



---

# Appeal Decision

Site visit made on 16 March 2023

**by Ben Plenty BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 May 2023**

---

**Appeal Ref: APP/A1910/D/22/3294559**

**The Spinney, Hempstead Road, Bovingdon, HEMEL HEMPSTEAD HP3 0DS**

- 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 A Salehi against the decision of Dacorum Borough Council.
  - The application Ref 21/03999/RET, dated 19 October 2021, was refused by notice dated 16 December 2021.
  - The development proposed is a pergola to the rear of the dwelling, and outbuildings to the rear of the existing detached garage.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The proposal relates to development that has already been completed and as such section 73A of the 1990 Town and Country Planning Act applies. I have therefore dealt with the appeal on this basis and removed reference to retrospective as this is not a description of development.
3. The Council demonstrates that the appeal site was subject to planning permission in 1967 and 1968 for a bungalow ('the original dwelling'), the latter had a floor-area of around 205sqm. The bungalow was subject to several substantial extensions between 1971 and 1984. These increased the floorspace by around 202sqm and included the existing triple garage. The bungalow was replaced in 2010. The existing dwelling overlaps some of the original bungalow's footprint in a more consolidated but taller form of development.
4. The replacement dwelling has a floorspace of about 398.7sqm, above ground, and a basement area of around 118.5sqm. For that scheme the Council found that the scale of development would be offset by the removal of two outbuildings and a porch (no's 4, 5 and 7<sup>1</sup>) totalling around 126.5sqm, and the removal of Permitted Development (PD) rights.
5. The Appellant asserts that the 'original building' would constitute the replacement building. However, case law<sup>2</sup> demonstrates that "what must be considered in the evaluation exercise is the original building as it existed on the coming into force of the 1947 Act or the first building as originally built after that date". This is a material consideration of substantial weight in my consideration of this appeal. Therefore, whilst the bungalow was replaced with

---

<sup>1</sup> Appellant's Statement of Case, Appendix 2, plan C01

<sup>2</sup> Guildford Borough Council v SSLUHC/Christopher weeks, [2023] EWHC 575 (Admin)

the existing dwelling, the original bungalow as originally built should be the baseline for any consideration as to the proportionality of further development.

## **Main Issues**

6. The main issues are:

- whether the proposed pergola, extension to the triple garage and outbuilding would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (The Framework) and any relevant development plan policies;
- the effect of the pergola, extension to the triple garage and an outbuilding on the openness of the Green Belt;
- the effect of the pergola on the character and appearance of the area; and
- if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances to justify it.

## **Reasons**

### *policy context*

7. Policy CS5 of the Dacorum Borough Council Core Strategy 2013 (CS) states that the Council will apply national Green Belt policy. The policy also explains that small-scale development will be permitted in certain circumstances. This includes at (c) for limited extensions to existing buildings. The Plan does not include a definition of 'limited extensions' and is therefore a matter of planning judgement. The Appellant identifies that CS policy CS5 refers to extensions to an 'existing' rather than an 'original' dwelling. However, it is clear that the policy provides overarching policy only for extensions to buildings in the Green Belt. It does not provide a specific approach for proposed extensions to replacement dwellings.
8. Paragraph 149, of the Framework, establishes that buildings in the Green Belt would be inappropriate unless they would meet a listed exception. Paragraph 149(c) explains that the extension or alteration of a building would not be inappropriate provided that it would not result in disproportionate additions over and above the size of the original dwelling.
9. The Framework explains in the glossary that the original dwelling is the building that existed on 1 July 1948 or, if constructed after this time, as it was built originally. Moreover, the commentary for saved policy 22 of the Dacorum Borough Local Plan (2004), identifies the original building as "either the dwelling that existed on the site on 1 July 1948; or if there was no dwelling on that site at that time, the first dwelling built after that date, as it existed when first built". This means that even if the original dwelling has been replaced by a new dwelling, consideration of proportionality must begin with an understanding of the size of the original dwelling.
10. Paragraph 149, of the Framework, does not refer to ancillary outbuildings. Nonetheless, paragraph 149(c) should not be interpreted as only being confined to physically attached structures and can include structures which are

physically detached from the building to which they are an extension<sup>3</sup>. Consequently, it is necessary to consider whether an outbuilding is deemed to be a normal domestic adjunct and thus would be considered as an extension to building for policy purposes. This is a matter of planning judgement taking into consideration such matters as an outbuilding's use, relationship to the original building and its size.

### *Inappropriate development*

#### The Pergola

11. The pergola is a large metal and glass structure attached to the rear of the dwelling, this covers around half of the rear elevation and extends into the rear garden. Although the extension retracts to its sides, it is a substantial structure either open or closed. It is also likely to be largely closed during inclement weather and through the winter, extending its effect on the Green Belt throughout the year. This has a floor-area of around 56.6sqm and represents a volume increase to the existing dwelling of around 8.4%.
12. The evidence demonstrates that the original dwelling was around half the size of the replacement dwelling, with a baseline figure of approximately 205sqm. Accordingly, the original dwelling was substantially smaller than that stated by the Appellant at 399sqm. The original building had been substantially extended since its first erection and was then replaced with a new dwelling. Its increased size was off-set by the benefits to the openness of the Green Belt through the consolidation of built form, and the removal of PD rights, and was approved under very special circumstances.
13. The Appellant asserts that the total quantum of built form on site was 632sqm and that the proposed development would be within the total quantum of development that was previously within the site. However, this sum includes a range of outbuildings that were separate and not part of the original building's floorspace. The evidence suggests that these did not form a domestic adjunct to the dwelling when assessing the effects of proportionality.
14. The proposed pergola would be a modest and limited extension in comparison to the existing building. Nonetheless, it would further increase the mass of development on site when compared to the base line as set by the size of the original dwelling. On those terms, the proposed extension would result in a material degree of change in physical built development on site. This, in combination with former additions that were applied to the original dwelling, would result in a disproportionate increase in the quantum of built form on site. Consequently, the proposal would be a disproportionate addition to the size of the original dwelling.
15. As it has not been demonstrated that the pergola would meet an exception listed in Paragraph 149 of the Framework. It would be inappropriate development in the Green Belt and conflict with the Council's policies outlined above.

#### Extension to garage

16. The triple garage is a wide structure that faces the driveway. It is set some distance from the dwelling and is not deemed to be an extension but is rather a

---

<sup>3</sup> Warwick DC v SSLUHC, Mr Stoner & Mrs Lowe [2022] EWHC 2145 (Admin)

separate building in the Green Belt. As a result, the garage would be an original building and the proposed extensions would be subject to consideration by virtue of paragraph 149(c).

17. The proposed outbuilding is immediately adjacent to the garage extension and used for purposes incidental to the enjoyment of the dwellinghouse. As such, this would be a domestic adjunct to the proposed extension to the garage. The extension and outbuilding are located to the rear of the garage.
18. The Appellant demonstrates that the extensions and outbuilding add a further 90% of floor-area to the existing garage. These consist of various elements that have a low-profile roof form. As such, the height of the proposed extension and outbuilding are substantially lower than the hipped roof of the triple garage. Nonetheless, these components form a structure that is substantially wider and deeper than the existing garage. Based on their scale and footprint, the extension and outbuilding combine to create a large structure that represents a disproportionate addition to the original garage.
19. Accordingly, the rear extension and outbuilding would not meet an exception listed in Paragraph 149 of the Framework. These would also be inappropriate development in the Green Belt in conflict with the Council's policies.

