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# Appeal Decision

Site visit made on 2 February 2024

**by K E Down MA(Oxon) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> February 2024**

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**Appeal Ref: APP/J1915/D/23/3324872**

**18 Well Row, Bayford, Hertfordshire, SG13 8PW**

- 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 Ms M Phillips against the decision of East Hertfordshire District Council.
  - The application Ref 3/23/0633/HH, dated 29 March 2023, was refused by notice dated 31 May 2023.
  - The development proposed is erection of 2No outbuildings to provide a gym and office. Demolition of existing garage.
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## Decision

1. The appeal is allowed and planning permission is granted for erection of 2No outbuildings to provide a gym and office. Demolition of existing garage at 18 Well Row, Bayford, Hertfordshire, SG13 8PW in accordance with the terms of the application, Ref 3/23/0633/HH, dated 29 March 2023, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 20491-S001-1<sup>st</sup>, 20491-P002-1<sup>st</sup>.
  - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those set out on approved plan ref. 20491-P002-1<sup>st</sup>.

## Main Issues

2. There are four main issues. Firstly, whether the proposed outbuildings would amount to inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; secondly, the effect of the proposed outbuildings on the openness of the Green Belt; thirdly, the effect of the proposed air conditioning units on the living conditions of neighbouring occupiers with respect to noise; and fourthly, if the proposed outbuildings would amount to inappropriate development, whether the harm, by reason of inappropriateness and any other harm is clearly outweighed by other considerations, such as to amount to the very special circumstances necessary to justify the development.
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## Reasons

### *Whether inappropriate development in the Green Belt*

3. Bayford is a small village in open countryside and lies within the Green Belt. The appeal dwelling is one of a short row of similar, semi-detached houses on relatively wide plots which front the highway and back onto fields. It lies within the village boundary. The appeal dwelling has a detached single garage to the side which is proposed to be demolished. No objection is raised to this, and I agree it would be acceptable.
4. The proposed outbuildings would be sited in the rear garden. One would be set a short distance behind the dwelling and close to the boundary with No16, which comprises mostly vegetation and is relatively open. The other would be set further from the dwelling and on the opposite side of the garden, close to the boundary with No 20 which comprises a high, close boarded fence.
5. Policy GBR1 of the East Herts District Local Plan (LP), 2018, states that planning applications within the Green Belt will be considered in line with the provisions of the Framework. 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 states that the construction of new buildings should be regarded as inappropriate except in a number of circumstances, such as 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.
6. Although the proposed buildings are not conventional extensions, the High Court has ruled [*Warwick DC v SSLUHC, Mr J Storer & Mrs A Lowe [2022] EWHC 2145 (Admin)*] that for the purpose of Green Belt assessment an outbuilding should not be assumed not to be an extension simply because it is not physically attached to the host building. Whether a detached structure would amount to an extension of the existing building is a matter of fact and degree. Factors that may be relevant include whether, in the case of a residential outbuilding, it would be a “normal domestic adjunct”, its purpose, its relationship with the original building and its size.
7. In this case planning permission has recently been granted for single and two storey extensions to the rear and side of the original dwelling. Although the proposal includes demolition of the garage and existing single storey projections, these extensions if built, whilst considered proportionate by the Council, would noticeably increase the size of the modest original dwelling. I do not have full details of the permitted extensions but, in view of the size of the proposed outbuildings, I consider it likely that, taken together with the permitted extensions, they would amount to a disproportionate increase over the size of the original dwelling. In the absence of further evidence, I therefore find that the outbuildings could not reasonably be considered as proportionate extensions to the original dwelling. The exceptions set out in paragraph 154 of the Framework do not therefore apply in this case.
8. It is concluded on the first main issue that the proposed outbuildings would amount to inappropriate development in the Green Belt. The Framework advises that substantial weight should be given to any harm to the Green Belt, including that by reason of inappropriateness.

### *Openness of the Green Belt*

9. The Framework states that the essential characteristics of Green Belts are their openness and permanence. The proposed outbuildings would be set within the garden of the dwelling but would be clearly visible from the open countryside beyond. Although single storey they would be some 3.5m by 7m and 3.5m by 5.5m respectively and would have a height of about 3.8m. Together they would have a noticeable effect on the openness of the area which would result in modest harm to the openness of the Green Belt.
10. It is concluded on the second main issue that the proposed outbuildings would materially detract from the openness of the Green Belt and given the location of the site on the edge of open countryside this would result in a limited encroachment of the countryside which would conflict with one of the purposes of Green Belts. The harm caused to the Green Belt by reason of effect on openness and purposes of the Green Belt attracts substantial weight.

### *Living conditions - Noise*

11. The proposal includes the provision of two modest air conditioning units, one attached to the western elevation of each outbuilding, facing towards the open countryside. The Council considers that these might cause a significant detrimental impact on the amenity of occupiers of neighbouring properties, which would conflict with LP Policy DES4 due to noise. However, the position of the units, their scale and the separation distance between them and the closest noise sensitive receptor would ensure that properly maintained air conditioning units would be unlikely to cause material disturbance to neighbouring occupiers.
12. The Council also suggests a conflict with LP Policy EQ2 which seeks to avoid noise pollution. However, the examples of noise generating development set out in the explanatory text to the policy, including traffic, aircraft, industrial, commercial and outdoor recreation noise, suggest that the policy is designed to control larger scale noise sources, rather than the everyday noise from commonplace sources associated with minor development.
13. It is therefore concluded on the third main issue that the proposed air conditioning units would have no materially detrimental impact on the amenity of occupiers of neighbouring properties with respect to noise and that the provision of a noise impact assessment would not be justified. In consequence, there would be no conflict with LP Policies DES4 or EQ2.

### *Other considerations*

14. The appellant draws my attention to one other consideration which she considers might amount to the very special circumstances necessary to justify the proposal. On 28 February 2023 the Council granted a Lawful Development Certificate (LDC) for the erection of two outbuildings and the demolition of the garage. The outbuildings were in the same locations and of the same footprints as those now applied for. However, they were flat roofed, having a height of some 2.5m.
15. The Council took the view that the additional height of the buildings the subject of this appeal would materially increase the loss of openness to the Green Belt

over and above that resulting from the LDC proposal and as such they did not represent a meaningful fallback.

16. However, on 27 July 2023 the appellant secured an LDC for the erection of two outbuildings and demolition of the garage but in this case the buildings were essentially the same scale and design as the appeal buildings but were located 2m from each respective side boundary and hence sited more prominently within the site, thus having a greater effect on the openness of the Green Belt than the appeal proposal.

17. I consider that if the appeal was dismissed it is highly likely that the appellant would implement one of the LDC schemes and, given the width of the garden which would be sufficient to accommodate the buildings if they were set away from the boundaries, the aesthetically more pleasing pitched roof design would be more likely to be implemented. Overall, I therefore find that the LDCs would amount to a realistic fallback with a genuine prospect of being implemented and that the LDC for the pitched roof design, which would have a greater effect on openness than the appeal scheme, would be the more likely. This carries considerable weight.

18. It is concluded on the fourth main issue that the other consideration in this case would clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that the very special circumstances necessary to justify the development therefore exist. In consequence, there would be no conflict with national policy set out in the Framework or with LP Policy GBR1.

### **Conditions**

19. Turning to planning conditions, the Council suggests three conditions in addition to the statutory commencement condition. I agree that the development should be carried out in accordance with the submitted plans for the avoidance of doubt. A condition requiring external materials to match those of the existing building would not be reasonable since the development comprises stand-alone buildings which have a different finish to the host dwelling. The proposed materials are clearly shown on the submitted drawings. I shall therefore impose a condition requiring these to be implemented in order to protect the character and appearance of the surrounding area. Finally, the Council suggested a condition requiring an assessment of noise and rating levels for the proposed air conditioning units at the nearest noise sensitive premises. However, for the reasons set out in paragraphs 11-13 above, such a condition would be unnecessary and unreasonable and I shall not therefore impose it.

### **Conclusion**

20. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be allowed.

*KE Down*  
INSPECTOR