The Planning Inspectorate

Appeal Decision

Site visit made on 4 July 2023

by S Ashworth BA (Hons) BPL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2023

Appeal Ref: APP/K0425/D/22/3298741
Windhill, Upper Icknield Way, Whiteleaf, Buckinghamshire HP27 0LX

- 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 & Mrs D Napier against the decision of Wycombe District Council.
- The application Ref 21/08697/FUL, dated 16 December 2021, was refused by notice dated 8 March 2022.
- The development proposed is 'demolition of link between garage and dwelling and conservatory, and erection of rear part 2, part single storey extension and landscaping'.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the link between garage and dwelling and conservatory and erection of rear part 2, part single storey extension and landscaping at Windhill, Upper Icknield Way, Whiteleaf, Buckinghamshire HP27 0LX, in accordance with the terms of application ref: 21/08697/FUL dated 16 December 2021 and subject to the following conditions:

    1. The development hereby permitted shall be carried out in accordance with plan numbers: BC 1; CAS58 DWG01; CAS58 DWG02; CAS58 DWG03; CAS58 DWG04; CAS58 DWG05; CAS58 DWG06; CAS58 DWG07; CAS58 DWG08; CAS58 DWG09; 7483-01; CAS58 DWG10; CAS58 DWG11; CAS58 DWG12; CAS58 DWG13; CAS58 DWG15; CAS58 DWG16; CAS58 DWG17; CAS58 DWG18; CAS58 DWG14; CAS58 DWG19; CAS58 DWG20; CAS58 DWG21; CAS58 DWG22.

    2. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

    3. The development shall be carried out in accordance with the Ecological Mitigation, Enhancement and Management Plan and the bat mitigation strategy set out in Table 5 of the Bat Emergence and Re-entry Surveys dated 26 June 2022. Details of the timing of the implementation of these measures shall be submitted to and agreed in writing by the local planning authority within two months of the date of this permission. Those measures shall be implemented as agreed and thereafter retained throughout the lifetime of the development.

Preliminary Matters

2. The appeal site lies within the Green Belt and the Chilterns Area of Outstanding Natural Beauty (AONB). The Council found that, although there were some concerns about the roof design, the overall design of the scheme would not detract from the character or appearance of the dwelling and would conserve the sense of place, local character and natural beauty of the AONB. I have no reason to disagree and have not therefore considered these matters further.

3. The Council refused the planning application for two reasons set out in the decision notice which relate to the effect of the proposal on the Green Belt and the effect of the proposal on bats, a protected species. Following the submission of additional survey results, the Council are satisfied that sufficient measures can be achieved to provide habitat mitigation and enhancement. Accordingly, the 2nd reason for refusal has been withdrawn by the Council. The appeal will proceed on the basis of the first reason for refusal only.

4. At the time of my site visit the conservatory, the bay window and the link between the house had been removed and trenches for the proposed extension dug. I have dealt with the appeal on that basis.

Main Issues

5. The mains issues in this case are:

   1) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies.

   2) If found to be inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

6. The National Planning Policy Framework (the Framework) sets out that the construction of new buildings should be regarded as inappropriate development in the Green Belt but in paragraph 149 lists a number of exceptions, one of which, paragraph 149 c), is 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. Policy DM43 of the Wycombe District Local Plan (the Local Plan) adopted August 2019 states that the extension of a dwelling will only be considered appropriate in the Green Belt where it satisfies one or more conditions. Condition f), relevant to this case, requires that where the volume of the original dwelling is more than 720 cubic metres, the total volume of the resulting building should be no more than 1080 cubic metres. There is no dispute between the parties that the original dwelling, as it existed on 1 July 1948, is more than 720 cubic metres, therefore condition f) applies.

8. The original dwelling had previously been extended by way of a conservatory and a small extension linking an outbuilding with the dwelling. As set out above, both of these extensions, and an original bay window, have now been

demolished as part of the proposal. The demolition of the link extension means that the outbuilding now stands alone and is not counted as original volume according to Local Plan policy.

9. A Certificate of Lawful Development (CLD) for a single storey extension following the removal of the conservatory and the conversion of the garage into habitable space, was approved by the Council in 2021[1]. That proposal has not been implemented and the matter has no bearing on my assessment of whether the proposal constitutes inappropriate development given that assessment is against the original dwelling only.

10. In terms of the calculation of the volume of a dwelling, paragraph 6.228 of the justification for Policy DM43 indicates that greater clarity and consistency will be achieved by an assessment of three-dimensional mass, ie gross external volume, including any basement. I saw at my site visit that land levels drop down across the site such that, whilst I am not aware there is a basement, there is more visible masonry at the rear. The removal of the previous patio makes this more apparent. The proposal includes the rebuilding of the rear patio and creation of replacement steps, such that the internal ground floor of the building would largely be commensurate with the level of the patio. The patio would obscure a small part of the lower rear wall of the house which the appellant describes as the undercroft.

