



Appeal Decision

Site visit made on 27 November 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2ND January 2024

Appeal Ref: APP/W3005/W/23/3320891

Halfmoon Farm, Kingsway, Kirkby-In-Ashfield, Nottinghamshire NG17 7FH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Adrian Frost against the decision of Ashfield District Council.
 - The application Ref V/2022/0918, dated 19 December 2022 was refused by notice dated 8 February 2023.
 - The application sought planning permission to convert and extend an existing garage into a dwelling with associated access without complying with a condition attached to planning permission Ref V/2020/0261, dated 21 July 2020.
 - The condition in dispute is No 5 which states that: This permission shall be read in accordance with the following plans: Site Location & Layout Plan, Drawing No. STWNHALF_0001 A100 1, Received 04/05/20; Proposed Floor Plans - Ground Floor, Drawing No. STWNHALF_0001 A101 3, Received 24/06/20; Proposed Floor Plans - First Floor, Drawing No. STWNHALF_0001 A102 2 Received 24/06/20; Proposed Roof Plan, Drawing No. STWNHALF_0001 A103 2, Received 24/06/20; Proposed Elevations, Drawing No. STWNHALF_0001 A105 2, Received 24/06/20. The development shall thereafter be undertaken in accordance with these plans unless otherwise agreed in writing by the Local Planning Authority.
 - The reason given for the condition is: to ensure that the development takes the form envisaged by the local planning authority when determining the application.
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Decision

1. The appeal is allowed and planning permission is granted to convert and extend an existing garage into a dwelling with associated access, at Halfmoon Farm, Kingsway, Kirkby-In-Ashfield, Nottinghamshire NG17 7FH in accordance with the terms of the application, Ref V/2022/0918, dated 19 December 2022, without compliance with Conditions Nos 1, 2, 3, 4 and 5 previously imposed on planning permission Ref V/2020/0261, dated 21 July 2020, but subject to the conditions set out in the attached schedule.

Preliminary Matter

2. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous iteration. Consequently, this update to national policy does not fundamentally alter the main parties' cases or prejudice their position at appeal, and it is not necessary to seek further comments. References hereafter in the decision to the Framework are to the December 2023 version.

Background and Main Issues

3. The appeal relates to a detached garage located in the grounds of a residential farmhouse which was granted planning permission in 2020 to be converted to a dwellinghouse. A subsequent application to amend the approved plans was refused by the Council, leading to the present appeal.
4. The proposal seeks to vary Condition No 5 to substitute new drawings for those approved, principally involving alterations to a front dormer to achieve sufficient head heights for the proposed staircase to meet with the requirements of the Building Regulations. The Council refused the application on the basis that the proposal amounted to a fundamental change to the design of the building that would have a detrimental impact on the character of the development, the street scene, and the visual amenity of the area.
5. The site is located in the Green Belt. The Council has clarified that the original proposal was permitted on the basis that very special circumstances were demonstrated, due in large part to the proposal being a well-designed scheme. The Council in the present case states that the proposal is still not considered an exception to inappropriate development, and that the increase in the size of the building compared to the approved scheme and its design are unacceptable and therefore very special circumstances have not been demonstrated.
6. Paragraph 56 of the Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance provides further advice in this respect, confirming that these six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.¹
7. The main issue, therefore, is whether the disputed condition meets these tests, having regard to:
 - Whether the proposal amounts to inappropriate development in the Green Belt, including the effect on the openness of the Green Belt and the purposes of including land within it, having regard to the Framework and any relevant development plan policies;
 - The effect of the proposal on the character and appearance of the area;
 - If the development is inappropriate, whether any 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 it.

Reasons

Green Belt

8. The Government attaches great importance to Green Belts. Paragraph 154 of the Framework states that the construction of new buildings within the Green Belt is inappropriate, development but lists certain forms of development which are not regarded as inappropriate. This includes 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.

¹ Paragraph: 003 Reference ID: 21a-003-20190723

9. The original proposal under Council Ref V-2020-0261 was stated to involve a 41% increase in internal floorspace, which was noted to exceed the 30% threshold of the Council's Residential Extensions Design Guide Supplementary Planning Document 2014 (the REDG). Though not explicit in its officer report, the Council indicates that this amounted to inappropriate development as a disproportionate addition over and above the size of the original building.
10. The approved conversion scheme for the garage included demolition of a side lean-to structure, removal of the rear walls and addition of a rear extension with a new pitched roof over the enlarged footprint that would raise the original ridge height by 1.5 metres. The design includes a double height front entrance which extends into a dormer structure within the roof slope.
11. The proposal seeks to alter the front dormer element from a hipped roof to a more contemporary, flat roofed design, with the centrally positioned front door moved to an offset position within a revised glazing pattern. The Council indicates the ridge height would also be raised by some 0.2 metres. The appellant also states that the footprint would increase by some 2.6% owing to the addition of an extra cavity and skin of facing stone over the blockwork walls at each end of the building to implement the approved materials.
12. Internally, the first floor bedrooms would be enlarged to fill the whole width of the building, with other layout changes to the ground floor, notably to incorporate a third bedroom. From my observations on site, the building appeared to be under construction to this design, though works were still some way from completion.
13. Based on the plans before me, the proposed changes would result in a very limited increase in the internal floorspace of the dwelling, most of which would be contained within the already approved envelope of the building. The only tangible increase in volume would be from the change in the shape of the front dormer feature, with the difference in ridge height and external footprint being very minor in scale and not manifestly altering the overall shape or size of the building.
14. However, the changes would result in a dwelling of slightly greater floorspace and volume than originally proposed. As the original dwelling was found to be inappropriate development, I find that the amended scheme would also amount to inappropriate development in the Green Belt, having regard to the overall scale of extensions added and the extent to which the threshold of the REDG would be exceeded. The proposal would therefore conflict with the Framework. There would also be conflict with Policy EV1 of the Ashfield Local Plan Review (November 2002) (the ALPR), in so far as it also resists inappropriate development in the Green Belt, but as it sets out different criteria to the Framework, it is not consistent with national policy and I afford limited weight to the conflict with this policy as a result.
15. In terms of openness, the Council's original assessment concluded that the proposal would not result in any 'undue harm to the character and appearance of the Green Belt.' However, this conflates the assessment of openness with the effect on character and appearance. On my own assessment, the approved scheme involved an increase in the size of the building through the rear extension and taller ridge line. As such, it would have had an adverse effect on openness in both spatial and visual terms. However, I find that the differences between the approved scheme and the amended proposal now before me are

minor in scale, such that the proposal would have no greater material effect on the openness of the Green Belt than the approved scheme. Moreover, it would not lead to any new harm in respect of the purposes of the Green Belt over and above the effect of the approved scheme.

Character and Appearance

16. The appeal site, despite being adjacent to the built up area and the suburban character of Ascot Close, is principally viewed as part of the open countryside which extends to the south and east. The design of the adjacent farmhouse evokes a traditional, rural aesthetic with its prominent, symmetrical front elevation and its deep, stone-faced rear projection. The former garage had a simple design befitting its original purpose as an ancillary structure.
17. The approved scheme is for a relatively modest, dormer bungalow with a simple, pitched roof design. The most notable design element is the prominent, double height entrance topped by a hipped dormer, which is of a more traditional design, albeit as part of the statement entrance feature.
18. The proposed flat roof to the dormer would represent a more contemporary approach to the design of the dwelling. However, it would still form part of an intentionally prominent, double height entrance feature that would be largely of the same scale and form as already approved. The overall design and form of the dwelling would not change significantly, remaining lower in height and secondary in prominence to the main farmhouse on the wider site.
19. Moreover, despite the Council's concern with the flat roofed design, I saw a flat roofed dormer nearby at 10 Ascot Close, facing in the same direction as proposed on the appeal site. A smaller, flat roofed dormer is also present on the rear roof slope of 7 Ascot Close, immediately adjacent to the appeal site. In this context, the proposed dormer would not be an isolated or anomalous design within the immediate surroundings.
20. I also saw that views of the dormer would be limited due to its orientation southwards, facing away from the neighbouring dwellings on Ascot Close towards open countryside. In views towards the dwelling along the entrance lane or from the playing fields, the dormer would not stand out due to the filtering effect of dwellings, hedgerows and telegraph poles in the foreground.
21. Elsewhere, two rooflights would be added to the front roof slope and one further rooflight would be added to the rear in an altered arrangement. A side window would be moved and a log burner flue would be omitted. None of these changes are opposed by the Council and, from my observations, they are negligible changes which do not materially affect the overall appearance of the building or the quality of its design.
22. For these reasons, I conclude that the proposal would preserve the character and appearance of the area, in accordance with Policies ST1 and HG5 of the ALPR, which together support development which does not adversely affect the character, quality, amenity or safety of the environment and is acceptable in appearance, scale and siting. This is consistent with the Framework aim of securing high quality design in new development.

Other Considerations

23. Although the enlargement of the original garage is a factor in finding the proposal would amount to inappropriate development, I set out above that the resulting dwelling would be acceptable in appearance, and, when seen in context with neighbouring dwellings, it would not appear disproportionate in scale relative to surrounding development.
24. Furthermore, it is an important consideration that the overall scale of development, which would be only negligibly increased by the proposal, has been found acceptable under the original planning permission. In the circumstances, I give significant weight to the fact that the approved development is already of a scale that amounts to inappropriate development and that the minimal increase in volume in comparison to the approved scheme would not materially worsen the adverse effect on the openness of the Green Belt.
25. The appellant has also set out that the reason for the design change to the dormer is to facilitate sufficient internal head height for the staircase to accord with the requirements of the Building Regulations. Though the proposal has not been shown to be the only means by which this issue could be addressed, it would enable the staircase to stay in the same position, thus avoiding potentially more significant alterations to the building. The appellant has also proposed a reconfigured internal layout which would enable a third bedroom to be provided, and for all of the bedrooms to be en-suite. These changes would provide improved internal space and an enhanced standard of accommodation which attracts limited, but nonetheless favourable weight.

Whether very special circumstances exist

26. The proposal would cause harm to the Green Belt by way of inappropriateness and limited adverse effect on openness, to which I afford substantial weight in accordance with the Framework, which adds that development should not be approved unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
27. Whilst the size of extensions triggers a finding of inappropriate development in technical terms, the proposal would be appropriate in its design and appearance. Moreover, the Council has approved largely the same scale of development and the amended design would not lead to any materially greater harm to openness, nor would it newly offend any of the five key purposes of the Green Belt. It would also provide improved internal head height and a better standard of accommodation compared to the approved design.
28. Taken together, I find that these other considerations clearly outweigh the totality of the harm identified to the Green Belt. Consequently, I conclude that the very special circumstances necessary to justify the proposal exist.

Conclusion

29. As I have found above that very special circumstances exist to justify development in the Green Belt, the proposal would ultimately accord with national policy set out in the Framework and relevant policies of the ALPR. There are no material considerations which indicate that a decision should be made other than in accordance with the development plan.

30. Having found the amended scheme acceptable, it follows it is not necessary to retain the plans approved under Condition No 5 of the original permission in order for the proposal to accord with local and national policy concerning development in the Green Belt and the character and appearance of the area. Therefore, the appeal should be allowed, with the original Condition No 5 removed and replaced by a new condition setting out the amended plans, to ensure there remains certainty as to the development approved.
31. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged, and with the exception of the time limit.
32. As development has commenced on site, it is not necessary to specify the remaining time to implement the permission.
33. Two conditions remove permitted development (PD) rights to construct extensions and outbuildings, respectively. The reasons given are to protect the character and appearance of the area. Given the position and form of the dwelling, extensions possible through PD could have a significant effect on the character of the dwelling and its relationship with the farmhouse and surrounding dwellings. Therefore, I am satisfied that the removal of these PD rights is justified in this case, and I shall retain the conditions, with the exception of minor changes to the wording to accurately set out the title of the relevant legislation.
34. I am told that an application was made to discharge the original Condition No 2, relating to the submission, approval and implementation of drainage plans, but that the Council has not approved details to date. Therefore, I shall re-impose this condition. However, I have amended the wording with a strict timetable for compliance because permission is being granted retrospectively, and it is no longer possible to use a negatively worded condition to secure the approval and implementation of the drainage scheme before the development takes place. The condition will also ensure that the development can be enforced against if the requirements are not met.

K. Savage

INSPECTOR

Schedule of Conditions

- 1) Unless within three months of the date of this decision details of drainage plans for the disposal of surface water and foul sewage are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within six months of the date of this decision, the use of the site, or its occupation as a dwellinghouse, shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved drainage scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) Notwithstanding the provisions of the Town And Country Planning (General Permitted Development)(England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no development relating to Class A of Part 1 of Schedule 2 (Erection of Extensions) shall be undertaken without the prior written approval of the local planning authority.
- 3) Notwithstanding the provisions of the Town And Country Planning (General Permitted Development)(England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no development relating to Class E of Part 1 of Schedule 2 (Erection of buildings incidental to the enjoyment of the dwellinghouse such as greenhouses, sunhouses, garden sheds) shall be undertaken without the prior written approval of the local planning authority.
- 4) This permission shall be read in accordance with the following plans: Site Location Plan; 1289/05 (Foundations Plan and Roof Layout); 1289/06 (Site Layout); 1289/07 (Proposed Plans and Elevations); STWNHALF_0001 A107 2 (Ground Floor Internal Elevations 1). The development shall thereafter be undertaken in accordance with these plans unless otherwise agreed in writing by the local planning authority.
