



Appeal Decision

Site visit made on 22 August 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2023

Appeal Ref: APP/B1550/D/23/3315298

The Bowery, Arundel Road, Ashingdon, Rochford SS4 3JU

- 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 Jones against the decision of Rochford District Council.
 - The application Ref 21/01221/FUL, dated 11 November 2021, was refused by notice dated 28 November 2022.
 - The development proposed is described as 'Refurbishment and extension to existing games room to rear garden of 'The Bowery''.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant indicates that the appeal proposal is for the retention of a domestic outbuilding, rather than as described on the application form and set out in the banner heading above. Whilst the reason for refusal cites extensions to dwellings it is, nevertheless, apparent from the officer report and decision notice that the Council's assessment was in respect of a replacement building. I have therefore dealt with the appeal on that basis and do not consider that any parties would be prejudiced by that.
3. The outbuilding that is the subject of this appeal was in situ at the time of my visit and I have dealt with the appeal on that basis.

Main Issues

4. The main issues are:
 - Whether or not the proposal 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 appeal proposal on the openness and the purposes of the Green Belt; and
 - Whether the 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

Inappropriate development

5. The appeal site is located within the Metropolitan Green Belt. The Local Development Framework Core Strategy (2011) (CS) Policy GB1 sets out that development will be directed away from the Green Belt as far as practical and that the protection of Green Belt land will be prioritised based on how well it helps achieve its purposes. However, this is not fully consistent with the Framework which confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. As a result, in accordance with paragraph 219 of the Framework, this policy does not carry full weight, although it does remain a material consideration.
6. Paragraph 149 of the Framework states that the construction of new buildings within the Green Belt should be regarded as inappropriate subject to a number of identified exceptions. One exception, at paragraph 149 (c), relates to the extension of a building provided it does not result in a disproportionate addition over and above the size of the original building. Whilst the outbuilding is clearly not attached to the existing dwelling, in certain circumstances it could be considered to be a normal domestic adjunct, capable of being treated as an extension. However, having regard to the overall mass, scale and distance of the appeal building from the main dwelling, I find as a matter of fact and degree that it cannot be regarded as an extension to the house but rather comprises a separate building.
7. Paragraph 149(d) of the Framework identifies, as a further exception, the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. There is agreement between the parties that the new building is in the same use as the one it replaced, and that it has, approximately, a 38% larger floor area than that building. However, whether such an increase is 'materially larger' is being disputed by the appellant.
8. In the absence of a definition in the Framework or the development plan, the appellant points to the exception set out at paragraph 149(c) of the Framework as a steer for what is meant by 'materially larger'. In that regard I acknowledge that extensions to existing buildings equating to a 38% increase in floorspace are sometimes considered to fall within this exception. However, that is a very different test relating to another form of development. As such, it would not be an appropriate basis upon which to assess whether a replacement building, as in this case, is 'materially larger' than the original. I therefore give little weight to this line of argument.
9. A 38% addition to the floorspace of the appeal building compared to the one it replaced, and the associated additional volume, is a noticeable and significant increase. Accordingly, I can only conclude that it is materially larger.
10. For this reason, the appeal proposal is inappropriate development in the Green Belt. It would therefore conflict with CS Policy GB1, and the associated aims of the Framework.

Openness

11. The Framework, at paragraph 137, sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness has both spatial and visual aspects.
12. The appeal building is contained within a plot defined by mature landscaping and as such there are limited, if any, views of it from outside of the site. Nonetheless, the increase in the overall size and volume when compared to the building it replaced would spatially reduce the openness of the Green Belt. The proposal would therefore be moderately harmful to openness.
13. On this issue, I conclude that there is a loss of openness in the Green Belt which conflicts with paragraph 137 of the Framework and is contrary to CS Policy GB1 which seeks to protect the Green Belt.

Other consideration

14. The appellant sets out a possible fall-back position, namely the construction, under permitted development (PD) rights, of an outbuilding that is lower in height than the appeal building or positioned further away from the site boundaries. The consideration of a fall-back position, including what could be erected under permitted development rights, is a well-established principle. However, for a fall-back position to weigh in favour of a proposal it must be a realistic proposition.
15. For an outbuilding to be PD it must be used and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. This does not cover normal residential uses, such as separate self-contained accommodation or the use for primary living accommodation such as a bedroom, bathroom, or kitchen. The appeal building contains a kitchen and a bathroom and, consequently, it would not be PD regardless of its overall height or its position relative to the boundaries.
16. Given that the construction of an outbuilding under PD rights would not provide the same accommodation as the appeal building, I do not consider that there is any reasonable likelihood that PD rights would be exercised, and, as such, I give such rights limited weight.
17. The acceptability of the design of the building, the lack of harm to the intrinsic character and beauty of the countryside, lack of isolation of the appeal site, and compliance with other development plan policies are neutral factors. As such they do not weigh in favour of the proposal.

Green belt balance

18. I have concluded that the appeal scheme would be inappropriate development and would, by definition, harm the Green Belt. I have also found harm to openness.
19. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on to indicate, at paragraph 148, that substantial weight should be given to any harm to the Green Belt and very

special circumstances will not exist unless that harm, and any other harm, are clearly outweighed by other considerations.

20. The other consideration I have identified is of limited weight in favour of the proposal. Consequently, such a consideration, along with all other matters identified in the evidence, does not clearly outweigh the identified harm to the Green Belt, either individually or collectively, so as to amount to the very special circumstances necessary to justify the development.

Conclusion

21. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
22. I therefore conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR