



Appeal Decision

Site visit made on 5 June 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2023

Appeal Ref: APP/M2270/W/22/3291698

Top Lodge, Pembury Road, Capel, Tonbridge TN11 0QG

- 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 G Linsdell against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/03419/FULL, dated 11 October 2021, was refused by notice dated 4 January 2022.
 - The development is construction of gymnasium outbuilding and proposed new driveway access including construction of new walls to front boundary line.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In considering whether to grant planning permission for development which affects a listed building or its setting, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special regard be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I shall have regard to this statutory duty in my consideration of this appeal.
3. The Council's reasons for refusal are focussed upon the effects of the gymnasium outbuilding element of the scheme. Indeed, there are seemingly no objections to the provision of a new access or the construction of new walls and, based upon the evidence before me and my own observations on site, I see no reason to take a different stance. I shall determine the appeal on this basis, primarily focussing upon the gymnasium element of the scheme. As the gymnasium outbuilding (the gym) has already been erected, I shall consider its effects on a retrospective basis.

Main Issues

4. The Council has not refused planning permission due to alleged inappropriate development in the Green Belt. Even so, the National Planning Policy Framework (July 2021) (the Framework) dictates that the construction of new buildings should be regarded as inappropriate development unless a specified exception applies. Given the importance of the Framework's Green Belt provisions, it is necessary for me to consider, under a main issue in this appeal, whether the gym represents inappropriate development in the Green Belt. I am content that no party with a potential interest in the outcome of this appeal is prejudiced by me taking this approach.

5. The main issues are:

- Whether or not the gym is inappropriate development in the Green Belt;
- The effect of the gym upon the openness of the Green Belt; and
- The effect of the gym upon the settings and thereby the significance of relevant Grade I and II listed buildings, and upon the significance of a Grade II listed Registered Park and Garden.

Reasons

Whether inappropriate development

6. The Framework specifies that the construction of new buildings in the Green Belt shall be regarded as inappropriate development unless one of several stated exceptions apply. These exceptions include 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.
7. Whilst the gym is not physically attached to Top Lodge, there is recent caselaw¹ to confirm that an extension for the purposes of the relevant Green Belt provision of the Framework can include structures which are physically detached from the building of which they are an extension. Moreover, whether a detached outbuilding amounts to an extension to a dwelling is a matter of fact and degree dependent upon the site-specific circumstances.
8. The case has not been made by any party, including the Council, that, for the purposes of the Framework's Green Belt provisions, the gym should be treated as a new building in its own right (as opposed to as an extension to a building). Having considered the gym's close physical relationship to Top Lodge and the clear function of the gym as a curtilage building, I have no obvious reason to depart from the position that, in Green Belt terms, an extension to a building is under consideration.
9. In the context of extensions to dwellings, the preamble to saved Policy H11 of the Tunbridge Wells Borough Local Plan (March 2006) (the LP) offers a clear indication of what an extension of 'modest' size would entail. An increase of approximately 50% in volume when compared to the existing building or 150 cubic metres (whichever is greater), subject to a maximum increase of 250 cubic metres, is specified. Whilst such measurements/thresholds do not specifically relate to Green Belt development and cannot definitively dictate whether or not the gym has resulted in disproportionate additions to Top Lodge in Green Belt terms, they still offer a broadly relevant steer as regards an acceptable size for an extension to a dwelling.
10. To my mind, in the absence of any suggestion to the contrary and having studied the submitted plans and the current composition of permanent buildings at the site, I am satisfactorily content that the gym has not resulted in disproportionate additions over and above the size of the original building. This is without prejudice to my considerations in a heritage sense, as set out in the following section of my reasoning. As such, the relevant Framework exception to a building being regarded as inappropriate development applies.

¹ Warwick District Council v SSLUHC, Mr J Storer & Mrs A Lowe [2022] EWHC 2145 (Admin)

11. For the above reasons, the gym is not inappropriate development in the Green Belt. There is satisfactory compliance with the Framework in so far as it sets out exceptions to the construction of new buildings being considered inappropriate in the Green Belt.

Openness

12. I have found that the gym is not inappropriate development in the Green Belt in accordance with an exception that does not expressly state a need to assess its effect on openness or whether it conflicts with the purposes of including land within the Green Belt. The gym should not therefore be regarded as harmful either to the openness of the Green Belt or to the purposes of including land within it².
13. Thus, the gym does not cause harm to the openness of the Green Belt and satisfactorily accords with Policy MGB1 of the LP and the Framework in so far as these policies confirm that the openness of the Metropolitan Green Belt will be preserved, and that openness is an essential characteristic of Green Belts.

Designated heritage assets

14. The gym occupies a sensitive location where the settings and significance of various designated heritage assets are at play. It falls within the curtilage of Top Lodge, a Grade II listed building. Top Lodge historically formed part of the estate associated with the Grade I listed building known as Somerhill and lies to the southern edge and within the boundary of the Grade II listed Somerhill Registered Park and Garden (the RPG).
15. The Grade I listed Somerhill is identified within the statutory list description as being of early-17th century origin. Its significance and special interest is drawn, in-part, from its grand architectural qualities, surviving historic fabric, and historic associations. This significance and special interest is further underpinned by the building's origins as a high status country mansion, visually and functionally ascendant over a wider parkland estate. There remains an enduring connection between Somerhill and its surroundings. Therefore, the land and buildings that historically formed part of the Somerhill estate, which include Top Lodge and the RPG, comprise part of its setting and make a valuable contribution to its significance as a designated heritage asset.
16. Top Lodge, according to its statutory list description, is of late-19th century origin. Its significance and special interest is drawn, in-part, from its Tudor style, intricate plan form, array of ornate architectural features, and varied palette of traditional external-facing materials. This significance and special interest is further underpinned by Top Lodge's association to Somerhill and its isolated position demarking what was once, as indicated in the statutory list description, the commencement of the principal approach to the mansion. Indeed, Top Lodge's significance and special interest, including its historic associations to Somerhill and the RPG, remains readily identifiable despite any works carried out in recent times to widen or reconfigure the A21.
17. The significance of the RPG as a designated heritage asset is drawn, in part, from its inherent connection to Somerhill, its areas of formal/informal garden, its extensive expanses of undulating and often well-vegetated rural land, and its various approaches that are signified by outlying perimeter buildings that

² Court of Appeal judgement *Lee Valley Regional Park Authority v Epping Forest District Council* [2016] refers

would have once offered gate-keeping opportunities or served other estate functions. Top Lodge, through providing a modest yet charming indicator of the estate's southern boundary and entry point, makes a positive contribution to the significance of the RPG. This is despite this route no longer functioning as a publicly accessible entry point to the Somerhill estate.

18. The gym has been designed and built to match the detailing and materiality of Top Lodge. For example, low-level sandstone is complemented by timber-framed upper walling of Tudor style, and decorative timber fascia features and reclaimed clay tiles have been utilised at roof level. However, notwithstanding the considerable efforts made in this regard, the gym is read as a significant and confusing addition to the site that, even though single storey, noticeably competes with Top Lodge for prominence in-part due to its size and close physical relationship.
19. The appeal site's relatively discreet location and well-vegetated surroundings provide some degree of containment. Indeed, available views of the gym are limited in their range and extent. However, in addition to being easily seen from the now private access to the site, I observed the gym to be visible, at least in-part, from along a not insignificant stretch of the northbound A21. Moreover, no longer is Top Lodge experienceable as an isolated and outlying single entity consistent with its inception and historic purpose. This is to the detriment of its heritage significance and special interest.
20. There is no intervisibility between the gym and Somerhill and it occupies a small peripheral part of the RPG. However, the fundamental alteration that has occurred to Top Lodge's immediate setting means that it can no longer be read as an impressive standalone building consistent with its historic role as a gateway and perimeter marker to Somerhill and its surrounding designed landscape. As such, the gym is incongruous to Somerhill's setting and appears as an unexpected and undesirable addition at the historic principal entry point to the estate. It thus diminishes, albeit in a modest way, the heritage significance of both Somerhill and the RPG.
21. It has been suggested that Top Lodge has always been served by outbuildings of reasonable size, including a workshop building that I understand was recently removed from the site having been in a severely dilapidated state. However, it has not been clearly demonstrated that any outbuilding of comparable scale and prominence to the gym has ever occupied the site.
22. I have noted reference to North Lodge, which is situated elsewhere to the RPG's edge and exhibits some similarities to Top Lodge in terms of its style, era of construction, and historic function. However, any suggestion that outbuildings serving North Lodge set a precedent for the gym has not been robustly substantiated. Indeed, such outbuildings are not of directly comparable scale and form, and North Lodge is not listed such that less rigorous development constraints would apply within its curtilage.
23. Thus, all relevant matters considered, harm has been caused to the significance and special interest of the Grade I listed Somerhill and the Grade II listed Top Lodge by development within their settings, and harm has also resulted to the significance of the RPG. In the terms of the Framework, I qualify that the degree of harm to the Grade I listed Somerhill, the Grade II listed Top Lodge, and the RPG as designated heritage assets is, in each case, less than substantial. Paragraph 202 of the Framework requires less than

substantial harm be outweighed by public benefits, which I shall come on to consider in my Heritage and Planning Balance.

Other Matters

24. The appellant has referred to an on-site meeting held with the Council at pre-application stage, where, it has been suggested, a positive stance was taken by the Council with respect to the gym. However, any advice obtained in advance of the formal submission of a planning application would have been given on a non-prejudice basis and, in any event, is of little relevance to the outcome of this appeal. Moreover, I must consider the individual planning merits of the proposal that is before me.

Heritage and Planning Balance

25. In terms of the public benefits of the proposal, the gym makes an effective use of land and provides additional ancillary residential floor space. However, in the main, its construction has satisfied private needs and wishes, increasing living space for the appellant's own private enjoyment. Therefore, the scheme's public benefits are very modest.
26. I am content that the provision of a new access and the construction of new walls using reclaimed materials of high-quality are elements of the scheme that would, once completed, read as acceptable low-level additions to the site. Even so, these features would have a neutral effect upon the heritage significance of Top Lodge, Somerhill and the RPG and, as such, would not deliver any public benefits in a heritage enhancement sense.
27. Thus, in the circumstances of this case, the scheme's public benefits do not outweigh the less than substantial harm I have identified to Top Lodge, nor either of the less than substantial harms separately identified to Somerhill and the RPG. It must be noted that even less than substantial harm to a designated heritage asset carries considerable importance and weight.
28. The overarching statutory duty in respect of listed buildings (or their settings) is not satisfied. The scheme therefore runs contrary to the clear expectations of Section 66(1) of the Act and fails to accord with the historic environment conservation and enhancement policies contained within the Framework. Conflict also arises with Core Policy 4 of the Tunbridge Wells Borough Core Strategy (June 2010) in so far as it requires the Borough's heritage assets, including Listed Buildings and Historic Parks and Gardens, to be conserved and enhanced and special regard to be had to their settings.
29. The scheme conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

30. For the above reasons, the appeal is dismissed.

Andrew Smith

INSPECTOR