#### *Openness*

20. The appeal site is in a linear group of dwellings within the open countryside. The proposed pergola would be located to the rear of the site which is relatively well screened to its sides and rear. However, it may be visible in glimpsed views, from the open countryside to the rear, through the rear boundary tree and hedge screen. Accordingly, the pergola although well screened from the public realm, would result in limited to minor visual harm to the Green Belt.
21. Considerations of openness have both visual and spatial aspects. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. In spatial terms, the proposal adds a sizeable further mass to the dwelling causing moderate harm to the openness of the Green Belt.
22. The proposed extension to the garage and outbuilding would materially increase the footprint and size of this building, resulting in an encroachment of built form and moderate spatial harm. As a result, although causing only minor visual harm, the proposed extension to the garage and its associate outbuilding, would also have a moderately harmful spatial effect. Consequently, the proposed extensions to the garage result in moderate harm to the openness of the Green Belt.

#### *Character and appearance*

23. The site consists of a large two-storey dwelling within a similar row of properties, recessed a substantial distance from the highway. The plot is behind mature hedge and tree screening with a tall wooden gate across the driveway entrance. This context results in the dwelling presenting limited views from the highway. The verdant planting within the front garden complements surrounding vegetated views within this rural setting. As such, the site makes a positive contribution to the rural character of the surrounding area.

24. The pergola is attached to the rear elevation of the dwelling. It is screened from the public highway and views from the countryside to the rear due to its scale and position. The extension would be a relatively large addition to the rear of the dwelling. However, it would be single-storey and complement the overall form and style of the dwelling. The dwelling includes brown/red brick and brown window frames. Although, the extension consists of glass with grey frames, these materials do not prevent the addition from integrating well with the dwelling from a design perspective. Due to its recessed location and having a low profile, the pergola is in scale with the main dwelling and would not represent a bulky addition. It would therefore retain the existing pleasant rural character of the area and complement the character and appearance of the surrounding area.
25. Accordingly, the pergola would comply with CS policies CS11 and CS12. These seek, among other matters, for development to respect an areas general character and integrate with the streetscene character.

#### *Other Considerations*

26. The Appellant has provided several Council decisions in support of the proposal. These demonstrate that an extension to a nearby dwelling, with a floor space increase of 13%, was found to be not disproportionate. A second proposal illustrated that a conservatory could be allowed despite the dwelling having already been extended by 11%. Although each case must be considered on its own merits, these examples do not reflect the scale of extensions proposed.
27. The neighbouring dwelling, 'Silver Birches' includes approved extensions and a hobby room that resulted in a sizeable increase in footprint. The Appellant suggests these increased the original dwelling by around 116%, demonstrated with ariel photographs of 2003 and 2013. However, the submitted calculations for that scheme showed a net increase of around 28% due to some original development being subject to demolition. Consequently, this decision does not show an inconsistent approach to decision making and, in any event, predates the recent case law judgement that has provided greater clarity on this matter. The Appellant also refers to two replacement dwellings approved in the area. However, these are not provided with sufficient detail, or the Council's approach to extensions to these, to enable me to draw any clear comparisons to the appeal. As such, these references are of limited weight of relevance to the matters associated with this appeal.
28. Various Council and appeal decisions, taken since the replacement appeal dwelling was approved, demonstrate that basements are not deemed to be disproportionate additions to dwellings in the Green Belt. The Appellant asserts that these decisions demonstrate that a proposal for a replacement dwelling, that includes a basement, would not result in the removal of class E PD rights if determined today. However, this is a purely theoretical assertion and does not present a robust fall-back position.

#### *Whether there would be Very Special Circumstances*

29. Paragraphs 147 and 148 of the Framework set out the general presumption against inappropriate development within the Green Belt. They explain that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of

inappropriateness, and any other harm, is clearly outweighed by other considerations.

30. I have concluded that the proposed pergola, garage extension and outbuilding would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that these additions would result in moderate harm to the openness of the Green Belt. Paragraph 148 of the Framework requires substantial weight to be given to any harm to the Green Belt.
31. On the other hand, the other considerations, including finding no harm to the character and appearance of the area, are of limited to moderate weight in favour of the proposal. As such, the harm to the Green Belt is not clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist. Accordingly, the proposal fails to adhere to the local and national Green Belt policies I have already outlined.

### **Conclusion**

32. For the above reasons, the appeal should be dismissed.

*Ben Plenty*

INSPECTOR