



Appeal Decision

Site visit made on 5 June 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2024

Appeal Ref: APP/B1550/W/23/3330695

67 High Road, Hockley, Essex, SS5 4SZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Michael Whyley against Rochford District Council.
 - The application is Ref 23/00135/FUL.
 - The development proposed is replacement conservatory & porch, first floor extension with internal alterations and amendment to existing roofs.
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Decision

1. The appeal is allowed and planning permission is granted for replacement conservatory & porch, first floor extension with internal alterations and amendment to existing roofs, in accordance with the terms of the application Ref 23/00135/FUL, dated 23 February 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 materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 235/P01; 236/P01; 237/P01 and 238/P01.
 - 4) The development hereby permitted shall not be occupied until the first floor bathroom windows on the western elevation of the development have been glazed with obscure glass. The windows shall be openable only above a height of 1.7 metres above the internal floor level of the room which they serve. The windows shall be permanently retained in that condition thereafter.

Preliminary Matter

2. During the appeal, on 19 and 20 December 2023, the Government published its revised National Planning Policy Framework (the Framework). The revisions do not have a material bearing on the matters at dispute between the parties in this case. Consequently, I have not found it necessary, in the interests of natural justice, to seek further written comments, and neither party would be prejudiced by my consideration of the revised advice in my determination of the appeal.

Main Issues

3. Although the appeal is against non-determination, the Council has given the reasons why planning permission would have been refused had the application still been within its remit to determine.
4. Based on the statement submitted by the Council and my observations on site, the main issues are:
 - whether or not the proposal would be inappropriate development within the Green Belt having regard to the National Planning Policy Framework (2023) ("the Framework") and any relevant development plan policies;
 - the effect on the openness of the Green Belt; 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 necessary to justify the proposal.

Reasons

Whether or not inappropriate development in the Green Belt

5. The appeal property is a detached two storey dwelling located within a large plot of land. The site is within the Metropolitan Green Belt. The Government attaches great importance to Green Belts and paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
6. Policy DM17 of the Rochford District Council Development Management Plan (2014) (DMP) allows for the extension of existing dwellings in the Green Belt, within defined limits. These include that the proposal would result in no more than a 25% increase in internal floorspace of the original building, does not involve a material increase in overall height and avoids a negative impact on the character and appearance of the Green Belt through its scale, mass and orientation.
7. Policy DM17 reflects Paragraph 154 of the Framework which states that new development is inappropriate in the Green Belt unless it falls within a list of 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'. Framework Annex 2 defines the 'original' building as being the building as it existed on 1 July 1948.
8. The Council identify that the proposed extensions would have a floor area of 41 square metres. As the appeal property has been previously extended, the Council indicates that the previous and proposed extensions would cumulatively result in an 130% increase to the original internal floorspace. This figure is not disputed by the appellant.
9. The proposal would add additional bulk, particularly to the rear of the building. When considered cumulatively, the existing and proposed extensions represent a considerable increase in floorspace and volume, which would be a disproportionate addition over and above the size of the original building.
10. Accordingly, I conclude that the proposal would be inappropriate development in the Green Belt and would conflict with Policy DM17 of the DMP and

Paragraph 154 of the Framework which collectively seek to resist inappropriate development in the Green Belt.

Openness

11. Paragraph 142 of 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 their permanence.
12. The openness of the Green Belt has a spatial as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
13. The dwelling is fairly well screened by the established trees and hedgerow which run along the site's boundaries. The first floor extensions' location to the rear of the building and within the existing footprint of the building would consolidate the dwelling's built form, and they would not project further to the rear into the Green Belt. The front extension would replace an existing porch. However, it would result in slightly larger built volume and massing at the front of the property.
14. Overall, the proposals have been designed with sensitivity to the host dwelling, and would consolidate built form together within the site. Within the context of the site, I consider the effects on both the spatial and visual openness of the Green Belt would be limited. Whilst limited, it would nevertheless erode the openness of the Green Belt, which, as noted, is one of its essential characteristics.
15. Therefore, I conclude that the proposal would not preserve, and would have a harmful effect on, the openness of the Green Belt. As such, it would conflict with the provisions within the Framework which seek to preserve the openness of the Green Belt.

Other considerations

16. The appellant has drawn my attention to a fallback position, emphasising that separate extensions could be constructed as permitted development under the terms of The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO). Specifically, the appeal property benefits from a Certificate of Lawful Development (CLD) (22/00742/LDC) for the erection of a side extension and porch, and a grant of Prior Approval (22/01163/DPDP1) for the erection of a rear extension.
17. Whilst the fallback extensions have not been constructed, they remain available as a fallback position and are a material consideration in the assessment of the proposal. For significant weight to be afforded to the fallback position, there needs not only to be a reasonable prospect of it being carried out, but it would also need to be more harmful than the scheme for which permission is sought.
18. The Council indicate that the fallback extensions would increase the property's floor area by 53.1 square metres, as opposed to the appeal scheme which would result in an additional 41 square metres. Consequently, the fallback extensions would be 12 square metres larger than the appeal proposal.

19. The fallback extensions would also project further beyond the rear of the appeal property's rear elevation than the appeal scheme, and would result in a greater spread of built form across the site within the Green Belt. I acknowledge that the appeal proposal would have an impact on the spatial and visual aspects of openness of the Green Belt, as stated above. However, as a result of its smaller size and its location largely within the existing footprint of the dwelling, in my view, the appeal proposal would have a reduced spatial and visual impact on Green Belt openness when compared to the fallback scheme. Therefore, the fallback position would be more harmful to the openness of the Green Belt. Since the footprint of the proposed replacement conservatory and the rear extension which is the subject of the CLD would overlap, I am satisfied that the appellant would not be able to construct both the appeal proposal and the CLD rear extension in the future. For these reasons I apportion the fallback position considerable weight.

Other Matters

20. I note the Council's reference to previous appeal decisions related to extensions to dwellings within the Green Belt (Refs: APP/B1550/D/20/3260454 and APP/B1550/D/20/3248884). However, unlike the current appeal proposal, neither of these decisions involved fallback positions which would result in larger increases in floor area than the appeal proposal. As a result, there are clear differences to the proposal before me. In any event, each case must be considered on its own merits.

Conditions

21. I have considered the Council's suggested conditions against the advice on conditions set out in the Framework and the Planning Practice Guidance (PPG). I have imposed the standard conditions relating to the commencement of development and specifying the relevant plans in order to provide certainty.
22. I have also imposed a condition requiring the external surfaces of the development to be constructed in materials to match the existing building in order to protect the character and appearance of the surrounding area.
23. I have included a condition to require obscure glazing within the first floor bathroom window in the proposal's side elevation. This is necessary in order to protect the living conditions of neighbouring occupiers.

Green Belt Balance and Conclusion

24. The proposal would result in inappropriate development in the Green Belt, which is, by definition, harmful to the Green Belt, and should not be approved except in very special circumstances. In addition, openness is an essential characteristic of the Green Belt, so a reduction in openness would also be harmful, even if to a limited extent. I am also required to give substantial weight to any harm to the Green Belt.
25. However, I give considerable weight to the fallback position which may be implemented. This would have a more harmful effect on openness than the appeal scheme. As such, in this case I find that this other consideration is of sufficient weight to clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness and effect on openness. As a result, very special circumstances exist to justify the inappropriate development in the Green Belt.

26. Although there would be conflict with the development plan, the balance of planning considerations in this case leads me to the view that the appeal should succeed. For the reasons above, I conclude that the appeal should be allowed, and planning permission should be granted, subject to the conditions I have set out above.

B Pattison

INSPECTOR