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# Appeal Decision

Site visit made on 23 April 2024

**by E Catcheside BA (Hons) MSc MRTPI**

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

**Decision date: 23.05.2024**

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**Appeal Ref: APP/B1930/W/23/3327658**

**6 Cherry Tree Lane, Wheathampstead, Hertfordshire AL4 8HP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr & Mrs Kirby against the decision of St Albans City and District Council.
  - The application Ref is 5/2023/0876.
  - The development proposed is "Additional first floor added, changes to fenestration".
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Mr and Mrs A Kirby against St Albans City and District Council. The application for costs is the subject of a separate decision.

## Preliminary Matters

3. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council has stated that, had it determined the application, it would have refused planning permission. The main issues I have identified are based on the evidence before me, including the views of interested parties.
4. The National Planning Policy Framework (the Framework) was revised in December 2023. As the revisions do not affect the main issues in this case, the parties have not been invited to make further comments. Where reference is made to the Framework in this decision, the paragraph numbers refer to the most recent version.

## Main Issues

5. The main issues are:
  - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
  - the effect of the proposal on the openness of the Green Belt;
  - the effect of the development on the living conditions of the occupants of 7 Cherry Tree Lane, with particular regard to privacy; and

- 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 inappropriate development*

6. The appeal site lies within the Metropolitan Green Belt. Paragraph 154 of the Framework sets out that the construction of new buildings should be regarded as inappropriate development in the Green Belt, other than in a few exceptions including (c) the extension or alteration of a building provided it does not result in disproportionate additions over and above the size of the original building.
7. Policies 1 and 13 of the City and District of St Albans District Local Plan Review Adopted 30 November 1994 Written Statement (LPR) also seek to restrict development in the Green Belt. The policies are not entirely consistent with the Framework in terms of the types of development that are not inappropriate in the Green Belt and the matters to be taken into account when considering appropriateness. I therefore reduce the weight I attach to Policies 1 and 13 of the LPR to moderate and shall primarily consider the appropriateness of the development against the provisions of the Framework.
8. The Council has stated that the original building had a floor space of 56.14m<sup>2</sup>, and this has not been disputed by the appellant. Therefore, in the absence of any substantive evidence to the contrary, I have taken this figure as the baseline for assessing the proposal against paragraph 154(c) of the Framework.
9. It is common ground between the parties that the host property has previously been extended to the front, side and rear. On my site visit, I observed a front porch and flat roofed extensions to the side and rear of the appeal building as well as a detached garden room and other outbuildings. The Council has calculated that the floorspace of the existing extensions is 62.62m<sup>2</sup>, which is broadly consistent with the size of the extensions I observed on my site visit. Therefore, in the absence of any alternative figures before me, the existing additions have a floor space of approximately 62-63m<sup>2</sup>.
10. The Framework does not define "disproportionate". Therefore, it is ultimately a matter of planning judgement as to whether the proposed development would comprise a disproportionate addition over and above the size of the original building. However, some guidance is provided in the Supplementary Planning Guidance Residential Extensions and Replacement Dwellings in the Green Belt May 2004 (SPG).
11. Amongst other things, the SPG sets out that side and rear extensions may be acceptable in the Green Belt where there would be an increase in cubic content of 90m<sup>3</sup>-180m<sup>3</sup>, or a 20-40% increase in floorspace subject to a maximum increase in cubic content of 300m<sup>3</sup>. The SPG does not specify floor space or cubic content guidelines for other types of extension such as the appeal proposal. However, it does advise that such extensions will generally be considerably smaller than side and rear extensions. Moreover, the SPG resists extensions in the Green Belt that would result in increasing the ridge height or bulk of a roof.

12. The proposed development would enlarge the existing property by extending it upwards and adding an additional storey to the existing building. Therefore, when combined with the existing additions, the proposed development would be substantially larger than the original building and would significantly exceed the floor space and cubic content guidelines set out in the SPG. Notwithstanding the proposed angle of the roof pitch, the development would also significantly increase the height and bulk of the roof and would alter its character by introducing an additional storey to the existing bungalow.
13. Overall, and taking all of the above into account, the proposed extension would result in disproportionate additions over and above the size of the original building.
14. I conclude that the proposal would be inappropriate development in the Green Belt, having regard to the Framework and Policies 1 and 13 of the LPR which, taken together, seek to resist development in the Green Belt other than in a few exceptions which are not met by the proposed development. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to any harm to the Green Belt.

