



Appeal Decision

Site visit made on 16 April 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2024

Appeal Ref: APP/R3650/D/23/3330028

Tall Trees, Hale House Lane, Churt, Farnham, Surrey GU10 2LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms M Duffell against the decision of Waverley Borough Council.
 - The application Ref is WA/2023/01348.
 - The development proposed is erection of a detached outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted as retrospective development. The Council considered the proposal on this basis, and so shall I.
3. The description of development on the appeal form differs slightly from that on the planning application form. No confirmation has been provided of an agreed change. I have therefore used that as set out on the planning application form.
4. In December 2023, a revised version of the National Planning Policy Framework (the Framework) was published. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. As such neither party is prejudiced by a lack of consultation on the revised Framework.
5. The evidence before me refers to the Surrey Hills Area of Outstanding Natural Beauty (AONB). On 22 November 2023, all designated AONBs in England and Wales were renamed "National Landscapes". I have therefore referred to the Surrey Hills National Landscape in my decision.

Main Issues

6. The main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies, including the effect upon openness; and
 - whether the 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

Inappropriate development and openness

7. The Framework identifies 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. 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; and that the construction of new buildings within the Green Belt is inappropriate development.
8. There are, however, a limited number of exceptions to this, as set out in paragraph 154 of the Framework. Paragraph 154 c) refers to the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building¹.
9. While there is no specific exception for curtilage outbuildings within the Framework, it is established practice to consider such buildings as extensions to a dwelling under paragraph 154 c) where the proposed use is ancillary and the proposed building is in proximity to its host, as is the case in the proposal before me.
10. Taken together, Policy RE2 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites 2018 (LPP1) and Policy DM14 of the Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies 2023 (LPP2) broadly conform to the Framework.
11. The Framework does not define what may constitute a disproportionate addition. However, and amongst other things, Policy DM14 sets out that extensions in the Green Belt should not be disproportionate to the original building (as it existed on 31 December 1968); that extensions which would increase floorspace by 40% or more over that of the original building will normally be considered to be disproportionate; and whether a development is disproportionate will be assessed by changes in scale, mass, height and floorspace. Policy DM14 also sets out factors to be taken into account when assessing openness.
12. The appellant states that the host building has an original floorspace of about 236m², and that the proposed outbuilding would be about 99m², representing an increase of about 40%. However, by my calculation, the increase would be almost 42%, which is above the threshold identified in Policy DM14.
13. The proposal would not create floorspace within the volume of an existing building, such as a loft or cellar conversion; and the appeal site is located outside any defined settlement area. Therefore, it would not meet the circumstances identified in the explanatory notes to Policy DM14, where proposals above the 40% threshold may be considered acceptable.
14. The proposal includes a garage and store to the ground floor, with office space above, together with an external staircase and balcony. While its eaves height would be 3m, its ridge height would be 5.7m, just about 1m lower than its host. In my judgement the proposed outbuilding is of a significant height, width

¹ The Framework defines 'original building' as the building as it existed on 1 July 1948, or if it was constructed after that date, as it was built originally.

- and depth, such that its overall scale and mass is substantial in comparison to its host. Consequently, the proposed outbuilding would form a disproportionate addition not only in floorspace terms, but also by virtue of its scale and mass.
15. Notwithstanding my findings above that the proposal falls to be considered as an extension to a building, I have considered the appellant's further ground of appeal that the proposal should also be considered in regard to the exception under paragraph 154 g) of the Framework. This refers to the limited infilling or the partial or complete redevelopment of previously developed land (PDL) whether redundant, or in continuing use (excluding temporary buildings).
 16. The appellant accepts that limited infilling generally relates to new dwellings. Even if the proposal should be considered as PDL, the definition of PDL in the Framework makes clear that it should not be assumed that the whole of the curtilage should be developed. The relevant test is whether the development would have a greater impact on the openness of the Green Belt.
 17. Although sited at the location of the previous garage, the proposed outbuilding occupies a much larger footprint than it, due to its greater width and depth. The Council calculates this increase to be about 175%, which is not disputed by the appellant. There are no volume calculations before me. Given that the proposed outbuilding is taller, wider and deeper than the previous garage, it is clearly of a much larger scale, volume and mass. Therefore, it has a significantly greater spatial impact on the openness of the Green Belt.
 18. The host property is within a large plot, with vegetation along its front boundary, to include mature trees. Due to its height and width, the proposed outbuilding appears in very limited public views along the street. It is also within view from neighbouring lower lying properties, but at some distance. Consequently, the proposed outbuilding has a greater impact on the visual aspect of openness, but to a limited extent.
 19. For these reasons, the proposed development would fail to preserve the openness of the Green Belt.
 20. I therefore conclude that the proposed development is inappropriate development in the Green Belt, which is by definition harmful, and that it fails to preserve the openness of the Green Belt. It conflicts with LPP1 Policy RE2, LPP2 Policy DM14 and the requirements of the Framework.
 21. In reaching my findings, I have taken account of caselaw² referenced by the appellant, regarding the application of national planning policy with regard to outbuildings and PDL.

Other considerations

22. The appellant claims that a rear extension and other outbuildings could be erected under permitted development rights to deliver a garage, storage building and office space, with a far greater floorspace than that constructed. In this regard, such rights could represent a theoretical fallback position.

² Warwick District Council v Secretary of State for Levelling Up, Housing and Communities [2022] EWHC 2145 (Admin) (12 August 2022); Sevenoaks District Council v Secretary of State for the Environment and Dawe (1997); Dartford Borough v The Secretary of State for Communities and Local Government & Ors [2017] EWCA Civ 141 (14 March 2017); Turner v SSCLG & East Dorset [2016] EWCA Civ 446.

23. However, I have not been provided with clear and compelling evidence that the erection of an extension and other outbuildings would meet the limitations as set out in the GPDO³. In addition, there is no substantive evidence to indicate a significant probability that such a fallback position would be constructed should this appeal be dismissed.
24. On this basis, and in the absence of any prior approval consent or lawful development certificate, I cannot be certain that even if there was a realistic prospect of such a fallback, that it would result in the same or greater harm than I have identified with the scheme before me. Consequently, this matter is of negligible weight.
25. I am advised that the appellant is employed by an American company with working hours behind that of the UK. As a play/musical director, the appellant teaches vocal and acting lessons over 'Zoom' calls. It is further advised that such activities if undertaken during the night in the main dwelling would have a massive impact upon the sleep quality of the other occupants of the host dwelling; and the appellant is also required to be in close enough proximity to be available should her children need her during the night.
26. I am sympathetic to the appellant's personal circumstances. I accept that the best interest of the children would, in principle, be served by the appellant's close proximity to her children in such circumstances, and that family members would benefit from peaceful sleep. However, family and/or employment circumstances can be expected to change over time, whereas the proposed outbuilding would remain on the site and continue to cause harm to the Green Belt in perpetuity. Furthermore, it has not been demonstrated that the proposal is the only way to meet the appellant's objectives.
27. I have had due regard to the Public Sector Equality Duty set out under section 149 of the Equality Act 2010, as the children would share the protected characteristics of age. The proposal would assist in eliminating discrimination against persons with the protected characteristics of age, advancing equality of opportunity for those persons and fostering good relations between them and others. I must also consider the rights of the appellant and her family to peaceful enjoyment of their possessions and to a private and family life and home, under Article 1 of the First Protocol and Article 8 of the Human Rights Act 1998.
28. Having regard to all of the above, these matters would attract limited weight in favour of the proposal. However, if I were to dismiss the appeal, it would be proportionate and necessary to do so in the pursuit of a well-established and legitimate aim: the protection of the Green Belt in the wider public interest. Any interference with qualified rights in this instance would accord with the law. I therefore find that the benefits of the proposal to the appellant, her children and her family would not outweigh the harm to the Green Belt in this case. If I were to dismiss the appeal, it would be proportionate and necessary to do so.
29. The main parties agree that the proposal would be of a satisfactory design and would not result in harm to the Surrey Hills National Landscape or an Area of Great Landscape Value. I find no reason to consider otherwise. Such matters

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

are neutral factors in my assessment, offering no weight either for or against the proposal.

30. The main parties agree that the proposal does not result in any harm to the amenities of neighbouring occupiers, and I find no reason to consider otherwise. However, this is a neutral factor in my assessment, carrying no weight for or against the proposal, as does the fact that the design of the outbuilding is acceptable.

Green Belt Balance

31. I have found that the proposal would be inappropriate development within the Green Belt, which is, by definition, harmful. I have also found that the proposal would fail to preserve the openness of the Green Belt. In accordance with the Framework, I am required to give substantial weight to any harm to the Green Belt. The Framework makes clear that the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, must be clearly outweighed by other considerations for planning permission to be granted.
32. I have found that the benefits of the proposal to the appellant, her family and her children would attract limited weight, and if I were to dismiss the appeal, it would be a proportionate and necessary act in the wider interest of the Green Belt.
33. Although there are benefits that weigh in favour of the scheme, they do not clearly outweigh the substantial harm arising to the Green Belt. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case.

Other Matters

34. The main parties agree that as the proposed development is for a domestic outbuilding, it is not likely to result in a significant increase in the number of people permanently residing on the site and therefore would not have a likely significant effect on the integrity of the Wealden Heaths Special Protection Areas. I find no reason to consider otherwise.

Conclusion

35. For the reasons given above, the appeal should be dismissed.

J Moore

INSPECTOR