



Appeal Decision

Site visit made on 21 August 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Appeal Ref: APP/M1520/W/22/3302016

Mount View, Rhoda Road, South Benfleet, Essex SS7 1HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Garry Jones against Castle Point Borough Council.
 - The application Ref 22/0391/FUL, is dated 10 May 2022.
 - The development is described as a "2 storey rear extension to a detached garage".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development in the banner heading above is taken from the appellant's planning application form. While the development comprises a two-storey extension to the existing garage, it also includes the conversion of the extended building into habitable living accommodation. I have therefore determined the appeal on this basis.
3. The extension was already constructed when I undertook my site visit. However, the works to convert the building were not substantially complete. Therefore, I have considered the appeal on the basis that the development is part retrospective.
4. The Council did not validate the planning application because they consider that the householder planning application form submitted, and the fee paid by the appellant of £206, was incorrect. It is the Council's view that the resultant development would comprise an independent dwelling and therefore a full planning application form and a fee of £462 should have been submitted. The primary question in establishing the correct planning application form and fee is therefore, whether the development comprises an independent dwelling or an annex to the host dwelling, known as Mount View.
5. The appellant sets out that the development is an extension to an existing garage and as such, is not a new dwelling. All utilities that feed the building are connected to the services supplying the main house and it does not have separate parking. It will be occupied by a family member of the appellant, who will receive care from the appellant's wife, while at the same time providing them with a degree of independence.
6. Annexes, such as the appeal development, provide independent living and so could be potentially occupied as a separate dwelling. However, even if the accommodation has facilities for independent day-to-day living, whether it

would become a separate planning unit from the main dwelling is a matter of fact and degree.

7. The development before me, would provide all of the facilities for independent living. The host dwelling has two accesses onto Rhoda Road: one that appeared regularly used at the time of my site visit, with vehicles parked on the driveway and a clear route to the front door; and a second that provided access to the garage with a smaller area of hardstanding/driveway that was largely used for storage purposes and provided access to the host dwelling's front door via steps and a path. A close boarded fence with a gate had recently been constructed between the front elevation of the original garage and an existing brick wall, and there was evidence of informal steps providing access from the gate to an exterior door in the building. Consequently, the building could be accessed by both vehicles and pedestrians independently of the host dwelling.
8. However, the occupier of the building will be a relative of the appellant and therefore, it is likely that they would have a degree of connection with the host dwelling and its occupants. The drawings indicate that there is no intention to subdivide the garden and the services supplying the building are shared with the host dwelling. The building, although substantial, is significantly smaller than the host dwelling and it is sited within close proximity, with a small gap separating the two. Notwithstanding the fact that the extended building would be generously sized, and irrespective of where the existing driveways and the external door are positioned, there is no particular reason to consider that the building would fail to function as an annex to the host dwelling.
9. Consequently, as a matter of fact and degree, the information before me suggests that the building would not amount to a separate dwelling.
10. If the appeal were allowed, the approved use of the development would be as an annex, not as a separate dwelling. The Council raise concern over what may happen if the building is no longer required to accommodate the relative. However, if there is a material change of use in the building in the future and a separate planning unit is created, then a separate grant of planning permission would be required. Furthermore, the use could be clarified by the imposition of a suitably worded condition. While the Council raise concern regarding whether such a condition could be reasonably enforced, it should be clear if the use is subsequently changed to provide a separate, independent unit of accommodation as there may be physical features that cause a material change of character, or it may be clear from who occupies the building, such as from Council Tax records and how they occupy it. Furthermore, the Council have investigatory powers to assess this.
11. The planning application is therefore valid as made.

Main Issues

12. The effect of my finding on this matter is that the appeal is against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As such, there is no decision notice. However, the Council has submitted an appeal statement that has clarified the position it would have taken on the application if it had made the decision. The main issues below are based on the putative reasons for refusal set out in their statement.