### *Openness*

15. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.
16. The area around the appeal site has an open character due, in part, to the low profile of most buildings and their deep setbacks from the road. The low height of the appeal property and neighbouring dwellings, and the spaces between them, allow for open views of the sky and the surrounding area to be gained from Cherry Tree Lane. Amongst other things, the SPG advises that the position of extensions in relation to public viewpoints will be a material factor when considering extensions in the Green Belt.
17. Openness can be perceived visually and spatially. Although the gaps between the existing dwellings would be preserved, the proposed development would occupy space above the host property that is currently undeveloped. Consequently, there would be a moderate effect on openness in spatial terms.
18. Moreover, at up to two-storeys high, the proposed development would block open views of the sky and surrounding area that can currently be gained over the building from Cherry Tree Lane. Whilst the street is not heavily trafficked, from my observations there are regular passers-by. Therefore, the loss of openness would be observed from public viewpoints. Overall, the proposed extension would reduce the open character of the area in visual terms, albeit at a localised level.
19. The proposed extension would not increase the footprint of the appeal building. Therefore, there would be no conflict with the Green Belt purposes defined in paragraph 143 (a), (b) or (c) of the Framework. Moreover, the site is not located within a historic town and is not an urban regeneration project. Consequently, there would be no conflict with the purposes listed in paragraph 143 (d) and (e) of the Framework.
20. However, overall, there would be moderate harm to openness at a localised level to which I attach substantial weight in accordance with the Framework.

### *Living conditions*

21. The proposed development would include a Juliette balcony on the first-floor side elevation facing 7 Cherry Tree Lane. Amongst other things, Policy 72 of the LPR states that first floor balconies will not normally be permitted. However, the use of the word “normally” allows for some discretion in decision-making. When read collectively with the remainder of Policy 72 (v) of the LPR, I am satisfied the restriction on balconies relates to the effects of development on the living conditions of neighbours, including through loss of privacy.
22. The proposed Juliette balcony would allow for elevated views towards No 7 from the host dwelling. However, due to the position of the side garden on the appeal site and the intervening distance between the properties, the development would not cause any harmful loss of privacy for the neighbouring residents. Moreover, some mutual overlooking through boundary hedging is already present and would not be exacerbated by the appeal proposal.
23. Therefore, the development would not cause undue harm to the living conditions of the occupants of 7 Cherry Tree Lane, with particular regard to privacy. Consequently, there would be no conflict with Policy 72 of the LPR insofar as it expects extensions to dwellings shall not unacceptably harm the privacy of adjoining properties. There would also be no conflict with the Framework insofar as it expects development to create a high standard of amenity for existing users.

### *Other considerations*

24. The proposed development would be inappropriate development in the Green Belt. Therefore, by definition, it is harmful to the Green Belt and should not be approved except in very special circumstances.
25. The proposed appeal site is located within an established residential area within proximity of the services and facilities in Wheathampstead and Harpenden. It would also improve the quality and quantity of living space for existing and future occupants of the host property. Consequently, it would support the continued use of the building as a family dwelling. However, there is limited evidence before me to indicate that the existing accommodation is sub-standard and, therefore, these benefits carry only modest support in favour of the scheme.
26. I have had regard to the existing two-storey buildings on Cherry Tree Lane, which form part of the street scene near to the appeal site. In that regard, I note that the Council has not raised any objection to the design of the development in terms of its impact on the character of the area. Based on the evidence, and my own observations, I see no reason to disagree. Moreover, no trees, landscape or ecological features would be harmed as a result of the proposal. The absence of harm weighs neither for nor against the proposal.
27. Few concerns were raised about the proposal during the consultation process, and it has some support from third parties. However, the absence of objection does not in itself render the scheme acceptable.
28. It has been put to me that, if it were not for the age of the host dwelling, it would benefit from permitted development rights. However, it is not in dispute that planning permission is required for the proposal, and I have considered the appeal on this basis.

### **Green Belt balance**

29. The proposed development would cause harm to the Green Belt by way of its inappropriateness and loss of openness. Whilst there would be some benefits arising from the proposal, these other considerations do not clearly outweigh the harm I have identified. Consequently, there are no very special circumstances before me to indicate the inappropriate development should be approved.
30. The proposed development would therefore be contrary to the Framework and Policies 1 and 13 of the LPR insofar as they seek to resist inappropriate development in the Green Belt except in very special circumstances.

### **Conclusion**

31. Whilst I have found no harm would arise in respect of the living conditions of neighbours, the proposal would be inappropriate development in the Green Belt that would not be justified by very special circumstances. Consequently, there would be conflict with the development plan and the Framework.
32. The material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, for the reasons given above, I conclude the appeal should be dismissed.

*E Catchside*

INSPECTOR