



Appeal Decision

Site visit made on 30 May 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/T2215/D/22/3295132

Rowhill Mount, Rowhill Road, Wilmington, Kent DA2 7QG

- 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 and Mrs Danny Andrews against the decision of Dartford Borough Council.
 - The application Ref DA/21/01634/FUL, dated 5 November 2021, was refused by notice dated 4 January 2021.
 - The development proposed is demolition of a link between the main dwelling and an ancillary building, and erection of a replacement link in the form of an orangery.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The date the application was refused in the banner above is taken from the Council's decision notice. It is common ground that it should have been 4 January 2022.
3. I have also dealt with another appeal (Ref: APP/T2215/D/22/3300228) on this site. It is the subject of a separate decision.

Main Issues

4. The appeal site is in the Green Belt and the main issues are:
 - whether the proposal is inappropriate development in the Green Belt, having regard to local and national planning policy;
 - if it is inappropriate development, its effect on the openness of the Green Belt and the purposes of including land within it; and
 - whether any harm by reason of inappropriateness is clearly outweighed by other considerations to amount to very special circumstances required to justify the development.

Reasons

Planning policy

5. Policy CS13(a) of the Dartford Core Strategy 2011 (the CS) and Policy DP22(1) of the Dartford Development Policies Plan 2017 (the DPP) resist inappropriate development in the Green Belt. DPP Policy DP22(7) permits extensions to buildings in the Green Belt that are proportionate and subservient in appearance to the original building and would not result in a disproportionate

addition to the original building, which in this policy is defined as no more than a 30% volumetric increase over and above the original building. DPP Policy DP22(2) sets out that inappropriate development will only be approved in very special circumstances.

6. These policies are broadly consistent with objectives of the National Planning Policy Framework (the Framework) to protect Green Belt land and to regard the construction of new buildings as inappropriate development in the Green Belt, subject to certain exceptions. The exception at paragraph 149(c) is relevant in this case. It relates to 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. The Framework does not refer to subservience or volumetric increase but these are two aspects of size. I have taken this into account in determining the appeal.

Whether inappropriate development

7. The large, detached two-storey house on the appeal site was granted planning permission in 2009 and replaced a Victorian house. It has been extended on one side linking it to a previously detached outbuilding. This link would be demolished. The proposed link would connect the house to the outbuilding.
8. DPP Policy DP22 defines 'original building' as '*a building as it existed on 1 July 1948 where it was built before that date, and as it was built when initially built after that date*'. This is consistent with the Framework¹, including for the purposes of paragraph 149(c); namely, '*a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally*'. Consequently, the house as it was built (detached from the outbuilding) is the original building and baseline against which extensions to it should be measured, not the Victorian house. The building volume of the (then proposed) house in 2009 was 1142.46cu.m, excluding basement.
9. The proposed link building would have 60cu.m or 63.53cu.m according to the appellant and Council respectively. This extension would therefore increase the building volume of the original building by between approximately 5.25% and 5.56%. Either way, significantly below 30%.
10. The main parties do not agree about the relevance of the outbuilding to inappropriate development. On the extracts before me the development plan does not define the circumstances in which an outbuilding might form part of a dwelling. There is, though, no dispute that the proposed link would physically attach and internally interconnect the outbuilding to the house. On this basis, although it already exists (and even if it was built before the house) the outbuilding would form an extension to the house. The Council considers that the proposed link and the outbuilding would cumulatively increase the building volume of the original building by 35% (a figure not in itself challenged by the appellant) and 'only marginally' above the 30% volumetric limitation. Nonetheless, it would still be above this limitation.
11. According to the submitted plans, the proposed link would be approximately 2.5m high to eaves, 3m high to the top of a parapet wall and 3.5m high to a main ridge. The floorplan would be about 6m wide and 4m deep with about 20sq.m internal floor area. The house is substantially larger than the proposed

¹ Appendix 2: Glossary

link in all these dimensions. This limited nub of built form would be sited on one side of the house, set well back behind the front elevation.

12. The outbuilding has a low-pitched hipped roof and is also not a tall building compared to the house but is near it on one side. The front elevation is more than half the width of the house and though set back, it is sited towards the plane of the front elevation of the house. Taken with the proposed link there would be a long, continuous façade protruding a significant distance off to one side of the house. Albeit single storey this would almost double the width of the house with a similar impression at the rear. The outbuilding also extends a substantial distance to the rear with an east side elevation considerably more than half the depth of the house. Its floor area taken with the proposed link would approach a doubling of the ground floor area of the house.
13. Considering all the above, by the Council's own volumetric limitation the proposal would not result in a proportionate extension of the original building but be a disproportionate addition. As such, it does not comply with DPP Policy DP22(7). Furthermore, it would result in disproportionate additions over and above the size of the original building and so fail to meet the exception at Framework paragraph 149(c). Accordingly, I find that the proposal would be inappropriate development in the Green Belt. It therefore also conflicts with CS Policy CS13(a) and DPP Policy DP22(1).

Openness and purposes of the Green Belt

14. The single storey and mostly glazed proposed link would take the form of an orangery and give the impression of a 'light' structure in between, and separating, the brick and tiled house and outbuilding. Nonetheless, while a relatively small building, and mostly see through, it would be timber framed and express a structure with appreciable scale and massing. It would span the gap between the house and the outbuilding and fill most of this space.
15. Consequently, this building would have a permanent visual and spatial presence and establish significant built form on part of the site where there was none originally. This part of the site would no longer be undeveloped and 'open' in any equivalent or comparative sense. Limited public visibility from Rowhill Road would not mean absence of intrinsic impact on the Green Belt.
16. The development would not spread beyond the residential curtilage of the house and into the wider countryside. However, it would result in a further consolidation of built form on the site and, as such, not safeguard this part of the countryside from this limited encroachment.
17. This small loss of openness would not preserve the openness of the Green Belt, which is one of its essential characteristics, and be at odds with a purpose of including land within the Green Belt set out in Framework paragraph 138. As a result, the proposal is contrary to the Council's objectives for CS Policy CS13(a) and DPP Policies DP22(1)(2) and (7). It also conflicts with the fundamental aim of Framework paragraph 137 to keep land in the Green Belt permanently open.

Other considerations

Personal circumstances

18. The appellants like the design of the proposed link and consider that this part of the garden would otherwise be underused. It would provide safe and

convenient enclosed pedestrian movement between the house and the outbuilding. One of the appellants' elderly parents has stayed in the outbuilding during periods of illness so care could be given with a degree of independent living. These would be private benefits and these preferences would prevail for the duration of the appellants occupation of Rowhill Mount. There is no evidence that future occupiers of the house would use the proposed link (or the outbuilding) in the same way. As such, these personal circumstances have limited weight in support of the proposal.

Alleged permitted and lawful development

19. The appellants suggest that the Victorian house could have been very significantly further extended, or outbuildings erected on the appeal site, using residential permitted development rights (PDR)². That may be so, but this house was demolished some years ago and no longer exists. Any such potential PDR have been lost.
20. Planning permission for a replacement house on the site was granted in April 2009 and for a similar proposal in December 2009³. In each case condition No.5 removed PDR including for extension of the replacement house and erection of outbuildings on the site. A subsequent application⁴ was made for development described as '*provision of alterations to drive and levels, details of main entrance pond fountain and gates (revisions to previously approved planning permission DA/09/01326/FUL)*'. It was approved in September 2010 without condition No.5 or an equivalent condition.
21. In this appeal I have no reason to find that development at the site did not reflect the 2010 revisions, as the appellant suggests. However, the only relevant plan before me in this respect is annotated 'site plan showing drive, fountain, slab levels'. It is therefore consistent with the description which has a narrow scope and unambiguously states the revisions were to the December 2009 (ie parent) planning permission. There is no compelling objective evidence before me that the 2010 revisions were an 'alternative to the original planning permission', that the development as a whole only reflected the 2010 revisions or that further development at the site is free from condition No.5.
22. As this plan is a site plan, it is unsurprising that the by then already approved house is shown in it. The plan does not refer to the erection of a house or to 'small amendments to the ground floor layout' of the approved house or as seeking approval for the outbuilding. Nor have I been provided with any elevation or floor plans for the house or the outbuilding as part of the 2010 revisions. The appellants anyway contend that the outbuilding was constructed before the house, if so its presence in this plan is not unexpected.
23. It is not clear to me precisely when either development occurred. The Council accepts that the outbuilding 'appears to have been built at some point between 2007 and 2012'. However, even if it has existed for more than 10 years and was 'constructed under permitted development' when the Victorian house still existed, this would not alter my finding above that the proposed link would physically attach the outbuilding as an extension to the house.

² Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 1995 (as amended)

³ 09/00160/FUL and 09/01326/FUL respectively

⁴ 10/00963/FUL

24. The main parties dispute the lawfulness of the existing link (including therefore the in-principle acceptability and baseline of a link and the relevance of comparisons made between the size of it and the size of the proposed link). This is not within the remit of this appeal. While it has existed for some years and even if it took the Council a corresponding time to become aware of it, at the appellants' own volition, this is not uncommon. In this appeal there is no certainty the existing link would remain, such as a lawful development certificate (LDC), so the fact that it currently exists does not justify or mitigate the adverse impacts of the proposed link. It would anyway be demolished so the starting point in this appeal is the proposed link building.
25. Notwithstanding the above, there are no specific plans or schemes before me to demonstrate the voracity of claims made in respect of any alleged historic or current PDR at the site, including with reference to relevant limitations or conditions of potentially relevant PDR. Nor is there any LDC to this effect or to substantiate alleged existing or proposed lawful development.
26. Consequently, I am not satisfied the appellant has demonstrated or justified that the house can be extended, or any outbuilding constructed at the site using PDR. There is also no definitive objective evidence, such as an LDC about the lawfulness of the existing link building or the outbuilding (including about its first use once constructed or its use now). The appellants' claims in these respects are, therefore, largely unsubstantiated assertion or speculation. In these circumstances, there is no real prospect of a fallback position in these regards, so these alleged permitted and lawful development considerations have little weight in this appeal.

Other matters

27. The appeal site is not in an area of outstanding natural beauty or a conservation area and is not at risk of flooding. The house is not a heritage asset and there are no nearby listed buildings, public rights of way (other than Rowhill Road) or site of special scientific interest. The proposed link would be energy efficient and high quality in design and external materials, sympathetic to the house and outbuilding in these regards. The proposal would have no adverse effect on the character and appearance of the area or trees on the site protected by a tree preservation order⁵ and be acceptable in terms of parking provision. It would not affect the living conditions of the occupiers of any nearby dwellings. The absence of harm in these regards is a neutral factor.

Green Belt Balance

28. The proposed link building is inappropriate development which is, by definition, harmful to the Green Belt. The limited harm to the openness and purposes of the Green Belt is at odds with local and national policy to protect the Green Belt. Framework paragraph 148 sets out that any harm to the Green Belt carries substantial weight.
29. The proposed link building would be important to and valued by the appellants. However, there is no compelling evidence or other convincing justification that it is the only alternative to meet the needs suggested. Whereas the proposed link would be a permanent building in the Green Belt and harm in this respect would endure.

⁵ TPO No.5 1978

30. I recognise that dismissing the appeal would interfere with the appellant's private rights to enjoyment of their possessions, to family life and their home⁶. I have also had due regard to the age protected characteristic in this appeal for the purposes of the Public Sector Equality Duty⁷, including the need to eliminate discrimination and advance equal opportunity. Nevertheless, these factors must be weighed against the wider public interest.
31. For the reasons given above, the development harms the Green Belt. I am satisfied that these legitimate aims can only be adequately safeguarded by the refusal of permission for the proposal. I therefore consider that dismissing the appeal for these reasons would be a proportionate outcome.
32. The other considerations outlined above are, therefore, individually and cumulatively of insufficient weight to clearly outweigh the harm to the Green Belt. Consequently, very special circumstances to justify the proposal do not exist. As such, it does not comply with DPP Policy DP22(2) or Framework paragraph 148.

Planning Balance and Conclusion

33. The proposal does not accord with the development plan taken as a whole and it conflicts with the Framework. There are no material considerations which outweigh these findings.
34. Consequently, for the reasons given above the proposal is unacceptable and therefore the appeal does not succeed.

Robin Buchanan

INSPECTOR

⁶ Article 1 of the First Protocol and Article 8(1) of the Human Rights Act 1998

⁷ Section 149 of the Equality Act 2010