



Appeal Decision

Site visit made on 10 October 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

Appeal Ref: APP/P3610/D/23/3319108

Verona, Horton Lane, Epsom KT19 8NX

- 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 Tony DeVivo against the decision of Epsom and Ewell Borough Council.
 - The application Ref 22/01560/FUL, dated 15 August 2022, was refused by notice dated 15 December 2022.
 - The development proposed is described as a Garden Play Room.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The concerns expressed regarding the Council's conduct during the processing of the planning application fall outside of the remit of this decision. An application for costs was made by Mr Tony DeVivo against the Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - whether or not the proposal would be inappropriate development within 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;
 - the effect of the proposal on trees surrounding the site; and
 - If the proposal would be inappropriate development, whether or not 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 necessary to justify the proposal.

Reasons

Whether or not inappropriate development in the Green Belt

4. The appeal property comprises a detached two storey dwelling accessed from a narrow lane off West Park Road. A bridle way leading to Christ Church Road runs to the south of the site. The site's boundary with the bridleway is marked by a tall wood panel fence which screens the majority of views into the appeal site's garden.

5. The Framework confirms 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 states that new development is inappropriate in the Green Belt unless it falls within a given list of exceptions. One exception, provided for by 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. The Framework's glossary explains that "original" in this case means the building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.
6. In relation to extensions to buildings in the Green Belt, Policy DM3 of the Development Management Policies Document (2015) (DMPD) is consistent with the Framework in that it outlines that the extension of buildings in the Green Belt will only be supported where the proposal would not constitute inappropriate development in the Green Belt. The policy sets out that in order for proposals not to be inappropriate development their increase would be no greater than 30% above the volume of the original building. Having regard to extensions to buildings, Policy DM3 states that the "original building" shall mean the building as it existed in 1948 or when first built if later than 1948.
7. The appeal dwelling had a two storey extension, approved in 2012, that the Council indicate increased the volume of the original building by 56%. The appellant does not dispute this or the Council's calculation that, when combined with the existing extension, the proposal would increase the volume of the original building by 73%, and the floor area by 88%.
8. I am mindful of the approach identified in *Sevenoaks District Council v SSE and Dawes [1997]*. This establishes that in considering whether an outbuilding could be an extension, it is reasonable to take into account whether the proposal is a normal domestic adjunct. This is a matter of planning judgement taking into consideration such matters as an outbuilding's use, relationship to the original building and its size.
9. The proposal would provide a, single storey multi use space for family activities, including for craft and music therapy activities. These purposes are ancillary to the use of the main dwelling. The proposal would be around 20 metres from the main property across an open lawn and consequently, it would have a direct connection into the house via the garden. In these circumstances, although the structure would be physically detached from the building, this separation is sufficiently close and direct that there would be a clear visual and practical relationship.
10. On this basis, the volume of the outbuilding should be included in an assessment of whether the proposal results in disproportionate additions over and above the size of the original building. As the proposed volume would be significantly more than 30% of the original building, this leads me to find that the proposal would undoubtedly result in a disproportionate addition to the original building and thus would fail to meet exception 149(c) of the Framework.
11. It has been put to me that as the proposal would be constructed on the footings of a historic garage it falls to be determined against the exception at paragraph 149(d) of the Framework. However, in order to assess whether a replacement building is materially larger, there would need to be an existing building in place at the appeal site. The historic garage has already been

demolished. As such, the proposal would not constitute an exception to Green Belt policy under paragraph 149(d).

12. The proposal would not fall within any of the other stated exceptions in paragraph 149 of the Framework. Accordingly, I must conclude that the proposal would comprise inappropriate development.
13. The main parties agree that the site is located within the Green Belt. However, the appellant suggests that the Green Belt designation is an anomaly, and that the site and surrounding area no longer possess an open character that would be expected from Green Belt land. Furthermore, the Council's emerging Draft Local Plan 2022-2040, and its evidence base, indicate that the appeal site and surrounding area may be re-designated so that it is no longer Green Belt land. However, the Draft Local Plan is at a very early stage having just completed the Regulation 18 consultation. Accordingly, I can only give such policies very limited weight in the decision-making process.
14. In not complying with any of the listed exceptions, the scheme would be inappropriate development in the Green Belt, which para 147 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

15. Paragraph 137 of the Framework identifies 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.
16. Openness has both spatial and visual aspects. Whilst set back from the site's front boundary and relatively low at 2.5 metres in height, the proposal would result in the introduction of new built form into space where currently there is none. This would have a harmful effect on spatial openness.
17. Given the tall wood panel fencing on the boundary with the bridleway, and dense vegetation screening on the garden's other boundaries, the outbuilding would not be prominent in views from outside the site. However, its roof is likely to be slightly visible in views from the bridleway. This would have a harmful effect on visual openness.
18. In this instance the effect of the cumulative increased size of the built development would clearly be experienced both visually and spatially. For this reason, the proposed development would compromise the openness of the Green Belt, in that it would be reduced. Whilst the loss of openness would be limited, harm to the Green Belt would occur. This matter carries modest weight in this site-specific circumstance.

Trees

19. An Oak, London Plane and Pine tree overhang the site's rear boundary. Both the Oak and London Plane trees have capacity for substantial growth, and they make a positive contribution to the character of the area. The main parties agree that, subject to suitable mitigation, it would be possible to construct the proposal without causing root damage to the trees.

