
Appeal Decision

Site visit made on 12 April 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Appeal Ref: APP/H1515/W/23/3327853

Thorndon Cottage, Warley Gap, Little Warley, Brentwood, CM13 3DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Craig Dewar against the decision of Brentwood Borough Council.
 - The application Ref is 22/01774/FUL.
 - The application sought planning permission for the demolition of existing dwelling and construction of replacement dwelling without complying with conditions attached to planning permission Ref 20/00446/FUL, dated 3 July 2020.
 - The conditions in dispute are Condition No 6 which states that *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), the dwelling hereby permitted shall not be extended or enlarged in any way without the prior grant of specific planning permission by the local planning authority"*, and Condition No 8 which states *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order) no development falling within Schedule 2, Part 1, Class E of that Order ('buildings etc incidental to the enjoyment of a dwellinghouse') shall be carried out without the prior grant of specific planning permission by the local planning authority."*
 - The reasons given for the conditions are: *"To order (sic) to safeguard the design of the approved dwelling and in the interests of maintaining the openness of the Green Belt"*, and *"To restrict the sprawl of urban development into the countryside in the interests of maintaining the openness and purposes of the Green Belt."*
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Decision

1. The appeal is dismissed.

Procedural matter

2. The Government published a recently revised National Planning Policy Framework ("the Framework"). All references in this decision relate to the revised document. I am satisfied that the parties will not be prejudiced by the changes to the national policy context as there are no material changes relevant to the substance of this appeal.

Background and Main Issues

3. Disputed conditions 6 and 8 removed national permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015, as amended ("the GPDO") that would otherwise have allowed, within certain parameters, the enlargement of the replacement dwelling and the

erection of outbuildings within its curtilage, without the need for a planning application. The disputed conditions do not necessarily prevent future extensions to the dwelling or the erection of outbuildings within its curtilage, but they allow the Council to control them through the planning application process.

4. The main issues are whether the disputed conditions are reasonable and necessary with regard to:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
 - The effect on the character and appearance of the area.
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by any other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

5. Policy MG02 of the Brentwood Local Plan 2022 ("the BLP") states that the Green Belt will be preserved from inappropriate development so that it continues to maintain its openness and serve its key functions. All development in the Green Belt will be considered and assessed in accordance with the provisions of national planning policy. Planning permission will not be granted for inappropriate development other than in very special circumstances.
6. The removal of the disputed conditions would lead to the grant of a new planning permission for the replacement dwelling. Paragraph 154 of the Framework, states that the construction of new buildings in the Green Belt should be regarded as inappropriate development, subject to specific exceptions. The relevant exception to this appeal is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. This is set out in Framework Paragraph 154.d).
7. For the purposes of this appeal and the Framework's exception, I have taken the demolished dwelling as the 'existing' building to be replaced. The evidence indicates that it had a cumulative volume, together with its outbuildings, of some 505 cubic metres. Whilst the replacement dwelling the subject of this appeal would have a greater volume than the existing building, a sizeable proportion of this would be contained within a subterranean basement, with the remaining volume above ground level. As such, the evidence suggests that the replacement dwelling was not considered to be materially larger above ground level than the existing building to be replaced, and therefore it was not found to be inappropriate development in the Green Belt under the Framework's exception above.
8. The evidence indicates that the disputed conditions were imposed to control the future enlargement of the replacement dwelling and the erection of outbuildings. This was to prevent it from becoming materially larger above ground level than the existing building and constituting inappropriate development in the Green Belt.

9. Restricting national permitted development rights by planning conditions requires clear justification under Framework Paragraph 54. Unlike in other designated areas such as National Parks, the evidence suggests that the GPDO does not place a restriction on extensions to dwellings and the erection of domestic outbuildings within the Green Belt. The Planning Practice Guidance ("the PPG") advises that conditions restricting the future exercise of national permitted development rights, and blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission, are unlikely to meet the tests of reasonableness and necessity.
10. However, in this instance, the replacement dwelling would be set in spacious grounds. Although not all the land within the application site would necessarily be considered as curtilage for the purposes of the permitted development rights, the space around the dwelling would be likely to present considerable scope for above ground extensions and outbuildings. There is limited evidence to indicate that only modestly sized enlargements to the dwelling could be carried out as permitted development. I am not aware of anything that would prevent permitted development rights from being utilised to their maximum extent.
11. Even if enlargements to the replacement dwelling and any outbuildings capable of being erected under the GPDO would be modest in scale, on the evidence before me they would still be expected to increase the size of the replacement dwelling and potentially result in it being materially larger above ground level than the existing building.
12. I acknowledge that the replacement dwelling is unlikely to be visible from a public vantage point. Views would mainly be limited to private views from the driveway that runs alongside the application site and serves a few other dwellings. Nonetheless, materially increasing the size of the replacement dwelling above ground level through extensions and outbuildings under permitted development rights, would be expected to cause a modest loss of Green Belt openness in both the spatial and visual dimensions, and some limited encroachment into the countryside.
13. Consequently, in taking account of site-specific circumstances, I find that the disputed conditions are justifiably necessary and reasonable to control the enlargement of the replacement dwelling and the erection of outbuildings within its curtilage. This is to prevent inappropriate development in the Green Belt and a loss of Green Belt openness, and meet the exception in Framework Paragraph 154.d), and the requirements of BLP Policy MG02, which are set out above.

