



Appeal Decision

Site visit made on 13 November 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21.12.2023

Appeal Ref: APP/V1505/D/23/3315211

Homeleigh, Laindon Common Road, Billericay, Essex CM12 9TJ

- 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 Barry Mence against the decision of Basildon Borough Council.
 - The application Ref 22/01084/FULL, dated 22 July 2022, was refused by notice dated 31 October 2022.
 - The development proposed is a new swimming pool outbuilding.
-

Decision

1. The appeal is dismissed.

Main Issues

2. 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 in the Green Belt, 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

3. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 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. The appellant asserts the exceptions that are of relevance to the appeal proposal include:
 - (b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it; and

- (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.

(b) Appropriate Facilities for Outdoor Sport, Outdoor Recreation etc.

4. The proposal is for an indoor swimming pool with associated changing room and underground plant room. Therefore, it does not comprise an appropriate facility for 'outdoor' sport or 'outdoor' recreation. Consequently, it would not comply with paragraph 154(b) of the Framework.
5. The appellant has directed me to an appeal decision¹ whereby the Inspector concluded that an external swimming pool in the garden of a dwelling would meet paragraph 154(b) of the Framework. However, it is clear from the description of development and paragraph 16 of the appeal decision that states, "*it is subterranean and whilst it is marginally above ground level, it has no greater visual impact than an equivalent area of hard standing*", that the development involved an outdoor swimming pool. The previous appeal decision is therefore not directly comparable to the appeal proposal.

(c) Extension or Alteration of a Building

6. The proposal would comprise a single storey building attached to the side elevation of the dwelling by a brick wall. A freestanding canopy would be located to the rear of the wall to create a covered walkway between the dwelling and the building. The appellant has directed me to the judgement of *Sevenoaks DC v SSE & Dawe* [1997] whereby a residential outbuilding can be considered a "normal domestic adjunct" and therefore can be considered an extension for the purposes of paragraph 154(c) of the Framework.
7. Policy BAS GB4 of the Basildon District Local Plan Saved Policies, adopted 2007 ('the LP') refers to the extension of dwellings in the Green Belt. It is more prescriptive than the Framework and sets a floorspace limit no matter the original dwelling's size, rather than considering what would be disproportionate. Consequently, the policy is not wholly consistent with paragraph 154(c) of the Framework. Annex 1 of the Framework states that the weight afforded to policies in plans should accord with their degree of consistency with the Framework. For this reason, I attribute reduced weight to LP Policy BAS GB4 and give more weight to the Framework.
8. 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.
9. It was clear from my site visit and the planning history of the appeal site, that the original dwelling has been previously extended with various single storey and two-storey extensions. The Council states that the original building as of 1 July 1948 amounted to a gross floor area of approximately 145sqm, excluding the attic space. While the total floor space of the existing dwelling equates to approximately 265sqm, excluding the attic space. Consequently, the existing

¹ Appeal Ref APP/E3715/D/20/3247703

extensions comprise circa 80% increase in floorspace over and above the size of the original building.

10. The Council state that the proposal would add a further 120sqm of floor space and 430 cubic metres of volume (excluding the below ground plant room) to the dwelling. These figures have not been disputed by the appellant. Even if the proposal could comprise an extension to the dwelling, it would represent a disproportionate addition over and above the size of the original building and accordingly, would not comply with paragraph 154(c) of the Framework.
11. The appellant asserts that due to the generous proportions of the original dwelling, its character and its spacious plot, the proposal would not comprise a disproportionate addition. They also assert that Schedule 2, Part 1, Class E of the GPDO limits the total area covered by buildings, enclosures and containers within the curtilage of a dwelling to 50% of the total area of the curtilage and that this figure identifies what could be considered proportionate. However, the assessment is solely one based on whether the sum total of the existing and proposed extensions would be disproportionate in size to the original building.

Conclusion on Whether Inappropriate Development

12. For the above reasons, the proposed development would, in respect of the first main issue, comprise inappropriate development when considered against exceptions 154(b) and (c) of the Framework. It would also conflict with LP Policy BAS GB4, which seeks to control the size of extensions to dwellings in the Green Belt. I am not obliged to assess the development against the purposes of including land within the Green Belt, as there is no requirement under paragraph 154(c), and I have found that paragraph 154(b) is not applicable to the proposal.
13. The Council's reason for refusal also references LP Policy BAS GB1. However, this is a strategic policy in respect of Green Belt boundaries and therefore, is not directly of relevance to the appeal proposal.

Openness

14. 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 proposed building would have a substantial floor space and would be sited on part of a lawn forming the side garden to the dwelling that is devoid of development. The scale and massing of the proposed building would therefore, in spatial terms, reduce the openness of the Green Belt. Furthermore, it is irrelevant whether the Green Belt in which the building is to be constructed forms part of a dwelling's garden or an open field for the purposes of assessing the spatial impact of a proposal on openness.
15. The side garden of the dwelling is predominantly bounded by hedgerows. The proposed building would be sited away from the site's boundaries and a number of trees would be retained along the boundaries shared with Wheatsheaf Cottages and the golf course. The proposed building has been designed with a low eaves and ridge height, and the ground on which it would be positioned is lower than the ground on which the dwelling is located. Accordingly, only a small proportion of the proposed building's roof would be visible from the surrounding area and therefore, in visual terms, it would not reduce the openness of the Green Belt.

16. Overall, while I find there would be no harm to the visual dimension of the openness of the Green Belt, there would be harm to the spatial dimension. Therefore, in respect of the second main issue, the proposal would not preserve the openness of the Green Belt.

Any Other Harm?

17. No other harm has been identified against the proposal that I need to take into consideration. On the basis of the evidence before me, I have no substantive reason to disagree.

Other Considerations

18. The appellant asserts that a swimming pool building could be erected under Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). However, the appeal site is located within a Conservation Area and therefore a building could not be sited in the same location as the appeal building. Consequently, it would have to be sited to the rear of the dwelling. However, the appellant's Design & Access Statement discounted positioning the proposed development to the rear of the dwelling, as it would adversely affect two trees protected by a Tree Preservation Order, and a building outside of the root protection areas of these trees would likely need to be sited within proximity of the dwelling's rear elevation. Consequently, I do not consider that there is a real prospect that this fallback development would be implemented.
19. I have taken account of the personal circumstances of the family member. However, limited information has been provided regarding the family member's condition, the location of publicly available swimming pools, or why driving to and attending them has proven difficult. Even this this information was provided and could justify a swimming pool at the appeal site, I am not convinced that the family member's needs could not be achieved by a less intrusive form of development.
20. I have been directed to a planning approval for a garage/cartlodge at Sleepy Willows², Laindon Common Road. I have not been provided with full details in respect of this building or the planning history of the property to ascertain whether it is directly comparable to the appeal proposal. In any event, I must determine each case on its own merits.
21. The appellant asserts that the Council has approved extensions to dwellings in the Green Belt that exceed LP Policy BAS GB4's floorspace size limits, including at the appeal property. From the information before me, I am not aware of the reasoning behind the Council's approval of previous extensions to the appeal property, and I have not been directed to any other examples where this has occurred. In any event, I attribute reduced weight to LP Policy BAS GB4 and give more weight to paragraph 154(c) of the Framework.
22. Consequently, in respect of the above considerations, I afford them limited weight.
23. I acknowledge that the Arboricultural & Grounds Maintenance Officer, the Built Heritage Consultant and Little Burstead Parish Council have raised no objection to the proposal. However, these are neutral matters.

² Planning Ref 21/00766/FULL

Other Matters

24. The appeal site is within the Little Burstead Conservation Area ('the CA'). Therefore, I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. The Little Burstead Conservation Area Character Appraisal, adopted 2011 states that the significance of the CA derives from its architectural and historic interest. As detailed above, the proposed building would not be visually prominent within the CA due to its siting and height and the retention of existing boundary hedges and trees. It would be constructed of materials to match the existing dwelling and would have a subservient design. Accordingly, I do not find harm to the character or appearance of the CA.
25. I have been directed to discrepancies in the Council's officer report in respect of the reporting of Parish Council comments. However, this has not prevented me from forming a view on the main issues.

Conclusion

26. 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.
27. Given the substantial weight to be given to Green Belt harm, relative to the limited benefits of the proposed scheme, 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.
28. 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