



Appeal Decision

Site visit made on 19 December 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2024

Appeal Ref: APP/M1005/D/23/3325860

5 Wood Lane, Horsley Woodhouse, Ilkeston, Derbyshire DE7 6BN

- 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 T Waddilove against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2023/0249, dated 22 March 2023, was refused by notice dated 16 May 2023.
 - The development proposed is described as 'Proposed extension to existing dwelling (Re-submission AVA/2022/0982)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following submission of the appeal, the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Other than the paragraph numbers, the provisions in the revised Framework relating to 'Proposals affecting the Green Belt' are the same as those that were in the previous version of the Framework when the Council made its decision. Therefore, it has not been necessary to seek the views of the main parties on this matter.
3. A two-storey rear extension was granted planning permission in February 2023¹ (the previous planning permission). This appeal relates to a resubmission of that proposal together with an additional side extension to incorporate a double garage, ground floor bedroom and wet room. On my site visit, I saw that the two-storey rear extension has already been built and that footings are already in place for the proposed side extension. Therefore, I have considered the appeal on the basis that planning permission is partly sought retrospectively.

Main Issues

4. The main issues are:
 - (i) whether or not the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - (ii) the effect of the proposal on the openness of the Green Belt;

¹ LPA Ref AVA/2022/0982

- (iii) 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 or not inappropriate development in the Green Belt

5. Paragraph 154 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt other than in a number of exceptions. One exception at Paragraph 154 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. In this context, original building means the dwelling as originally built or as the building existed on 1 July 1948 (whichever is the later). As the original building has been previously extended, this needs to be taken into account in any consideration of the size of the building.
6. Saved Policy EN2 (Green Belt) of the Amber Valley Borough Local Plan (2006) (LP) is not entirely consistent with the Green Belt requirements in the Framework and is therefore out-of-date. Even so, it similarly sets out that extensions to existing dwellings will only be granted where they do not result in a disproportionate increase over the size of the original dwelling.
7. The Framework does not define what would be classed as a disproportionate addition, but the overall size of the building (either in terms of footprint, floorspace or volume) are clearly important factors. From the evidence before me, the Council do not have any policy or guidance which sets out what they consider would be disproportionate either.
8. The Council's delegated report sets out that figures provided by the appellant's agent indicated that the original building had a volume of 432m³. The report sets out that, when the appeal scheme is factored in, the total volume of extensions to the original building would be 422m³.
9. The appellant suggests that the proposal would replace parts of the original building including a garage, coal shed, rear porch, downstairs toilet and a conservatory. However, no substantive evidence has been provided to show that all these elements were original nor have any detailed workings been provided to demonstrate that the calculations in the Council's report did not accurately account for them.
10. In the absence of any detailed alternative calculations to persuade me otherwise, based on the above figures there would be a cumulative increase in volume of approximately 98% over the original building, thereby almost doubling the volume of the dwelling when compared with its original size. The plans illustrate that there would also be substantial increases in footprint and floorspace when the totality of extensions is compared with the original building. To my mind, these factors indicate that the appeal proposal would result in disproportionate additions.
11. For the reasons set out above, the proposal would not accord with the exemption at paragraph 154 c) of the Framework. Consequently, the proposal would be inappropriate development in the Green Belt. As the proposal would

result in a disproportionate increase over the original dwelling, it would also be contrary to saved Policy ENV2 of the LP.

The effect on the openness of the Green Belt

12. Paragraph 137 of the Framework sets out the essential characteristics of Green Belts, which are their openness and permanence. It has been held in the High Court that openness is epitomised by the lack of buildings or development.
13. As I have found above, taken together with existing extensions, the proposal would result in a substantial cumulative increase in the size when compared to the size of the original building. The extended building's greater size and bulk over that previously permitted, would inevitably have a spatial effect on the openness of the Green Belt.
14. The dwelling sits within a large plot and is substantively screened from neighbouring fields by boundary planting. The already erected two-storey rear extension is discernible from Wood Lane, albeit this has no greater visual effect on its surroundings than the development approved under the previous planning permission. Even accounting for these factors, the further side extension proposed would elongate the dwelling at ground floor level and this extension of built form would be evident to passers-by the site frontage.
15. Overall, I find that the spatial and visual effects of the additional side extension would have a moderate effect on the openness of the Green Belt, over and above the effects of the previous planning permission.
16. I conclude, the proposals would not preserve the openness of the Green Belt, thereby conflicting with the aims of including land within the Green Belt when assessed against the Framework.

Other Considerations

17. The Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010, sets out the need to eliminate 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 share it. I have given due regard to the PSED as well as the provisions of the Human Rights Act 1998.
18. More particularly, the appellant's statement of case indicates that the proposal would provide ground floor accommodation for an older relative who has degenerative health conditions. It also states that the appellant has a degenerative health condition and that the extension would future proof the dwelling. In the absence of any detailed evidence on these matters, I afford moderate weight to the possibility that the proposal would facilitate assisted living and would future proof the dwelling for the family with the potential that there would be consequential benefits for the quality of life of those concerned.
19. The appellant contends that they could 'build a large agricultural building' to store their agricultural equipment as well as a 'large detached garage' under permitted development rights. However, no substantive evidence, for example plans with a certificate of lawfulness of proposed use or development, is before me to demonstrate that is the case. Furthermore, the proposal before me includes habitable accommodation and so is not directly comparable to these

scenarios. Therefore, the prospect of the alternative scenarios being carried out is uncertain and any potential visual and spatial effects cannot be compared.

20. Even if the appellant's preference is for an attached building for security reasons, there is nothing to suggest that the site has any significant security issues which need addressing through and extension of the size proposed. Therefore, this matter attracts limited weight.
21. My attention has been drawn to several dwellings in the area which the appellant suggests have had significant increases in volume when compared with the original buildings on those sites. I have also seen the plans and pictures provided in respect of some of these sites. However, I am not aware of the detailed planning history of those particular properties, nor do I know the material planning considerations that may have been relevant in considering proposals on those sites. I have determined this appeal on its own merits having regard to the site-specific evidence before me and the relevant Green Belt policy requirements.

Green Belt Balance and Conclusion

22. Saved Policy ENV2 of the LP is out-of-date. Paragraph 11 d) of the Framework confirms that in instances where the policies of the development plan which are most important for determining an application are out-of-date, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This includes the policies in the Framework relating to land designated as Green Belt.
23. I have found that the development constitutes inappropriate development in the Green Belt to which I attach substantial weight. The Framework states that inappropriate development is by definition harmful to the Green Belt and should only be approved in very special circumstances.
24. As part of the assessment, I have also found that the development would result in a moderate effect on the openness of 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, is clearly outweighed by other considerations. This is a high hurdle for a development proposal to overcome.
25. The other considerations put forward in favour of the proposal carry no more than moderate weight.
26. In conclusion and on balance, the substantial weight to be given to Green Belt harm, in addition to the other harm identified is not clearly outweighed by other considerations and therefore the very special circumstances needed to justify the proposed development do not exist.
27. For the reasons given the overall conclusion is therefore that the appeal should be dismissed.

M Russell

INSPECTOR