



Appeal Decision

Site visit made on 30 August 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Appeal Ref: APP/H2265/D/22/3308038

Woodruff, Mill Lane, Basted, Sevenoaks TN15 8PR

- 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 J Penn against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/22/01353/FL, dated 21 June 2022, was refused by notice dated 17 August 2022.
 - The development proposed is erection of single storey side extension with glazing and bi fold doors to be used as dining/entertaining space.
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Decision

1. The appeal is allowed and planning permission is granted for erection of single storey side extension with glazing and bi fold doors to be used as dining/entertaining space at Woodruff, Mill Lane, Basted, Sevenoaks TN15 8PR in accordance with the terms of the application, Ref TM/22/01353/FL, dated 22 June 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PD01 Feb 2021 - Existing Plans & Elevations of Main House; PD02 Feb 2021 - *Proposed Plans & Elevations of Summer House*; PD03 Rev B May 2021 - *Proposed Plans & Elevations of Main House*; AX02 May 2021 - *Location Plan, existing and proposed site plans*.

Applications for costs

2. An application for costs was made by Mr & Mrs J Penn against the decision of Tonbridge and Malling Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. In the header above, I have omitted wording unrelated to the description of the development. I have had regard to the Certificate of Lawfulness and Unilateral Undertaking within my reasoning, below.

Main Issues

4. The main issues in this appeal are:
 - whether 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 proposal on the openness of the Green Belt; and
- 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 the proposal would be inappropriate development in the Green Belt

5. The appeal site comprises a two-storey semi-detached dwelling situated in the North Kent Downs Area of Outstanding Natural Beauty (AONB) and within the Green Belt.
6. Policy CP3 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy 2007 (CS) establishes the extent of the Green Belt and sets out that national policy will be applied within it. Other than in connection with certain limited exceptions, the Framework regards the construction of new buildings as inappropriate in the Green Belt. Notably, paragraph 149(c) of the Framework enables 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. The proposed single storey extension would have a total external floor area of 10.33m² and a gross external volume of 36m³, and therefore would be modest in size. However, the appeal property has previously been extended. Planning permission¹ was granted in 1998 for a two-storey side extension to provide two bedrooms and a kitchen plus rear conservatory. The building was further extended following grant of planning permission² in 2005 for a two-storey rear extension to form lounge and ensuite facilities. Whilst the proposed extension is itself modest in scale, previous extensions have substantially increased the floor area and built volume of the appeal property.
8. Neither the Framework nor development plan provide a specific test for determining whether an extension or alteration is disproportionate and therefore whether the proposal would result in disproportionate additions is a matter of planning judgement. I consider that the combined effect of the proposed development, along with past additions to the appeal property, would amount to disproportionate additions over and above the size of the original building.
9. Consequently, the proposed development would not satisfy any of the exceptions provided by the Framework and the proposal would be inappropriate development which is, by definition, harmful to the Green Belt.

Effect on Green Belt Openness

10. Paragraph 137 of the Framework describes the essential characteristics of Green Belt being its openness and permanence and states the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.

¹ LPA ref: TM/98/01248/FL

² LPA ref: TM/05/00403/FL

11. Openness has both spatial and visual elements. The proposal would contribute additional built volume to the site and therefore would result in a physical loss of openness commensurate with the small scale of the proposed extension.
12. The proposed development would be single storey height with a pitched roof and would adjoin the side wall of the appeal property. Whilst the proposed extension would appear subordinate to the main dwelling, it would be visible from the lane at the front of the site, and therefore would have a modest adverse visual impact on Green Belt openness.

Other considerations

13. A certificate of lawful development³ has been granted for an outbuilding on the appeal site on an area currently forming a raised patio to the rear of the location of the proposed extension. The outbuilding would serve as a dining/entertaining space, and therefore offers a realistic alternative to the proposed extension, which provides a similar form of accommodation.
14. The outbuilding would have an external floor area of 23m² and a gross external volume of 69m³, and therefore would be substantially larger than the proposed extension. In addition, the outbuilding would occupy an elevated position, above the floor level of the appeal property and would be visually prominent from the front of the appeal site. The scale and siting of the outbuilding would therefore have greater adverse impacts on Green Belt openness than the proposed extension.
15. An identical scheme was subject to a previous appeal decision⁴ in which the Inspector noted that the appellants would be willing to accept a condition removing permitted development rights in relation to buildings incidental to the enjoyment of a dwellinghouse. However, the Inspector concluded that such a condition could not be reasonably used to restrict development of the outbuilding that already benefits from a certificate of lawful development. On this basis the Inspector concluded that it would be possible to implement both developments on the appeal site and therefore could not attribute significant weight to the fallback position.
16. The Framework permits the use of planning obligations to make otherwise unacceptable development acceptable. Section 106(1) of the Town and Country Planning Act 1990 sets out what a planning obligation may be used for, including restricting the development or use of the land, requiring specified operations or activities to be carried out on land, requiring land to be used in any specified way, or requiring sums to be paid to an authority.
17. The appellant has sought to secure the fallback position through a signed Unilateral Undertaking (UU) containing planning obligations. The obligations at paragraphs 5.1 and 5.2 would restrict construction of the certificate of lawful development scheme or other buildings incidental to the enjoyment of a dwellinghouse. Since those obligations restrict the development of the land, I am satisfied they comply with the Section 106(1) tests. Whilst the Council is not a signatory to the UU, I do not consider this would impede its effectiveness.
18. The obligation at paragraph 5.3 of the UU seeks to prevent the appellant from claiming compensation in the event the Council amends or revokes the

³ TM/21/00467/LDP

⁴ APP/H2265/D/21/3284465

certificate of lawful development. This appears to be a personal undertaking which, whilst binding on the current owners, may not be binding on successors and as such carries no weight in my decision. However, at paragraph 7 the UU is clear that its clauses are distinct and severable from one another. Therefore, irrespective of whether the obligation at 5.3 meets the Section 106(1) tests has no effect on the operation of the planning obligations at paragraphs 5.1 and 5.2.

Whether there would be Very Special Circumstances

19. By virtue of its link to national planning policy, CS Policy CP3 requires that inappropriate development will not be permitted unless very special circumstances can be demonstrated. As set out above, the proposal would be inappropriate development in the Green Belt and would harm openness. Paragraphs 147 and 148 of the Framework require that substantial weight be given to any harm to the Green Belt and that inappropriate development should not be approved except in very special circumstances.
20. Paragraph 148 of the Framework indicates that very special circumstances will not exist unless the potential harm to the Green Belt, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
21. As set out above, the proposed extension and approved outbuilding would serve the same function and as such there is a realistic prospect that the appellant would construct the outbuilding were the appeal to fail. The outbuilding would result in greater harm to Green Belt openness than the proposed extension and as such I have given this fallback position considerable weight.
22. The UU provided by the appeal proposal provides a suitable mechanism which would prevent the appellant or any successor to the property title from constructing works permitted by the certificate of lawful development or other buildings incidental to the enjoyment of a dwellinghouse.
23. Accordingly, the undertaking provided by the UU not to implement the development afforded by the certificate of lawful development, and to restrict the use of permitted development rights for future outbuildings, would amount to very special circumstances which justify the development and is a matter to which I have attributed considerable weight.
24. Having taken account of the other considerations outlined above, these outweigh the substantial weight which must be given to Green Belt harm. Consequently, I consider that there are very special circumstances necessary to justify inappropriate development in the Green Belt. On this basis, the proposal would comply with CS Policy CP3, which requires the application of national Green Belt policy to the extent of the Green Belt.

Conditions

25. In addition to the standard time limit of the planning permission granted, in the interests of certainty I have attached a condition specifying the approved plans.

Conclusion

26. I have concluded above that, for this appeal, very special circumstances exist to justify inappropriate development in the Green Belt and there are no other

matters that would lead me to reach a different conclusion. Consequently, I conclude overall that the proposal would comply with the relevant provisions of the Framework and the development plan when considered as a whole.

27. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be allowed.

E Dade

INSPECTOR