



Appeal Decision

Site visit made on 14 May 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2024

Appeal Ref: APP/J1535/W/23/3328493

Five Acre Lodge, Hoe Lane, Nazeing, Waltham Abbey, Essex EN9 2RW

- 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 Loy Delapenha and Nadia Orgill against the decision of Epping Forest District Council.
 - The application Ref is EPF/0459/23.
 - The application sought planning permission for demolition of conservatory and garage/stable, creation of garden room and extension to form new annexe for ancillary use without complying with condition 2 attached to planning permission Ref EPF/0810/19, dated 22 July 2019.
 - The condition in dispute is No 2 which states that:
The development hereby permitted will be completed strictly in accordance with the approved drawing numbers:
 - a) Drawing no. NWA- 14 -24- 2 (Proposed Ground, First Floor and Elevations.
 - b) Drawing no. TH/A3/2043/TPP – Tree Protection Plan) – 08/07/2019
 - c) Arboricultural Report Date: 8th July 2019
 - d) Drawing no. NWA-14-024-LOC_P, NWA-14-024-LOC_E
 - e) Drawing no. NWA-14-024-SK1/Rev D(Proposed Floor and Elevations Plan)
 - f) Drawing no. NWA-14-024-1 (Survey Plan and Elevations)
 - The reason given for the condition is:
To ensure the proposal is built in accordance with the approved drawings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of conservatory and garage/stable, creation of garden room and extension to form new annexe for ancillary use at Five Acre Lodge, Hoe Lane, Nazeing, Waltham Abbey, Essex EN9 2RW in accordance with the application Ref EPF/0459/23, without compliance with condition number 2 previously imposed on planning permission Ref EPF/0810/19 dated 22 July 2019 and subject to the conditions set out in the attached schedule.

Application for Costs

2. The appellant made an application for an award of costs against the Council. This is subject to a separate decision.

Procedural Matters

3. The appeal seeks to vary condition 2 of planning permission EPF/0810/19, which was granted 22 July 2019. At the date of the application to vary condition 2, this planning permission had expired. That is unless, in accordance with s56(2) of the Town and Country Planning Act 1990 (the Act), a material

operation comprised in the development granted permission was carried out, so that the development was begun in accordance with the terms and conditions of the permission, and within three years of the date of commencement. The application form states that the development commenced on 31 May 2022 and the Council has not disputed this.

4. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially 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 are those that appear in the latest version.

Background and Main Issues

5. The appellant seeks to erect a garden room and extension to form new annexe for ancillary use of a different design to that approved. In particular they wish to alter the width and depth of the two storey annexe and revise the height and of the link element. Therefore, the main issues are:
 - a) whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - b) the effect of the revised design of the proposal on the openness of the Green Belt; and
 - c) 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

Whether inappropriate development

6. The appeal site is set within the Green Belt wherein policy DM4 of the Epping Forest District Local Plan Part One 2023 (EFLP) applies. This policy states that within the Green Belt planning permission will not be granted for inappropriate development, subject to a number of exceptions. These requirements are in accordance with the Framework. One such exception being 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.
7. Neither the EFLP policy DM4 nor the Framework provide a definition of 'disproportionate additions'. Therefore, an assessment of whether a proposal would amount to a disproportionate addition over and above the size of the original building is a matter of planning judgement. Although reference has been made to a previously removed conservatory and a garage, I have not been provided with advice as to whether the existing building is the same as the original building. In the absence of any evidence to the contrary, I have therefore assumed that the existing building, following the removal of the garage and conservatory, is the same as the original.
8. The proposed extension is substantial, it is a two-storey structure which sits separately to the main dwelling and is only associated with it by way of a single storey link extension. It substantially elongates the dwelling and represents a noteworthy increase in both floorspace and volume over the existing building.

The height of the extension would be comparable to that of the existing building. For these reasons I conclude that the proposed extension would represent a disproportionate addition over and above the original dwelling. The development would therefore be inappropriate development in the Green Belt and conflicts with policy DM4 of the EFLP and provisions of the Framework.

Openness

9. Openness can be perceived spatially and visually. While the appeal site is contained in a small enclave that is generally well screened from most surrounding views, the proposal would extend in footprint into space that is currently open. This, together with the increase in height and bulk to accommodate an elongated, part two storey building, would inevitably impact on the spatial and visual dimensions of the site. Therefore, there would be harm to openness.

Other considerations and very special circumstances

10. Paragraph 152 of the Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Under paragraph 153, such very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
11. In this instance, the application is seeking to vary condition 2 of planning permission EPF/0810/19 insofar as there will be an alteration to the approved plans and to the design and appearance of the proposed development. A scheme has commenced which includes the prior demolition of the conservatory and garage and it is therefore reasonable to assume that it will be completed, given the needs of the appellant.
12. By comparison to that previous planning permission, the proposed development is similar. Both schemes are two storey annexes to be attached to the parent dwelling by way of a single storey link. They remain of a broadly similar size, scale and appearance and the differences between the two are likely to be relatively immaterial from outside the application site and therefore their effect of openness would be comparable. The change in dimensions to the extension is not well defined in the evidence provided, including by reference to the original building. There may, therefore, be harm to openness from a spatial dimension. However, on balance, the increase in dimensions to the two storey element are likely offset by the reduction in height of the roof to the single storey part.
13. Given that footings, in some manner, have been laid; there is a greater than theoretical possibility that the development might take place. Moreover, there is no possibility that granting permission for this revised scheme would risk both schemes being implemented to the detriment of the Green Belt as the two are mutually exclusive.
14. It is not my role to consider the lawfulness of those operations already undertaken as this may only be established through the grant of a lawful development certificate. However, it is sufficient for me to conclude that the fallback position would, if lawfully implemented, amount to a very special circumstance that clearly outweighs the harm to the Green Belt.

Conditions

15. Condition 1 of EPF/0810/19 is deleted to reflect that this permission is time expired. However, as the application form states that the development commenced within the three year period when it was extant, a time limit condition is no longer necessary.
16. Condition 2 of the original permission is amended so as to reflect the revised plans in the interests of certainty.
17. I have reimposed all remaining conditions of planning permission EPF/0810/19, including renumbering, with one typographical correction to the original condition 5 through the insertion of the word 'be' to the first line of that condition.
18. The additional conditions suggested by the Council are not imposed here as these relate to activities during the construction of the development. Such activities are better controlled under other legislation and therefore fail the tests of the Planning Practice Guidance as they are neither necessary, enforceable nor relevant to planning.

Green Belt Balance and Conclusion

19. The development is inappropriate development in the Green Belt which, by virtue of paragraph 153 of the Framework, attracts substantial weight. The Framework makes it clear that the potential 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. In this case, I find that the fallback provided by the approved scheme attracts significant weight in favour of the appeal scheme and in this case clearly outweighs the substantial harm arising to the Green Belt.
20. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt exist in this case. Accordingly, the development complies with policy DM4 of the EFLP and provisions of the Framework.
21. Therefore, for the reasons given above I conclude that the appeal should be allowed. I will grant a new planning permission with deletions and alterations to conditions whilst restating those undisputed conditions that are still subsisting and capable of taking effect.

Nick Bowden

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the approved plans: EX01A, X01 Rev G, 01A Rev B, 05 Rev F.
2. Materials to be used for the external finishes of the proposed development shall match those of the existing building, unless otherwise agreed in writing by the Local Planning Authority.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (or any other order revoking, further amending or re-enacting that Order) no development generally permitted by virtue of Class A, B, and E of Part 1 of Schedule 2 to the Order, shall be undertaken without the prior written permission of the Local Planning Authority.
4. Replacement trees - Replacement tree planting shall be undertaken in accordance with Trevor Heaps Arboricultural Consultancy Ltd 'Tree protection plan — drawing number TH/A3/2043/TPP - dated 8th July 2019' and shall consist of English oak and silver birch (all of 10cm — 12cm girth at the time of planting) unless agreed otherwise in writing by the Local Planning Authority. They shall be planted within one month of the implementation of the felling of the trees shown to be removed on the above mentioned plan. If within a period of five years from the date of planting any replacement tree is removed, uprooted or destroyed, dies or becomes seriously damaged or defective another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.
5. Tree protection - Tree protection shall be implemented prior to the commencement of development activities (including demolition), and the methodology for development shall be undertaken in accordance with the submitted Tree Survey/ Arboricultural Method Statement reports unless the Local Planning Authority gives its prior written approval to any alterations. Tree protection shall be installed as shown on Trevor Heaps Arboricultural Consultancy Ltd, Tree protection plan—drawing number TH/A3/2043/TPW - dated 8th July 2019'.
6. The proposed development shall only be used as an Annexe and occupied by the applicant's daughter as ancillary accommodation for the existing dwellinghouse and shall not be occupied as a unit separately from the dwelling known as Five Acre Lodge, Hoe Lane, Nazeing.

End of Schedule