11. It seems to me that the building up of external land levels around a property could be used all too often to ensure that a development meets the policy test. However, in this case it is not unreasonable for the existing patio to be replaced as part of the upgrading of the dwelling and the increase in its height is both limited and reasonable considering the level of the ground floor of the dwelling. Accordingly, seems to me to be reasonable to make allowance for the removal of the undercroft in the calculations.

12. There appears to be some confusion both in the Council's calculations and those in the original planning statement which has led to the Council's conclusion that the resultant building would exceed the threshold set out in Policy DM43. However, the size of the resultant building is essentially the volume of the original building, which the parties agree to be 787.84 m3, less the volume of the bay window and the undercroft, plus the volume of the two-storey extension. The volume of those elements of the proposal have been calculated by CAD modelling and there is no dispute between the parties as to the accuracy of the figures produced. On the basis of those calculations, the proposal would result in a cumulative volume of less than 1080m3 and would therefore meet the tests of the policy.

13. The Framework itself does not set out what it means by a disproportionate extension but nevertheless it is clear that the matter relates to size. In visual terms the extension would appear as a subservient addition to the building, with a limited height and bulk as a result of the proposed roof design. Accordingly, it would not be perceived as a disproportionate addition.

14. On that basis the proposal falls within the exception set out in paragraph 149 c) of the Framework and is not therefore inappropriate development in the Green Belt. Accordingly, it should not be regarded as harmful to the openness

[1] Ref: 21/05233/CLP

of the Green Belt or to the purposes of including land within it. For the same reasons, very special circumstances are not required to justify the proposal.

Conditions

15. The Council has suggested a number of conditions in the event of the appeal being allowed which it considers necessary to make the development acceptable. They include the removal of permitted development rights for development falling within Classes A, B, C, D, and E of Part 1 of Schedule 2 of the General Permitted Development Order, which includes extensions and outbuildings, to enable the Council to consider the effect of such development on bats and on the openness and visual amenity of the Green Belt. Such a condition could, in effect, prevent the development proposed under the CLD being carried out.

16. Paragraph 54 of the Framework indicates that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance also states that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity.

17. If what is now proposed and that granted under the CLD were both implemented, the policy limit of 1080 m3 would be exceeded. However, I am not aware of any provision in the local plan to restrict permitted development rights where the resultant dwelling would exceed the threshold in terms of its volume. It seems to me that such a scenario would not be unusual given the restrictive threshold set out in the local plan. The fact that a dwelling is in the Green Belt is not, in and of itself, a clear justification for removing permitted development rights.

18. In this case, the impact of the CLD proposal on openness is likely to be very limited given that it proposes, in part, a reuse of an outbuilding. Other possible extensions carried out as permitted development are likely to also be limited given the restrictions on extensions to dwellings within the AONB. Moreover, as the scale of the extended house would be modest in relation to its generous plot size, and as the other dwellings in the road are of a variety of styles and sizes, there is unlikely to be significant harm to the visual amenity of the area from further extensions. Accordingly, site specific circumstances themselves do not justify the removal of permitted development rights in this instance.

19. The Preliminary Ecological Appraisal and Bat Roost Assessment showed that there is a potential for bat roosts at the property. This is a matter that can be dealt with by condition as set out below. However, given that bats are protected species, and thereby the subject of protection under other legislation, there is no justification for removing permitted development rights for that reason. Accordingly taking all of this into account, the removal of permitted development rights by condition is not reasonable or necessary in this instance.

20. In this instance, given that development has already begun, the standard time condition is not necessary. The specification of approved plans is necessary in the interests of certainty and proper planning. In order to protect the character and appearance of the area it is necessary to require the development is constructed in materials to match the existing building.

21. The Preliminary Ecological Appraisal and Roost Assessment confirmed that to comply with good practice standards and to inform planning decision making, three further surveys were required. The Council originally suggested a condition requiring further ecological surveys were carried out at the property. However, bat emergence and re-entry surveys were undertaken in May and June 2022 which recorded a pipistrelle bat emerging from the roof on the southern side of the property opposite to where the extension is proposed.

22. The Ecological Mitigation, Management and Enhancement Plan was produced at the end of March 2022. The Council is satisfied that the mitigation and enhancement measure it suggests are appropriate in all instances, except for where bats are concerned. In that respect the recommendations in Table 5 of the Bat Emergence and Re-entry Surveys should be relied upon. A condition requiring the implementation and timing of the various measures set out in those documents is therefore necessary.

23. The Council has also suggested a condition regarding the phasing of the development, requiring the removal of the link between the garage and the dwelling prior to the construction of the two-storey extension. That link has already been demolished and as such the condition is unnecessary.

Conclusion

24. For the above reasons, and taking into account all other matters raised, the appeal is allowed subject to the above conditions.

S. Ashworth

INSPECTOR