



Appeal Decision

Site visit made on 20 June 2023

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Appeal Ref: APP/T3725/D/22/3307585

West Hill, Westhill Road, Cubbington, Leamington Spa, Warwickshire CV32 6RA

- 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 Gavin Raeburn against the decision of Warwick District Council.
 - The application Ref W/21/1852, dated 05 October 2021, was refused by notice dated 01 July 2022.
 - The development proposed is single storey detached garage and garden maintenance store with walled courtyard.
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Decision

1. The appeal is allowed and planning permission is granted for proposed single storey detached garage and garden maintenance store with walled courtyard at West Hill, Westhill Road, Cubbington, Leamington Spa, Warwickshire CV32 6RA in accordance with the terms of the application, Ref W/21/1852, dated 05 October 2021, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made against Warwick District Council by the appellant. This application is the subject of a separate Decision.

Preliminary Matters

3. The application form cites the address as 'Westhill'. However, all the other evidence refers to 'West Hill', therefore I have used this spelling in my decision.
4. A completed Unilateral Undertaking dated 07 December 2023 was submitted during the course of the appeal (the UU). The UU revokes householder permitted development rights under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
5. My attention has been drawn to a previous Inspector's decision for a similar proposal at the appeal site¹. That decision is a significant material consideration in the determination of this appeal.
6. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. Where I

¹ Appeal ref: APP/T3725/D/18/3217513

have referred to specific paragraphs of the Framework, the numbering used is that of the December 2023 version.

Main Issues

7. The main issues are:

- whether the proposal would be inappropriate development in the Green Belt, including the effect on openness of the Green Belt, having regard to the Framework and any relevant development plan policies; and

- if the development is inappropriate, 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 required to justify the proposal.

Reasons

Whether inappropriate development

8. The appeal site comprises a dwelling which is situated in the Green Belt. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy DS18 of the Warwick District Local Plan 2011-2029 (2017) (LP) confirms that the Council will apply national policy to proposals within the Green Belt.
9. The proposal includes the erection of an outbuilding to be used in association with the dwelling. Neither national nor local policy make any specific reference to outbuildings or other ancillary domestic buildings as not being inappropriate development within the Green Belt. The appellant claims that the appeal scheme would comprise the erection of a domestic adjunct within the curtilage of a dwelling house. Reflecting the approach identified in *Warwick DC v SSLUHC & others [2022] EWHC 2145 (Admin)* the appellant claims that the garage would not be inappropriate development because it should be regarded as an extension to the host dwelling, and furthermore that this extension does not result in disproportionate additions over and above the size of the original building. Thus, it is stated that the proposal would meet the exception set out in criteria c of paragraph 154 of the Framework.
10. Having regard to that Judgement² it is a matter of fact and degree as to whether outbuildings can readily be considered to be extensions of other buildings even when they may not physically be connected. In this case, the proposed garage would be located to the front of the dwelling. The building would clearly be used in association with the main dwelling and would be within its residential curtilage. Nonetheless, and having regard to the overall size of the appeal site, it would be located a considerable distance from the main dwelling and furthermore would be visually separated from it by a driveway/turning area. Given this, the garage would clearly be perceived as an outbuilding, rather than an extension to the dwelling and thus would not meet the exception set down in Paragraph 154 criterion c of the Framework.

² *Warwick DC v SSLUHC & others [2022] EWHC 2145 (Admin)*

11. The appellant also states that the site comprises previously developed land and thus would meet the exception set out in criteria g of Paragraph 154 of the Framework. Criterion g of paragraph 154 of the Framework sets out that the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, is not inappropriate as long as it would not have a greater impact on the openness of the Green Belt than the existing development.
12. I have not been provided with a definition of previously developed land in the LP, however Annex 2 of The Framework defines it as being land which is or was occupied by a permanent structure, including the curtilage of the developed land. This definition excludes land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.
13. The main parties agree that the site did accommodate a hard surfaced tennis court. At my site visit I observed that the tennis court is no longer in place and this land consisted of a gravel surfaced area upon which materials were being stored. This surface did not appear to have blended into the landscape and thus I am satisfied that this part of the site should be regarded as previously developed land as defined by the Framework.
14. The full details of the tennis court which previously stood on the site are not before me, though the appellant refers to a chain-link fence that originally enclosed the tennis court as being higher than the height of the proposed garage. If that were the case, it is reasonable to assume that there would be an element of visual permeability afforded by a tennis court fence which would have limited effect on the openness of the Green Belt. I note that this is the conclusion made by a previous Inspector in relation to an appeal on the same site³ for the erection of a garage on land which was, at the time of the appeal determination, being used as a tennis court.
15. Paragraph 142 of the Framework indicates that openness is an essential characteristic of the Green Belt. Openness is capable of having both a spatial and a visual dimension. The boundaries of the site are densely vegetated. The proposal would be well-contained within the site and screened from public view by existing landscaping. Thus, it would not represent a visual intrusion into the surrounding area. Nonetheless it would introduce permanent, solid 3-dimensional built form where currently there is none. The scale and bulk of the proposed building and the walled courtyard would diminish the openness of the Green Belt and would result in a greater impact on the openness of the Green Belt than the existing hard surfacing or the tennis court which was previously located on the site.
16. In reaching this judgement account has been taken of court judgements⁴ and an appeal decision⁵ where it was found that the correct approach is to consider the impact or harm, if any, wrought by the change to the openness of the Green Belt. In this case I consider the scale and form of the proposal would have a greater impact on the openness of the Green Belt experienced here.

³ Appeal ref: APP/T3725/D/18/3217513

⁴ Turner [2016] EWCA Civ 466, Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council [2020] UKSC 3, Euro Garages Ltd v SSCLG & Anor [2018] EWHC 1753 (Admin)

⁵ Appeal Ref: APP/M3645/D/20/3262416

17. Accordingly, it is concluded that the proposal would be inappropriate development and would cause harm to openness, thereby conflicting with the Framework and LP Policy DS18. Paragraph 152 of the Framework advises that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances.

Other considerations

18. The appellant has indicated that extensions which could be carried out under householder permitted development (PD) rights, including that which has been established by a Lawful Development Certificate⁶ (LDC) would have a greater effect on the openness of the Green Belt than the appeal proposal. This LDC relates to a larger outbuilding on an undeveloped part of the garden and given that it provides similar accommodation to that now proposed, I find it likely that it would be built if this appeal were dismissed. By virtue of its increased bulk and massing and its siting in relation to the appeal property, this alternative would have a greater impact on the openness of the Green Belt. I give significant weight to this.
19. The appellant has submitted a UU which would revoke householder PD rights under Schedule 2, Part 1, Class E of the GPDO while enabling this particular proposal to be implemented. The Council state that there is no justification to restrict PD rights, pointing out that the GPDO does not discriminate between Green Belt and non-Green Belt land in terms of PD rights. However, in this case, it would prevent the fallback development occurring, while allowing this less harmful proposal to proceed, so, there would be a clear justification for doing so. The removal of PD rights would not prejudice the Council in determining any future planning applications for other development that would normally be PD.
20. The Council has raised some concerns regarding the enforceability of the UU. However, it is clear which land is bound by the UU and that the signatories who have an interest in that land are the freehold owners. The UU clarifies what buildings are currently on the land to give certainty about when any building would be 'additional', specifies the land where no 'additional buildings' will be erected and is linked to the appeal property. Therefore, I am satisfied that it is enforceable and would meet the 3 tests set out in Paragraph 57 of the Framework and Regulation 122 of the CIL Regulations. Consequently, I give the UU significant weight in the determination of this appeal.

Other Matters

21. The Council's Ecological Assistant commented on the proposal requesting that clear photographs of the proposed site for the garage including any structures present on the site are provided prior to determination of the application to assess whether a bat survey is required. This detail does not appear to form part of the submission. Nonetheless the Council commented that, as the footprint of the proposed garage would not be as big as the tennis court, the proposal would not have an unacceptable impact on biodiversity. I see no reason to take a different view.

⁶ LPA Ref W/18/0959

Conditions

22. I have had regard to the conditions suggested by the Council in their statement of case, on which the appellant has had the opportunity to comment. Where necessary I have made revisions to some of the conditions put to me to ensure that they meet the tests in the Framework and Planning Practice Guidance, without altering their fundamental aims.
23. In addition to the standard time limit condition, it is necessary to specify the approved plans in the interest of certainty. In the interest of the character and appearance of the appeal property, a condition is necessary to control the external materials of the development.
24. A pre-commencement condition, to which the appellant has agreed, relating to a scheme for the protection of the retained trees and hedges is necessary to ensure appropriate measures for the protection and retention of retained trees and hedges in accordance with LP Policies BE1 and NE1.

Green Belt Balance and Conclusion

25. The proposal would be inappropriate development in the terms set out by the Framework and would result in a harmful loss of openness to the Green Belt. The Framework requires that substantial weight should be given to any harm to the Green Belt. However, the restrictions within the UU would prevent a more harmful fallback development occurring. This would clearly outweigh the harm that I have identified to the Green Belt by reason of inappropriateness and harm to openness and would therefore amount to the very special circumstances necessary to approve the development.
26. The proposal would therefore accord with LP Policy DS18 and the Framework. There are no other material considerations to indicate otherwise. For these reasons the appeal is allowed.

N Robinson

INSPECTOR

SCHEDULE OF 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: 372_AR_300_001, 372_AR_300_002, 372_AR_300_003, 372_AR_130_002
- 3) The external surfaces of the development hereby permitted shall be constructed to match the materials as stated on the approved plans and thereafter maintained as such.
- 4) Prior to the commencement of the development hereby approved (including all demolition and all preparatory work), an Arboricultural method statement

(AMS) and a tree protection plan (TPP), together referred to as the scheme of protection, for the protection of the trees to be retained shall be submitted to and approved in writing by the Local Planning Authority.

Specific issues to be considered in the scheme of protection shall include how to control:

- the impact that the installation of services/utilities/drainage may have (if appropriate).
- the impact that construction may have
- the impact that changes in level may have.

The scheme of protection should make recommendations for:

- a) tree pruning to allow the development to proceed (if appropriate)
- b) tree protection, to be shown on the TPP with offsets from fixed points to confirm the alignment of any protective fencing and the extent of any ground protection
- c) ground protection where scaffolding will be erected (if appropriate)
- d) the specification for the construction of any access, driveway, parking area or the like that encroach over the Root Protection Areas (RPAs) of the retained trees
- e) site setup, including (but not limited to) site access, parking, on-site welfare facilities, temporary buildings, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing, including suitable control measures to protect the retained trees from harm from those facilities or activities
- f) a site monitoring protocol that will confirm by independent examination by a suitably qualified tree specialist that the agreed scheme of protection is in place

The development thereafter shall be implemented in strict accordance with the approved scheme of protection, which shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed from the site.

END OF CONDITIONS