

Appeal Decision

Site visit made on 31 July 2024

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2024

Appeal Ref: APP/N1025/W/24/3338756

Rostrevor, Station Road, Stanley, Derbyshire DE7 6HB

- 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 Mr Richard Norman against the decision of Erewash Borough Council.
 - The application Ref is ERE/0323/0043.
 - The development proposed is for the change of use and alteration/extension of the building to a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The original description of development on the application form was for demolition of existing double garage and flat and erection of new house. However, during the course of the consideration of the planning application the appellant sought changes to the proposal, which amended the nature of the proposal and the description of development to that set out in the banner above. The amended plans and details submitted were accepted and the planning application was determined by the Council on the basis of the amended scheme. Therefore, I have considered the appeal on the basis of the amended description, plans and details submitted by the appellant.
3. The Erewash Core Strategy was adopted in March 2014 (ECS). The Erewash Local Plan Saved Policies document (ELPSP), was adopted July 2008. The relevant development plan policies are thereby some 10 years plus, and also since such time national planning policy contained within the National Planning Policy Framework (the Framework) has been updated several times, including most recently in December 2023. This recent and most up to date Framework is therefore a material consideration, which I have had regard to in reaching my decision.

Main Issues

4. The main issues in this appeal are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies;

- the effect of the proposed development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the host property and surrounding area; 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

Whether inappropriate development

5. The Framework explains that inappropriate development is, by definition, harmful to the Green Belt and should not be agreed except in very special circumstances. Paragraph 154 of the Framework sets out that the construction of new buildings is inappropriate in the Green Belt, subject to certain exceptions. Paragraph 155 explains that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness.
6. Having regard to the development proposed, one of the exceptions under criterion c) of paragraph 154 of the Framework 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. Also, as set out in paragraph 155 part d) of the Framework, one of the forms of development that are not inappropriate includes the re-use of buildings, provided that the buildings are of permanent and substantial construction, and provided they would preserve its openness and would not conflict with the purposes of including land within the Green Belt.
7. As highlighted in another recent appeal decision within the Borough referred to by the appellant¹, saved Policy GB5 of the ELPSP is not wholly consistent with Green Belt Policy contained within the Framework. It includes additional criteria that needs to be satisfied for exceptions which are not required by the Framework criteria. Thereby, I have afforded limited weight to Policy GB5 in reaching my decision and have assessed the proposal primarily against the Framework.
8. While the appellant has referred to the proposal being for the re-use of the existing building, from the evidence provided and my observations, the resultant proposed dwelling would be of a totally different appearance to that of the existing building. The proposed development includes a number of alterations and extensions, which would result in a building that would have a different shape and volume compared to that of the existing building. Thereby, I do not regard the proposal as the re-use of a building and so, criteria d) of paragraph 155 of the Framework does not apply to the proposal.
9. Notwithstanding such, I appreciate that there is no dispute between the parties that the existing building is of permanent and substantial construction. Also, having regard to the Framework, as opposed to Policy GB5 of the ELPSP,

¹ Appeal ref APP/N1025/W/23/3321245 at Units North of JTD Autos, Sandiacre, dated 22 November 2023.

notwithstanding the findings of AJS Structural Design Ltd², it is not necessary to demonstrate that a building is structurally sound under the Framework criterion. Furthermore, I appreciate that the appellant asserts that the proposal is not for the replacement of the existing building, rather that it is for the extension and alteration of the existing building which is currently used incidental to the enjoyment of the main dwelling, Rostrevor (the host dwelling), to change its use to a separate dwellinghouse.

10. In view of the above, I have principally assessed the proposal on the basis of criterion c) of paragraph 154 of the Framework. As the Framework does not define what is disproportionate additions, the assessment of whether a proposal would amount to such over and above the size of the original building is a matter of planning judgement.
11. From the evidence before me, I appreciate that the proposal would not extend development form, nor would the new residential garden of the proposed dwelling extend beyond the boundaries of the existing host dwelling.
12. The appellant asserts that the proposed extensions and alterations to the existing building would result in a total volume of 369.1 cubic metres. Compared to the existing volume of the appeal building of 276.70 cubic metres, the proposal would represent a proposed volume increase of approximately 33% (92.4 cubic metres).
13. Substantive details have not been provided in respect of the size of the existing floor area of the appeal building to enable comparison of such to that proposed. However, from my observations, the existing building is part single storey and part two-storey, with much of the building being single storey, with no upper floorspace. The proposed plans indicate that the overall ground footprint of the building would be squared off, thereby slightly increasing such. Also, the proposed plans show that the new dwelling would have ground and first floor living accommodation extending across the whole width and depth of the resultant building.
14. Thereby, without any evidence to the contrary, based upon my observations, I consider the floor area of the existing building would discernibly increase and that, there would also be an appreciable increase in the volume of the appeal building.
15. The appellant has provided details of an example whereby the Council considered an approximate volume increase of 47% was an acceptable addition to the property in respect of a development at Sunnyside, Stanley Common³, which included a proposal for extensions and alterations to an outbuilding to form additional living accommodation for a dependant relative. There may be some comparable elements between that scheme and the proposal, in that it is for dependant accommodation for a relative and comprises extensions and alterations to an existing outbuilding. However, I have not been provided with full details of this example to allow full comparison with the appeal proposal, in terms of its site context and existing

² AJS Structural Design Limited letter dated 14 February 2023 sets out that, notwithstanding the need for some localised underpinning, the property is largely structurally sound and is eminently suitable for conversion to domestic use (the process of which would further strengthen the structure).

³ Application ref. ERE/0718/0003 at Sunnyside, Common Lane, Stanley Common

and proposed plans. I also note that in that example, it was found that there were very special circumstances which outweighed the limited harm identified.

16. Another example provided in respect of alterations and extensions to a garage to form a new dwelling in the garden of a dwelling in Linby⁴, Nottingham. However, this case example is not within the same district as the appeal proposal and thereby does not share the same merits as the appeal proposal. Thereby, I have considered the appeal proposal having regard to its individual merits.
17. In view of the proposed volume increase, together with the proposed increase in floor area and the fact that the appearance of the appeal building would be considerably different to that of the existing building, I consider the appeal proposal would result in a disproportionate addition over and above the size of the original building.
18. Accordingly, the proposal would be inappropriate development in the Green Belt, contrary to the Framework.

Openness of the Green Belt

19. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects. The appeal building is located at the edge of the garden boundary of Rostrevor, within a courtyard arrangement with former agricultural brick buildings opposite to it and a large arched roof storage building located immediately adjacent to it on one side. The appeal building is set back considerably from Station Road, accessed via an existing long driveway which curves on an angle away from the road.
20. The additional bulk and massing of the proposed resultant building, once extended and altered would spatially affect openness. Despite that there are some trees and other vegetation surrounding Rostrevor and along Station Road, and having regard to the setback from the road, the existing two-storey element of the building is glimpsed from Station Road at the access driveway point. Thereby, the proposed increase in the volume and introduction of a second floor with pitched roof across the whole width of the host building, would increase the overall visibility of the appeal building from public vantage points.
21. Rostrevor, as an existing residential property could benefit from certain permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. However, while I appreciate the appellant drawing my attention to various court judgements⁵, I do not consider that such residential permitted development rights provide a realistic or meaningful fallback position in regard to the proposed development in this instance.
22. The proposed development requires planning permission and so, does not constitute 'permitted development' and the building is an existing outbuilding

⁴ Appeal Ref: APP/N3020/W/21/3268087 Land to the Rear of 14 Main Street, Linby, Nottingham NG15 8AE

⁵ Including, Sullivan L.J. in Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government [2009]; Hickinbottom J. in R (Zurich) v Lincolnshire Council [2012]; and Hersch Schneck v Secretary Of State For Levelling Up, Housing & Communities and West Berkshire District Council [2022].

associated with Rostrevor, rather than comprising an extension to the host property or a new freestanding structure to be constructed within its grounds. Furthermore, the proposal would sub-divide the domestic garden area and create a new separate dwellinghouse and so other 'permitted development' works do not represent a meaningful fallback position in this regard.

23. In view of the above, I consider the proposed development would harm the openness of the Green Belt, in conflict with the Framework and Policy GB5 of the ELPSP, which requires a proposal to not have a materially greater impact on the openness or character of the Green Belt than the existing use.

Character and Appearance

24. The proposed extensions and alterations would considerably alter the external appearance and character of the host building, from the appearance of a collection of smaller conjoined domestic outbuildings of different scale and character. This includes changing the roof design and external materials on different parts of the building. Even though part of the appeal building was previously used as a 1 bedroom flat above a garage, from my observations, it does not appear to be currently in use as a dwelling unit or as living accommodation.
25. The existing appeal building does not have an attractive appearance. Part of the building is two-storey with a flat roof, built of breezeblock with timber boarding, and other add-on elements to this are of varying single storey scale and design. Therefore, the appeal building appears at odds to that of other surrounding buildings, including the host dwelling, which is a typical traditional red brick farmhouse, with brick chimneys, bay windows and projecting open pitched roof porch to the front elevation.
26. The proposed extensions and alterations would result in a more attractive building overall compared to the existing, although none of the original character or features of the appeal building would be retained. The position and number of openings in the host building would completely change, the proposed pitched tiled roof would span the whole of the building, and the external walls of the appeal building would be principally rendered with a small area of Cedar boarding used as an accent to the front elevation. As a result, once altered and extended, the external character and appearance of the host building would be unrecognisable compared to the existing building.
27. Furthermore, the design and external appearance of the altered and extended appeal building would not reflect the design of the traditional, red brick host dwelling house, nor that of other buildings within the yard area surrounding it. The surrounding buildings include an arch corrugated barn and traditional red brick and pitched roof barns. Thereby, the proposed design of the appeal building would not be in keeping with that of the host property, nor that of the immediately surrounding buildings.
28. While there are rendered dwelling houses on the edge of the nearby village, and some examples of the use of timber boarding on buildings, this is not the discernible character of buildings within the immediate area surrounding the appeal site. The design of the proposed development would not, due to the size and shape of proposed openings and use of render, be comparable

to that of many modern agricultural conversion schemes. Notwithstanding that I do not have any substantive evidence of comparative examples of other similar conversion schemes, there is no apparent commonality between the proposed design of the appeal building and that of other surrounding buildings, nor generally with that of former railway and colliery buildings. Also, for the same reasons, the design of the proposal would not, be of a simple functional utilitarian building.

29. That the appeal building may be hidden from view by existing vegetation and contained within a yard area, does not justify a design and appearance that would not be in keeping within its immediate setting and the surrounding character of other buildings. Although, as the proposed development would essentially be contained within the confines of the existing development footprint and there are trees and other vegetation to the northern boundary, the proposal would not harm the wider landscape character.
30. In view of the above, I find the proposal would be harmful to the character and appearance of the host property and surrounding area in conflict with Policy 10 of the ECS, which, amongst other matters requires all new development to have regard to the local context and reinforce valued local characteristics.

Other Considerations

31. The appeal building is an outbuilding within the grounds of an existing residential property and is used in association with the host property. The appeal proposal is for the change of use of the appeal building from an incidental and/or ancillary⁶ outbuilding to a separate independent dwelling house. Thereby, the proposal would create a new residential property within its own planning unit, notwithstanding that the proposed garden and parking and access areas surrounding the new dwelling would remain within a C3/residential use for the purposes of the Town and Country Planning Act 1990, as amended. However, having regard to the main issues in this appeal, I give this consideration limited weight, particularly as it would not be unusual per se, for outbuildings to be converted to an alternative use.
32. The proposed dwelling would allow an onsite presence for the appellant and their family to live close to and provide care support and companionship for an elderly relative, who lives in the host dwelling. While I appreciate the potential benefits and desire for such, including that it would allow the elderly relative to retain their independence, no substantive evidence in respect of the elderly relatives' care needs have been provided, nor, why such needs could only be provided for by the proposed new dwelling. Thereby, I give limited weight to this consideration.
33. It is asserted by the appellant that the proposal would provide additional security benefits to the business and that it would reduce commuting for the appellant. Although, no substantive details have been provided in respect of any existing particular security concerns at the premises, nor whether other options for enhanced security, such as CCTV and alarms have been explored to meet such concerns. Furthermore, no substantive details have been

⁶ It is not a matter for this appeal to consider whether or not the appeal building is incidental and/or ancillary to the main host property and furthermore this is not material to my findings on the appeal.

provided about existing commuting distances involved. In creating an additional dwelling this would support local services and facilities and, would be in line with national planning policy to seek to boost housing numbers, although, one additional dwelling would not provide substantial additional benefit overall. Thereby, I give only moderate weight to these considerations.

34. I note the appellant's point that as there would be no increase in the existing built form, the proposal would not be contrary to the purposes of the Green Belt, as set out in the Framework. However, I have set out clearly in my conclusions that the proposal would constitute inappropriate development and would harm the openness of the Green Belt, by reason of its spatial and visual aspects.
35. The appellant has referred to relevant court judgments, including *Wychavon v SSCLG & Butler* [2008] and *Basildon v FSS & Temple* [2004] and in *Basildon v SSETR & Ors* [2000]. Whereby, in the *Wychavon* case, the judge found that whilst rarity may contribute to the "special" quality of a particular factor, it is not essential, as a matter of ordinary language or policy. The word "special" in the guidance connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. Thus, for example, respect for the home is in one sense a "commonplace", in that it reflects an aspiration shared by most of humanity. But that it is at the same time sufficiently "special" for it to be given protection as a fundamental right under the European Convention." (paragraph 21).
36. The above view is consistent with the comments made in the *Basildon v FSS & Temple* [2004] and in *Basildon v SSETR & Ors* [2000] case judgments, whereby it was set out that the circumstances do not have to be unique, and the possibility that similar circumstances might arise elsewhere does not prevent a finding of very special circumstances in any particular case. Therefore, I have had regard to such in reaching my decision.
37. I acknowledge the Council's pre-application advice⁷ in January 2023, set out that the principle of converting the building would be acceptable, provided that the building is of a permanent and substantial construction. However, the pre-application advice was given before the proposal was to significantly extend and alter the building, which goes well beyond the simple conversion and re-use of a building. Thereby, I give limited weight to this consideration.

Other Matters

38. As asserted by the appellant there is no conflict with Policy GB6 of the ELPSP. However, this policy relates to extensions to domestic curtilages and such is not proposed as part of the development scheme, rather the proposal is for the subdivision of the existing domestic curtilage of Rostrevor. Thereby, Policy GB6 is not directly relevant to the consideration of this appeal.

⁷ Application Ref KHA/ENQ117377 for the change of use of a two-storey garage to a liveable space, dated 5 January 2023.

Green Belt & Planning Balance and Conclusion

39. I have found that the proposal is inappropriate development in the Green Belt. The development would also reduce the openness of the Green Belt. The harm caused to the Green Belt, by reason of inappropriateness and the loss of openness, attracts substantial weight. The development, by reason of its design and appearance, would also have an adverse impact on the character and appearance of the area, which subsequently adds to the harm I have identified.
40. While I have given careful consideration to the arguments put forward, the benefits of the appeal proposal do not clearly outweigh the totality of the harm arising from inappropriateness and other harms caused in this instance. Thereby, the very special circumstances required to justify the development have not been demonstrated, and so, the proposal does not accord with national policy set out in the Framework and the development plan that protect the Green Belt.
41. The Councils' relevant development plan policies in respect of Green Belt are not up to date nor fully compatible with the Framework. The 'tilted balance' at paragraph 11d) of the Framework means where there are not relevant development plan policies...granting permission unless (11d)i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 includes policies relating to land designated as Green Belt, and designated heritage assets. Consequently, my findings in respect of Green Belt harm provide a clear reason for refusing the development for the purposes of paragraph 11d) of the Framework.
42. Accordingly, I conclude the appeal should be dismissed.

C Billings

INSPECTOR