13. Therefore, the main issues are:

- a) whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework ('the Framework') and any relevant development plan policies;
- b) the effect of the development on the openness of the Green Belt; and
- c) if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether Inappropriate Development

14. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework explains that other than in connection with a closed list of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. One such exception is: (c) 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.
15. The Framework does not provide a definition of "disproportionate additions" and therefore, an assessment of whether a development would amount to a disproportionate addition over and above the size of the original building is a matter of planning judgement. The Framework does however, define "original building" as a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was originally built. The Council has confirmed that there are no development plan policies that are of relevance to the development.
16. Prior to the works to the garage, it comprised a single storey, square-shaped building with a pitched roof. From the information before me, it is likely that this structure comprised the "original building". The extension is to the rear of the garage and projects beyond one of the garage's side elevations. It is rectangular in shape, and due to the sloping nature of the land, is two-storeys in height. Attached to the extension's rear elevation is a balcony that extends across its width. The extended building would have two bedrooms (one with an en-suite), an open-plan kitchen/living/dining room, a wet room and a room annotated as a washroom.
17. The Council has provided footprint, floorspace and volume figures that compare the original building to the building as extended. The appellant has not disputed these figures. From what I observed on my site visit and from the information before me, the extension has resulted in a significant increase in the footprint, floorspace and volume of the original building. Therefore, the extension results in a disproportionate addition over and above the size of the original building.
18. In respect of the first main issue, the development is inappropriate development in the Green Belt which is, by definition, harmful. It would therefore conflict with the paragraph 149(c) of the Framework.

Openness

19. The Framework identifies the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness has both spatial and visual qualities. The development significantly increases the scale and massing of the original building and therefore, in spatial terms, it reduces the openness of the Green Belt.
20. The building was not visible from Bowers Road or Dower Road at the time of my site visit. Even during the colder months when the leaves have fallen, it is unlikely that it would be visible due to the significant distances between the building and these roads, and the siting of neighbouring properties.
21. The building fronts onto Rhoda Road. At the time of my site visit, trees/shrubs, a boundary wall, and a gateway covered with a pitched, tiled roof screened a high proportion of the building's front elevation from the road, with parts of the side gable and roof of the extension visible within the gap between the building and the neighbouring property. However, I note that the majority of the vegetation is deciduous and therefore the building would likely become more visible in the colder months when the leaves have fallen. Consequently, the development in visual terms, reduces the openness of the Green Belt.
22. In respect of the second main issue, the development would have a detrimental effect on the openness of the Green Belt.

Other Considerations

23. The appellant asserts that the development would be occupied by a family member who has a medical condition that requires round-the-clock care. The development would allow the family member to maintain a degree of independence while still being cared for by the appellant's wife. The development was also to accommodate the husband of the family member, however, in the period between the development being commenced and the consideration of this appeal, this is no longer required.
24. Evidence has been provided to substantiate the family member's medical condition. However, there is no compelling evidence to suggest: why the accommodation in terms of its size and facilities is required; why the accommodation needs to be independent of the host dwelling; why the original building, prior to it being extended, could not provide suitable accommodation for the family member; or why the development would be beneficial to the family member over and above where they currently reside. Consequently, I am not persuaded that the development is the minimum necessary to achieve the benefit and accordingly I attach limited weight to it.
25. I have had due regard to the Public Sector Equality Duty ('the PSED') contained in Section 149 of the Equality Act 2010 ('the Act'), which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not. The Act sets out the relevant protected characteristics which includes age. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the Act.

26. The negative impacts of dismissing this appeal would arise from the family member not living in proximity of the appellant, his family and their house. However, it does not follow from the PSED that the appeal should succeed. I have taken into account the personal circumstances of the family member. However, from the information before me, I am not convinced that their needs cannot be achieved by a less intrusive action that would comply with the policies in both the development plan and the Framework. My actions in this respect, and my decision therefore on the appeal, are a proportionate response to the requirements of the Act and those of the plan led system.

Conclusion

27. The development would be inappropriate development in the Green Belt. The Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
28. Given the substantial weight to be given to Green Belt harm, relative to the limited benefits of the development, the harm is not clearly outweighed by other considerations. Therefore, in respect of the third main issue, the very special circumstances necessary to justify the proposal do not exist.
29. The Council has stated that there are no development plan policies that are of relevance to the appeal proposal. Paragraph 11(d) of the Framework states that for decision-taking, "where there are no relevant development plan policies...granting permission unless (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed".
30. The appeal site is located in the Green Belt (a protected area defined by Footnote 7 of paragraph 11(d)). As I have already found that the proposed development would comprise inappropriate development, and very special circumstances do not exist, the application of policies in the Framework that protect the Green Belt provide a clear reason for refusing the development. Therefore, paragraph 11(d)(ii) of the Framework is not engaged.
31. For the reasons set out above, having regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR