



Appeal Decisions

Site visit made on 27 June 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2023

Appeal A Ref: APP/N0410/C/22/3312107

Appeal B Ref: APP/N0410/C/22/3312108

22 Denham Way, Denham, Buckinghamshire UB9 5AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kuldeep Singh Dhaliwal (Appeal A) and Mrs Swaranjeet Kaur Dhaliwal (Appeal B) against an enforcement notice issued by Buckinghamshire Council.
 - The notice was issued on 5 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding.
 - The requirements of the notice are: 1. Demolish the outbuilding shown in the approximate position on the plan attached to the notice. 2. Remove all materials and debris resulting from complying with step 1 of this notice from the land.
 - The period for compliance with the requirements is three months.
 - The appeals are both proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.
-

Appeal C Ref: APP/N0410/W/22/3307640

22 Denham Way, Denham, Buckinghamshire UB9 5AX

- 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 K Dhaliwal against the decision of Buckinghamshire Council.
 - The application Ref PL/22/2297/FA, dated 27 June 2022, was refused by notice dated 8 September 2022.
 - The development proposed is described as 'retrospective application to regularise the existing outbuilding.'
-

Decisions

1. Appeals A and B-The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the applications deemed to have been made under section 177 (5) of the 1990 Act as amended for the development already carried out, namely the erection of an outbuilding on land at 22 Denham Way, Denham, Buckinghamshire UB9 5AX referred to in the notice, subject to the conditions in the Schedule at the end of this Decision.
2. Appeal C-The appeal is allowed and planning permission is granted for the construction of an outbuilding at 22 Denham Way, Denham, Buckinghamshire UB9 5AX in accordance with the terms of the application, Ref PL/22/2297/FA dated 27 Jun 2022, subject to the conditions in the Schedule at the end of this Decision.

Preliminary Matters

3. I have no power to consider whether it was expedient for the Council to issue the enforcement notice. A challenge to a Council's decision to take enforcement action on the grounds of expediency can only be made by way of judicial review.
4. The enforcement notice is not a nullity. It is not missing a vital element, such as the requirements or the time for compliance. The notice specifies the matters required by the Act in s173 and in the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. The notice tells the appellants fairly what they have done wrong and what they must do to rectify it. Therefore, the notice does not offend the principles established in leading case law¹.
5. The description in the banner heading for Appeal C of the development for which permission is sought is taken from the application form. The appellant used a slightly different description of development on the appeal form, although they also stated that the description had not changed from the application. I shall use the appeal form description in my decision, as it is more precise and omits matters which do not refer to acts of development. The Council used a similar description on their decision notice.

Appeals A, B-Ground (a) appeals and Appeal C

Main Issue

6. The appeal property is located within the Metropolitan Green Belt. Therefore, the main issue in these appeals is whether erecting the outbuilding has involved inappropriate development, having regard to the Development Plan and the National Planning Policy Framework (the Framework).

Reasons

Whether inappropriate development

7. The property contains an enlarged semi-detached dwelling set within a generously sized plot. The property is located on a residential cul-de-sac, in a built-up part of the village. The notice attacks a freestanding single storey residential outbuilding erected in part of the rear garden.
8. Policy GB1 of the South Bucks District Local Plan (LP) states that in the Green Belt planning permission will not be granted other than for the limited extension of a dwelling in accordance with Policy GB10. The latter requires amongst other things that an extension together with any earlier extensions is integral to and of a small scale in relation to the size of the original dwelling. Although of considerable age, both LP policies are consistent with the Framework. At paragraph 149 this advises that the construction of new buildings should be regarded as inappropriate development in the Green Belt, exceptions including at (c) the extension or alteration of a building not resulting in disproportionate additions over and above the size of the original building. The "original building" is defined in the Framework as a building as it existed on 1 July 1948 or, if constructed after that date, as it was built originally.

¹ *Miller-Mead v MHLG* [1963] 2 WLR 225.

9. An outbuilding does not have to be attached to a dwelling to be an extension for the purposes of paragraph 149 (c). Relevant case law makes it clear that the paragraph is not to be interpreted as solely being confined to physically attached structures but that an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension². Whilst that case concerned a proposal to replace an existing outbuilding, there is little to suggest that paragraph 149 (c) should be interpreted differently in these appeals. Reference in the LP supporting text to outbuildings within 5 m of a dwelling seems to be relevant to assessing the cumulative increase in floorspace, not whether an outbuilding located greater than 5 m from a dwelling is an extension for the purposes of Policy GB10.
10. During my visit, I saw that the outbuilding is used as a home gym and children's playroom, as well as for the storage of household items. The drawings accompanying Appeal C show the outbuilding being used as a home office and children's home study. These are all purposes clearly related to the occupation of the dwelling, in much the same vein as a hobbies room, residential garage or garden shed. Therefore, the outbuilding could reasonably be regarded as a normal domestic adjunct.
11. The distance separating the outbuilding and the dwelling is not especially great in the context of such structures in general. It is not uncommon for a structure in a secondary or incidental use to be located some distance away from a dwelling. Some outbuildings at adjoining property are located at similar distances from their associated dwellings. The case law referenced above concerned a garden room/home office located approximately 20 m from its associated dwelling. At around 34 m², the outbuilding has a relatively modest footprint compared to that of the dwelling. Together with the low-profile roof, this has meant that the outbuilding is of reasonably small scale and it is viewed in conjunction with the dwelling as a subordinate built feature. As a result, the outbuilding has a close relationship, physically and visually, with the dwelling. Consequently, when considering its function, the proximity to and relationship with the dwelling, it is not unreasonable to regard the outbuilding as an extension within paragraph 149 (c).
12. The LP supporting text states that extensions which increase the floorspace of the original dwelling by more than half will not be small scale for the purposes of Policy GB10 but that in some settlements, it may be possible to allow some extensions that are a little larger than would be acceptable elsewhere in the Green Belt. This has previously been interpreted by the Council as providing for an increase in floorspace of up to 60% over that of the original dwelling in some instances. The dwelling floorspace has previously been enlarged, including by a single storey rear extension. According to the appellant, the increase in floorspace over the original dwelling is in the region of 54%, inclusive of the outbuilding. However, that figure does not account for other additions consisting of a hip-to-gable roof and rear dormer. When those additions are included, the actual increase in floorspace is more likely to be in excess of 60% over that of the original dwelling. The garage that previously existed at the property was not part of the original dwelling and in any event, it has been removed. That structure and an unimplemented planning permission for substantial extensions can have little bearing on the increase in size over the original dwelling.

² *Warwick DC v SSLUHC, Mr J Storer & Mrs A Lowe* [2022] EWHC 2145 (Admin).

13. Nevertheless, the floorspace added to the original dwelling including the outbuilding is unlikely to be greatly in excess of the 60% threshold. The increase in size could also be partly offset by the demolition of the large freestanding timber shed, currently located behind the outbuilding. Given the modest footprint, low-profile roof and correspondingly modest scale, the outbuilding is not viewed as a disproportionate addition compared to the greater form, bulk and overall height of the original dwelling. Following erection of the outbuilding the dwelling remains of modest scale in relation to its curtilage. In the context of the freestanding structures in adjoining gardens, some of which are of a comparable size to the outbuilding, there has been no material erosion in openness.
14. Additionally, my attention was drawn to examples of two residential extensions in the street permitted by the Council in recent years involving increases in floorspace greater than 60% over that of the original dwelling. In one instance, the size increase was over 70%. Whilst it is an established principle that each case should be determined on its individual planning merits, consistency in the planning process is also important. From the details supplied, there is little material difference in the circumstances between the outbuilding and the examples referred to. The above factors are all persuasive of the increase in floorspace following erection of the outbuilding being comparable in size with that of larger extensions provided for by Policy GB10.
15. Furthermore, the Council confirmed that there is nothing to restrict permitted development rights at the property. At Article 3, Schedule 2, Part 1, Class E the GPDO³ permits the erection of an outbuilding required for incidental purposes within the curtilage of a dwelling. Given the current and proposed use of the outbuilding it is highly probable that a structure with a similar footprint would reasonably be required for incidental purposes if the outbuilding were to be removed. It is entirely possible that a new structure would occupy a similar location. There is no sound reason to think that the appellant would not seek to replace the floorspace provided by the outbuilding, if it were to be demolished, with a new structure. The principal difference is that the roof and eaves of any new structure would be in the region of 0.4 m lower than the outbuilding, to meet the height limitation in Class E. Therefore, there is a realistic prospect of a comparably proportioned and similarly sited structure being erected at the property in the event of the notice being upheld. The 'fallback' position of erecting a similarly sized and sited structure is a factor to which considerable weight should be attached when assessing the increase in size over that of the original dwelling following erection of the outbuilding.
16. For the above reasons, the outbuilding is not disproportionate in comparison with the original dwelling and it is not inappropriate development in the Green Belt. Accordingly, there is no conflict with Policies GB1 and GB10 or inconsistency with paragraph 149 of the Framework.

Conditions

17. I shall impose a condition restricting the use of the outbuilding other than for purposes incidental to the use of the dwelling, to safeguard the living conditions of occupiers of adjoining residential property. I shall also impose a condition requiring demolition of the timber shed. This is to ensure that the outbuilding does not result in disproportionate additions over and above the

³ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

size of the original dwelling. The Council's suggested conditions have been modified to ensure that they meet the tests in paragraph 56 of the Framework.

18. I shall not impose any other conditions. Although the property is in the Green Belt, it occupies an established residential setting. There is no clear and convincing evidence to indicate why a condition restricting permitted development rights in Class E is reasonable or necessary. In terms of the availability of Class E rights there is no difference between land located within a Green Belt and that outside. Had the Government intended to restrict Class E development rights in the Green Belt generally, it surely would have done so. The inference that can be drawn from the absence of a restriction on such rights is that the Government's fundamental Green Belt aims of preventing urban sprawl by keeping land permanently open do not extend to restricting Class E rights within a residential curtilage. It is open to the Council to make a Direction under Article 4 of the GPDO to restrict such rights in the locality if they consider it expedient to do so. The other suggested condition is unnecessary, as the development has already been carried out.

Conclusions

19. For the reasons given above erecting the outbuilding has not involved inappropriate development in the Green Belt, it accords with the Development Plan and is consistent with the Framework. Therefore, I consider that Appeals A and B should succeed on ground (a) and planning permission will be granted. For similar reasons I consider that Appeal C should be allowed.

Stephen Hawkins

INSPECTOR

SCHEDULE OF CONDITIONS

Appeals A, B & C:

1. The outbuilding hereby permitted shall not be used at any time other than for purposes incidental to the residential use of the dwelling known as 22 Denham Way, Denham, Buckinghamshire UB9 5AX.
2. Within three months of the date of this decision the existing timber shed located towards the end of the rear garden shall be entirely demolished and all of the resulting demolition materials removed from the site.