



Appeal Decisions

Hearing held on 30 April 2024

Site visit made on 30 April 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 24 May 2024

Appeal A Ref: APP/Q4625/C/23/3317712

Appeal B Ref: APP/Q4625/C/23/3317713

86 Meriden Rd, Hampton in Arden, Solihull B92 0BT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Pawan Kumar and Appeal B is made by Mrs Sonica Kumar against an enforcement notice issued by Solihull Metropolitan Borough Council.
- The notice was issued on 25 January 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a 2 storey rear extension including a corresponding extension to the 'chalet type' roof, a ground floor front to side extension and the insertion of 8 dormers in the roof, as shown on the proposed plans and elevations drawing no. 9074-012, Rev A, submitted with planning application ref : PL/2021/02958/MINFHO refused on 17.02.2022 - attached to this enforcement notice as 'Drawing 1'.
- The requirements of the notice are to: (i) Remove the 8 dormer in the roof in their entirety, and (ii) Demolish all unauthorised extensions; the 2-storey rear extension including a corresponding extension to the 'chalet type' roof and a ground floor front to side extension, and (iii) Remove all associated materials from carrying out steps (i) and (ii) above from the land, and (iv) Return the property to its pre-development state as shown in the drawing by R, C, I. Design Ltd dated June 2020 entitled 'Existing Plans and elevations' (unnumbered) drawing submitted with planning application ref: PL/2021/02958/ MINFHO refused on 17.02.2022 - attached to this enforcement notice as 'Drawing 2'.
- The period for compliance with the requirements: 6 (six) months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the notice be corrected by deleting the alleged breach of planning control from section 3 and substituting it with:

"Without planning permission, the erection of a two-storey rear extension including a corresponding extension to the 'chalet type' roof, a ground floor front to side extension and the insertion of 8 dormers in the roof."
2. Subject to the correction, the appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the

development already carried, namely the erection of a two-storey rear extension including a corresponding extension to the 'chalet type' roof, a ground floor front to side extension and the insertion of 8 dormers in the roof at 86 Meriden Rd, Hampton in Arden, Solihull B92 0BT as shown on the plan attached to the notice and subject to the following condition:

- 1) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development included within Schedule 2, Part 1, Class E shall be carried out.

Preliminary matters

3. The Hearing remained open on the site visit so that discussion could continue regarding the development under construction around the property and issues concerning the roof height. At the site visit both parties confirmed that drawing no. 9074-012 Rev A attached to the notice as 'Drawing 1' incorrectly showed the roof as having been raised. It was also noted that there were other discrepancies with the plans and what had been built. Because of these errors, it was agreed that the allegation be corrected to omit reference to the drawing from the notice.

Appeals A and B on ground (b)

4. An appeal on ground (b) is a claim that the matters alleged in the corrected notice have not occurred as a matter of fact. The appellants must therefore demonstrate that the development as alleged has not been constructed. The burden of proof falls to the appellants and the test of the evidence is on the balance of probability.
5. At the Hearing it was accepted that what was alleged had in fact occurred. Therefore, the appeals on ground (b) must fail.

Appeals A and B on ground (c)

6. An appeal on ground (c) is a claim that the matters alleged in the corrected notice, if they occurred, do not constitute a breach of planning control. This is a legal ground of appeal, and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
7. The alleged breach of planning control is the carrying out of operational development without planning permission. The appellants contend that they had received advice from the Council that what they had proposed to build would be permitted development. No written evidence of this advice has been provided to support this claim. Reference was also made to a prior approval application that had been submitted. However, I was not provided with a copy and the Council had no record of one having been received.
8. In the absence of evidence to substantiate their claim, the appellants have failed to discharge their burden of proof. On the balance of probabilities, I find that the matters stated in the corrected notice constitute a breach of planning control. It therefore follows that the appeals on ground (c) must fail.

Appeal A on ground (a) and the deemed planning application

Main issues

9. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies and the purposes of including land in the Green Belt;
- The effect of the development on the openness of the Green Belt; and
- 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 necessary to justify the development.

Reasons

Whether inappropriate development

10. Policy P17 of the Solihull Local Plan (2013) (the LP) explains that some of the smaller settlements in the Borough, of which Hampden in Arden is one, are inset in the Green Belt and are therefore not subject to Green Belt policy. The appeal site comprises a dwelling which is situated outside the settlement and is therefore within the Green Belt.
11. The National Planning Policy Framework (the Framework) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. New buildings should be regarded as inappropriate in the Green Belt subject to exceptions, one of which 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.
12. The appeal relates to the extension of an existing dwelling. At the Hearing the appellant referred me to the judgment in *Julian Wood v SSCLG and Gravesham Borough Council* [2015]. The case concerns the construction of new buildings in the Green Belt and the interpretation of limited infilling in villages. The Framework specifically refers to extensions as an exception set out in paragraph 154(c) and limited infilling in villages as an exception set out in paragraph 154(e). Given the wording of the Framework, I consider that the limited infilling exception does not apply to the enlargement of an existing dwelling. Thus, it is most appropriate for me to deal with the appeal before me under paragraph 154(c).
13. Policy P17 of the LP is consistent with the Framework in terms of development proposals for extensions or alterations to buildings in the Green Belt. The House Extension Guidelines (2010) (Extensions SPD) further conforms to the general thrust of national Green Belt policy and supports the extension or alteration of existing dwellings where this would be proportionate to the size of the original property. While the Framework and Policy P17 do not specify what would constitute disproportionate additions, the Extensions SPD sets out the Council's interpretation which limits extensions to no more than 40% of the original habitable floorspace of the property as originally built.

14. The Council calculated the property's original floor area as 74.5 sqm. With previous extensions the floor area is said to have increased to 317.29 sqm and the extensions which are the subject of the notice are claimed to have increased the floor area further by an additional 108 sqm. The increase in floor area has culminated in a figure which is significantly above the 40% limit for extensions to properties within the Green Belt.
15. Although this figure is a guide, the development has significantly increased the size of the original building. This has resulted in a disproportionate addition in Green Belt terms. While the Council has no objection to the effect of the development on the character and appearance of the host dwelling or its immediate surroundings, the appeal development is inappropriate development in the Green Belt which is, by definition, harmful. As such the development does not fall within the exception set out in paragraph 154c) of the Framework.

Openness and Green Belt purposes

16. Paragraph 142 of the Framework notes that the Government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence. Openness requires consideration of both spatial and visual aspects and consideration of the impact or harm, if any, wrought by the change.
17. The appeal property is in a spacious rectangular plot on the edge of the built development at the eastern end of the settlement. It is set back from the road by a deep landscaped boundary with grass and mature trees which forms part of the public highway. To the other side of the road is a mature tree-lined hedge which screens open fields beyond.
18. The property sits towards the rear of the plot with garden to the sides and rear, and hardstanding to the front. Low-level brick walls and fencing to the front boundary and an open frontage allow for glimpses towards the property by those using the public highway. High level mature vegetation boundaries within the site provides an element of screening to the sides and rear. While there are some views from the neighbouring Lapwing Drive and there will be views from open land to the rear and to the east, these will be significantly compromised by new development which is currently under construction.
19. Nevertheless, the effect on openness is not just about the degree to which new development would be visible from within the public realm, it is also concerned with the spatial aspect. Additions to the property have extended the building at ground floor level, most of which is to the rear. Four large dormers have been constructed on either side of the roof and these are the elements that have added considerable bulk to the previously modest sized chalet bungalow. The development increases the footprint, volume and mass of the original dwelling and this has a spatial impact on the openness of the Green Belt.
20. Given the locational context of the site, I consider there to be no intrusion into the countryside by encroachment, but there is a loss of openness. The appeal extensions occupy space on the ground and have added volume which has changed the shape and massing of the dwelling. The development by its very nature as additional built form reduces the openness of the Green Belt and this is harmful when considered against the provisions of the Framework.

Other considerations

21. I turn now to address other considerations brought forward by the appellants that, potentially, might clearly outweigh the identified harm so as to provide the very special circumstances required to justify a grant of planning permission.
22. My attention has been drawn to a previously approved scheme for a four-bedroom replacement dwelling and the Council provided the drawings at the Hearing. While the permission is no longer extant, the approved scheme¹ was for a substantial two-storey dwellinghouse with a floor area comparable to the appeal property as it now stands. I also note that two previous applications for replacement dwellings were withdrawn. These are described as providing four bedrooms and five bedrooms.
23. While I am not aware of the relevant local plan policies that existed at the time, local Green Belt policy for the replacement of dwellings has remained mostly consistent with national Green Belt policy. Thus, and without any evidence to the contrary, the relevant Local Plan policy would likely have reflected the advice in the national planning guidance at that time² which considered that 'the replacement of existing dwellings need not be inappropriate, providing the new dwelling is not materially larger than the dwelling it replaces'.
24. The Framework applies a similar approach to exceptions to new development in the Green Belt and states at paragraph 154 d) 'the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces' may be regarded as an exception to the construction of new buildings deemed inappropriate in the Green Belt. In this respect, I consider that as there has been little change in national Green Belt policy for replacement dwellings since, I should afford moderate weight to the previously approved replacement dwelling which was considered acceptable and granted planning permission in 2008.
25. The appellants also claim that if the property's full permitted development tolerances were applied, the development that would ensue would be materially larger than that which has been built. While there is no documented evidence supplied to show how the property itself could have been enlarged, a recently issued certificate for lawful proposed development for an outbuilding in the garden shows a building with a floor area of some 209 sqm that would accommodate a swimming pool, changing rooms, garden room with kitchenette, plant room and sheds.
26. It was suggested at the Hearing that the appellants would be willing to enter into a unilateral undertaking to forego the proposed outbuilding to lessen any impact on openness within the site. From the appellants verbal submissions at the Hearing, it would seem unlikely that more than the shell of the building would be constructed due to current financial constraints. Nevertheless, while it seems unlikely that the appellants would build a structure that they could not immediately complete, the prospect of the fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than

¹ Planning application ref: PL/2007/00272/FULL Demolition of existing dwelling and replace with a 4 bedroomed dwelling. Approved 4 February 2008

² Planning Policy Guidance Note 2 Green Belts

a merely theoretical prospect. Although the possibility of the fallback position happening may be very slight, this is sufficient to make the position a material consideration. Were the development to be constructed alongside the dwelling, there would be an even greater impact on openness by the extent of the development on previously undeveloped land. In these circumstances, I afford moderate weight to what has been proposed and what could lawfully take place.

Green Belt balance

27. The development constitutes inappropriate development and erodes the openness which is harmful to the Green Belt. This is a matter to which substantial weight is given. While I find there is no conflict with the five purposes for designating land inside the Green Belt, I have identified conflict with Policy P17 and the SPD which adds moderate weight. Inappropriate development is by definition harmful and should not be approved except in very special circumstances. These will not exist unless the harm to the Green Belt, by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
28. Since the notice was issued, the current situation on the ground has significantly altered. Land to the rear and either side of the appeal property which was designated in the LP as a housing site to provide approximately 100 new homes, is under construction. Due to the designation the land was released from the Green Belt and included in the settlement as indicated by the inset map. The appeal site, however, remains located outside the settlement as indicated by the inset map, but remains within the Green Belt.
29. The construction of the designated housing site surrounding the property will significantly change the context of its setting and largely negate the purpose of including the appeal site in the Green Belt. When the development is complete, the appeal site will be surrounded by housing and thus physically and functionally incorporated within the built-up area of the settlement. It will no longer be on the outer edge although it will remain in the Green Belt, in contrast to its surroundings.
30. In these unusual circumstances, I consider that there is a substantial reduction in Green Belt harm. While the appeal site remains as an island of Green Belt land, it no longer contributes to its purposes. This substantially reduces the weight attached to the overall harm to the Green Belt.
31. Together with the weight that I have apportioned to the previously approved replacement dwelling and the fallback position, I find that the other considerations clearly outweigh the harm to the Green Belt that I have identified. Looking at the case as a whole, I therefore consider that the very special circumstances exist which justify the development.

Conditions

32. The Council suggested conditions in the light of the appeal being allowed and the appellants agreed to their inclusion. However, those conditions must satisfy the 6 tests.
33. It was agreed at the Hearing that the suggested plan condition was unnecessary as the development was complete. The second condition suggested by the Council is that no windows, dormer windows or other

openings (other than those expressly authorised by this permission) shall be constructed or installed. There are windows in place at both the ground floor and the upper level on every elevation of the building. Dormer extensions also almost fully cover each roof slope. As such I consider that the restrictive condition is not reasonable or necessary to protect the residential amenities of adjacent dwellings as cited by the Council.

34. The Framework indicates that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. In addition, the Planning Practice Guidance advises that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity and there is no reference to the removal of permitted development rights for development within the Green Belt in LP Policy P17.
35. Notwithstanding this, at the Hearing, the appellants accepted the Council's suggested condition to remove permitted development rights included within Schedule 2, Part 1, Classes A-E of the GPDO. This would nullify the certificate of lawfulness gained for the outbuilding which the appellants offered as a 'trade-off' against the appeal development to preserve openness. Having given moderate weight to their fallback position, I consider that removing permitted development rights for curtilage buildings would be reasonable in these circumstances. However, I consider that there is no clear justification for removing permitted development rights for those included within Schedule 2, Part 1, Classes A-D. The reason for the condition is stated as being to protect the visual amenities of the area and the residential amenities of adjacent dwellings. The reason given for it is generic and I can see no site-specific reasons for restricting permitted development rights except for buildings within the curtilage for the reasons given.

Conclusion on Appeal A

36. I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the corrected notice. The enforcement notice as corrected will be quashed. As the appeal has succeeded on ground (a) it follows that the appeals on ground (f) and ground (g) do not fall to be considered.

S A Hanson

INSPECTOR

APPEARANCES:

FOR THE APPELLANTS:

Michael Kalam	Director, Lapworth Architects
Charles Robinson	Consultant Planner, Lapworth Architects
Mrs Sonica Kumar	Appellant
Mr Pawan Kumar	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ciaran Cleeve	Planning Enforcement Officer
Lucy Duffy	Enforcement Team Leader

Documents submitted at the Hearing:

Inset map for Hampton in Arden

Landscape Masterplan (reserved matters application) for the adjacent housing site

PL/2016/01562/PPFL Delegated officer report

Print out of the planning history for 86 Meriden Road

Proposed housing site 24 plan for land off Meriden Road (Local Plan)

Application plans for replacement dwelling ref. 07/2803