Character and appearance

14. The character and appearance of the area around the appeal site is that of countryside and defined by extensive grass covered land that is surrounded by dense woodland. The woodland provides a sense of containment and seclusion from the town of Brentwood, notwithstanding the visibility of the large former Ford Motor Company HQ building to the north and a building under construction to the south.
15. The approved replacement dwelling is of an individualistic and contemporary design and would be sited in a spacious plot some distance away from other

buildings. The utilisation of the permitted development rights removed by the relevant disputed condition would give scope to alter its appearance through enlargements. However, the dwelling would mostly be seen on its own against a backdrop of trees and it would not form part of an established street scene or grouping of buildings comparable scale, form or design. This would remain the case even if it was extended.

16. For these reasons, I am not persuaded that altering the appearance of the replacement dwelling through enlargements that would otherwise be permitted development would harm its character and appearance or that of the wider area. Consequently, the proposed removal of the relevant condition would not conflict with BLP Policy BE14, insofar as it requires development to be of a high design standard that responds positively and sympathetically to its context. Nonetheless, an absence of harm in this respect is not a matter which weighs positively in favour of the appeal proposal. Therefore, it would not alter or outweigh the conclusions I have reached on the main issue of Green Belt above.

Other Matters

17. Some general similarities can be drawn between the appeal proposal and the appeal decisions that are before me. However, I am not familiar with the evidence placed before those Inspectors, including in the allowed appeal in West Malling¹. The appeal decisions in Halifax², Huddersfield³, Lightwood⁴, Enfield⁵, Guildford⁶, Wakefield⁷ and Solihull⁸ were based on the now superseded guidance in an earlier version of the PPG, which stated that conditions restricting the future use of permitted development rights should only be used in 'exceptional' circumstances. As such, those decisions are of limited relevance and weight to this appeal.
18. In contrast to my conclusions in this appeal, there was limited scope for any additional extensions at the property in the Halifax appeal. In the Danzey Green⁹ appeal, the main parties concluded that the proposal would comply with Green Belt policy and the Inspector found no reason to disagree. The appeal in Guildford pre-dates the Framework and does not appear to relate to the Green Belt.
19. The appeal decisions submitted in evidence, including those¹⁰ in the Council's area, would have been subject to site-specific considerations and judgements, and determined on their own merits. As such, they are of limited weight in favour of the appeal proposal, and they do not alter my conclusions on this appeal.

Planning Balance and Conclusion

20. Paragraphs 152 and 153 of the Framework state that inappropriate development is, by definition, harmful to the Green Belt and should not be

¹ APP/H2265/W/20/3264915

² APP/A4710/W/17/3174097

³ APP/Z4718/W/20/3255705

⁴ APP/M3455/W/19/3226953

⁵ APP/Q5300/A/14/2217664 & APP/Q5300/A/14/2217665

⁶ APP/Y3615/A/11/2144286

⁷ APP/X4725/D/18/3201609

⁸ APP/Q4625/A/12/2170281

⁹ APP/J3720/W/20/3251058

¹⁰ APP/H1515/W/20/3250232 & APP/H1515/W/20/3250250

approved except in very special circumstances, and that substantial weight should be given to any harm to the Green Belt. I have given substantial weight to the harmful effect on the Green Belt that would be expected to arise from the removal of the disputed conditions and the utilisation of permitted development rights by reason of inappropriateness and harm to openness. This harm is not outweighed by any other considerations and therefore the very special circumstances necessary to justify granting planning permission without the disputed conditions does not exist.

21. For the above reasons, I conclude that the disputed conditions are reasonable and necessary to prevent inappropriate development in the Green Belt and preserve Green Belt openness, consistent with BLP Policy MG02 and the exception in Paragraph 154.d) of the Framework. Consequently, the disputed conditions are consistent with Framework Paragraphs 54 and 56, and the development would not be acceptable without them.

G Sylvester

INSPECTOR