20. However, the Council have raised concerns that the trees could create significant shade, leaf and twig litter fall which would create significant pressure to prune or remove the trees. The design of the outbuilding involves large full height glazed bi-folding doors which would cover more than half the width of the front elevation. This elevation faces back towards the house and away from the trees. As a result, even when the trees are in full leaf, it seems likely that the outbuilding would not suffer from a lack of natural light as a result of the trees' shading.
21. Whilst leaf and twig fall can be a nuisance to residential occupiers, the outbuilding is only 2.5 metres in height, and the removal of detritus from the building is likely to be easier than, for instance, a two storey building.
22. For these reasons, I do not consider that the proposal is likely to result in future pressure to remove or reduce the adjacent trees. In this respect the proposal would comply with Policy DM5 of the DMPD. This policy expects development proposals to retain existing trees and other important landscape features where practicable. The proposal would also comply with Paragraph 131 of the Framework which states that planning decisions should ensure that existing trees are retained wherever possible.

Other considerations

23. In determining this appeal, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. This requires me to have due regard to 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.
24. Amongst other things, for the purposes of the Equality Act, protected characteristics include disability. Whilst I have not been provided with supporting medical information, I am satisfied that the purpose of the appeal is to accommodate the appellant's family member who has a protected characteristic for the purposes of applying the PSED.
25. Given the specific health related circumstances involved, the benefits associated with the proposal is a matter that attracts substantial weight. That is not to say that this matter will be determinative. Whether that is the case will require a balanced judgement based on the circumstances of any given case. I shall return to that balance later in my report.
26. The appellant also states that the appeal property sits within a large plot and that the proposal would make an effective use of land. However, the site is located within the Green Belt where one of the key functions is to keep land permanently open. Thus, there is no imperative to develop or make more intensive use of land in planning terms and this is not a matter that attracts weight in favour of the proposal.

Other Matters

27. The appeal property is within the West Park Conservation Area (CA). There is no dispute between the parties that the proposed physical works to the property would have an adverse effect on the character or appearance of the CA. Having considered the proposal and visited the site I concur with that view. Accordingly, it is my view that the development proposed would preserve the

character and appearance of the CA and I shall make no further reference to this matter.

28. The appellant indicates that two nearby properties have erected outbuildings within the root protection areas of nearby trees. As set out above, I have agreed with the appellant that the proposal would not create future pressure to significantly reduce or remove the nearby trees. However, I have not been provided with any other details relating to the planning permissions for these outbuildings, such as submitted drawings or officer reports, to enable me to determine whether they are directly comparable to the appeal proposal. In any event, each case must be considered on its own merits.
29. The appellant has drawn my attention to extensions and outbuildings at other nearby properties within the Green Belt. I understand that the two developments at Laundry Cottage were constructed following the submission of Certificates of Lawfulness and therefore were not subject to assessments against national and local Green Belt Policy. The developments at Manor Cottage and Little Acre were considered under paragraph 149 (b) of the Framework and unlike the appeal proposal before me, did not require the assessment of volumetric calculations. The Council has confirmed that planning application 13/00331/FLH at Laundry Cottage was approved as a result of a genuine permitted development fallback position. I have not been provided with details of a fallback position in relation to the appeal before me. However, from the submitted evidence, it does not appear that these developments are directly comparable to the appeal proposal. They are therefore of neutral consequence to the outcome of this appeal.

Planning Balance and Conclusion

30. In conclusion I have identified that the scheme would be inappropriate development in the Green Belt as defined by the Framework and result in harm to the openness of the area. It would, by definition, be harmful to the Green Belt, harm which the Framework indicates should be given substantial weight.
31. Having taken into account the other considerations outlined above, they do not outweigh the substantial weight which must be given to Green Belt harm, and therefore they are not sufficient to demonstrate very special circumstances. Consequently, very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist. The proposal would therefore fail to comply with policies DM3 of the DMPD and Policy CS2 of the Core Strategy (2007) (CS). Together, these seek to resist inappropriate development in the Green Belt. I am required to attach substantial weight to the harm caused by virtue of the proposal's inappropriateness.
32. The Framework highlights that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, with substantial weight given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
33. The benefit of the additional indoor space for craft and music therapy necessary for the needs of the appellant's family member is a matter that attracts substantial weight. However, the submitted evidence indicates that the outbuilding would also provide a multi-use space for the family, and therefore it

- would, in part, be used for accommodation that would not be identifiably related to the health-related needs of the appellant's family member.
34. Given the existing scale of the dwelling it seems likely that at least some of the proposed accommodation could be integrated into the existing fabric of the building without the need to extend to such a great extent. That tempers the arguments proposed in favour of the scheme, when viewed as a whole.
35. Whilst I am very sympathetic to the appellants' personal circumstances, I am mindful of the advice contained in Planning Practice Guidance that in general planning is concerned with land use in the public interest. It is probable that the proposed outbuilding would remain long after the appellants' personal circumstances cease to be material. Future use of the outbuilding would also not necessarily entail a similar situation.
36. Therefore, whilst I am very mindful of the needs of the appellant's family member, and attach substantial weight to those needs, the cumulative weight attributed to that and the other considerations in support of the case does not outweigh the substantial harm I have identified.
37. The proposal would be contrary to the development plan and the Framework taken as a whole. There are no other material considerations which indicate that the decision should be determined other than in accordance with the development plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR