserts that such a structure could be built in a similar position to the appeal proposal under permitted development rights afforded to dwellinghouses under Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the Order).
11. Amongst other things, Class E of the Order allows for the provision within the curtilage of a dwellinghouse any building required for a purpose incidental to the enjoyment of the dwellinghouse subject to certain restrictions. These restrictions extend to the height of the building, and development would not be

¹ Paragraph 5 Appellant's Grounds of Appeal

² *Mansell v Tonbridge and West Malling Borough Council* [2017] EWCA Civ 1314

- permitted where the height would exceed (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building within 2 metres of the boundary of the curtilage of the dwellinghouse, or (iii) 3 metres in any other case. Furthermore, the height of the eaves of the building should not exceed 2.5 metres.
12. The appellant has not established that the fallback triple garage definitely falls within the permitted development class relied upon by way of a certificate of lawfulness for proposed development. Moreover, it is not for me to determine the lawfulness of the fallback development within the remit of this decision. The absence of a certificate of lawfulness does not deny the existence of permitted development rights, but it does mean some doubt remains as to whether the alternative structure proposed would conclusively fall within the limitations of the Order. This is reinforced by some misgivings expressed by the Council as to whether the scale of the fallback garage would be consistent with a purpose incidental to the enjoyment of the dwellinghouse, necessary to qualify under Class E.
 13. Nevertheless, the appellant has stated³ that should this appeal be dismissed, it would be her intention to construct a garage under Class E of the Order in line with the submitted drawing. However, the appellant goes on to express her opinion that the tiled pitched roof shown in the appeal scheme would result in a more beautiful building than the flat roofed design put forward as a fallback position. Given the strongly stated design preference, it is not convincingly explained why any fallback position advanced under Class E of the Order by the appellant would not therefore take advantage of the option to have a dual-pitched roof.
 14. Overall, based on the evidence presented to me I accept that there is a greater than theoretical possibility that an alternative fallback development for a larger replacement garage might take place under permitted development rights. However, I am not entirely convinced it would take the form shown in the submitted drawing.
 15. In any event, the proposed flat roofed structure would be considerably lower in height than the appeal proposal, and therefore, in spatial and visual terms would have a lesser impact on the openness of the Green Belt. Accordingly, it is not shown that the fallback position advanced would result in greater or equivalent harm to the openness of the Green Belt in comparison to the appeal proposal.
 16. It is put to me that by comparison, the appeal scheme would enhance visual amenity due to the employment of a pitched roof, and use of roof tiles that would match those on the main dwelling. Nevertheless, the appeal scheme would appear as a simple functional building subservient to the main house. It would present a blank elevation towards the road and therefore, even with a pitched roof it would make a limited aesthetic contribution to the character and appearance of the area. Moreover, it is not clearly demonstrated that the pitch of the roof proposed would positively respond to the roof pitch and somewhat complex roof form in evidence at the main dwelling.
 17. By comparison, I am not persuaded that the more modest dimensions of the fallback scheme would be objectionable or out of keeping. Hence, I cannot

³ Paragraph 12, Appellant's Grounds of Appeal

agree with the appellant's assertion that the appeal proposal would result in visual enhancement of the Green Belt to any significant extent. Consequently, I find that the specific fallback position advanced should attract limited weight in support of the appeal proposal.

18. The appellant indicates that no objections have been made by the Council in relation to the demolition of the existing garage, the impact on the living conditions of neighbouring occupiers or on highway safety grounds. Be that as it may, these are matters that would generally be required by other local and national planning policies. Therefore, the absence of harm in these respects are neutral factors in the balancing exercise rather than benefits of the proposal.

Green Belt balancing exercise

19. Paragraph 148 of the Framework advises that substantial weight should be given to any harm to the Green Belt. Moreover, very special circumstances to allow inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In this case, the proposal amounts to inappropriate development, and limited harm would be caused to the openness of the Green Belt. These factors attract substantial weight and would not be clearly outweighed by other considerations advanced by the appellant. Consequently, the very special circumstances necessary to justify the development do not exist.
20. Therefore, I find that the proposal would amount to inappropriate development in the Green Belt that would harm openness and would conflict with national Green Belt policy in the Framework. It further follows that it would be contrary to policy GP2 of the LP and ought not to be approved.

Conclusion

21. For the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

INSPECTOR