



Appeal Decisions

Site visit made on 12 September 2024

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

Appeal A Ref: APP/M0655/D/24/3344207

Cuerdon Cottage, Cuerdon Drive, Grappenhall and Thelwall, Warrington WA4 3JU

- 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 S Latif against the decision of Warrington Borough Council.
 - The application Ref is 2024/00248/FULH.
 - The development proposed is retention of detached pergola covering outdoor cooking and seating area.
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Appeal B Ref: APP/M0655/W/24/3350477

Cuerdon Cottage, Cuerdon Drive, Grappenhall and Thelwall, Warrington WA4 3JU

- 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 Mr S Latif against the decision of Warrington Borough Council.
- The application Ref is 2024/00614/VAR.
- The application sought planning permission for new residential property comprising of existing outbuilding and including the retention of existing extension to this (following the demolition of the conservatory) and removal of its curtilage building link-extension without complying with a condition attached to planning permission Ref 2021/40621, dated 10 May 2022.
- The condition in dispute is No 3 which states that:
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):
 - (i) *no external alterations shall be carried out to the dwelling*
 - (ii) *no extensions shall be carried out to the dwelling*
 - (iii) *no garages or outbuildings shall be erected within the curtilage of the dwelling*
 - (iv) *no vehicle standing space or hardstanding shall be provided within the curtilage of the dwelling*

- (v) *no gates, walls, fences or other structures shall be erected along any boundary to the curtilage of the dwelling*
 - (vi) *no means of vehicular access shall be constructed to the curtilage of the dwelling*
 - (vii) *no windows or dormer windows shall be added to the dwelling other than those expressly authorised by this permission, unless planning for such development has been granted by the Local Planning Authority.*
 - The reason given for the condition is:
In the interests of preserving the openness of the Green Belt and to comply with Policy CS5 of the Warrington Core Strategy and the NPPF.
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Decision

1. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for new residential property comprising of existing outbuilding and including the retention of existing extension to this (following the demolition of the conservatory) and removal of its curtilage building link-extension at Cuerdon Cottage, Cuerdon Drive, Thelwall, Warrington WA4 3JU in accordance with the application Ref 2024/00614/VAR, without compliance with condition numbers 1, 3 and 4 previously imposed on planning permission Ref 2021/40621, dated 10 May 2022 and subject to the conditions on the attached schedule.

Background and Preliminary Matters

3. Planning permission was granted for the subdivision and separate residential use of the appeal property, known as Cuerdon Cottage, in 2022 (application ref 2021/40621, referred to below as the 'original permission').
4. Permission was later granted for the retention of a bedroom extension at the site (application ref 2023/00919). As part of that 2023 permission, a condition was imposed which required the demolition of the existing pergola. That condition has not been complied with within the specified timescales. Appeal A seeks permission to retain the pergola.
5. The original permission included condition 3, which removed various permitted development rights at Cuerdon Cottage. The appellant has indicated that they accept the removal of permitted development rights for extensions and alterations to the dwelling, but object to their removal for garages, outbuildings, gates, fences, vehicular access and areas of hardstanding. Appeal B seeks to vary condition 3 accordingly.
6. The two appeals at the site raise different issues but are related. To avoid repetition, I have dealt with them both in the same decision letter.

Appeal A

Main Issues

7. The main issues are:
 - whether the pergola is inappropriate development in the Green Belt, including the effect on openness.

- if it is inappropriate, whether very special circumstances exist that clearly outweigh the harm to the Green Belt.

Reasons

Whether inappropriate development

8. The site is on the edge of a small area of housing to the south of Weaste Lane, within the Green Belt.
9. To prevent urban sprawl and keep land permanently open, paragraph 154 of the National Planning Policy Framework (the Framework) says that the construction of new buildings is inappropriate in the Green Belt, unless it meets one of the exceptions listed. These include 154c), which allows for 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.
10. No further guidance as to what constitutes a 'disproportionate addition' is provided in the Framework. Policy GB1 of the Warrington Local Plan 2023, which requires that proposals for development in the Green Belt accord with national policy, is also silent on the matter. However, local interpretation is provided in the House Extensions Supplementary Planning Document 2021 (SPD).
11. The SPD advises that any extensions and additions that result in an increase in size of over 33% of the original building will be considered to be disproportionate, and therefore unacceptable. The SPD clarifies that in making such an assessment, measurements will be based predominately on volume and floorspace. It also notes that structures such as pergolas can be considered as part of the assessment of floorspace when considering whether an addition is disproportionate.
12. The pergola at Cuerdon Cottage is a substantial, open sided timber structure which provides a large area for cooking and dining. Whilst not attached to the main house, the pergola is very close to it, with a gap of only around one metre. Its large area of solid, partially tiled roof, appears to be connected to the house, even when viewed from close by.
13. The pergola houses a permanent outdoor kitchen area, with a cooker set within a low brick wall, and a counter/bar area. Surrounding brick walls and fences provide a significant degree of enclosure. This sheltered area, with internal lighting, has the potential to be used for much of the year, providing additional living space for the occupiers.
14. The Inspector dealing with two previous appeals at the property¹ found the pergola structure to be an addition to the building that required consideration under Framework paragraph 149c) (now 154c). Since then, the pergola has been physically detached from the house, but only by a small amount.
15. That minor change is not sufficient to warrant a different approach. Taking account of its form, function and siting in relation to the main house, I agree with the previous Inspector's findings on this matter. In coming to this view,

¹ Appeal refs APP/M0655/W/22/3310817 and APP/M0655/W/22/3310825

I am mindful of caselaw that has established that, for the purposes of Framework paragraph 154c), an extension can include structures which are physically detached from the building².

16. The pergola provides an addition to a dwelling which has already been extended, so consideration needs to be given as to whether the cumulative additions would be 'disproportionate' in terms of Framework paragraph 154c).
17. According to the Council, previous extensions have resulted in an increase in floorspace of around 35% over and above the original building. With the pergola included, the proportional increase would be some 43%. In the absence of any alternative figures provided by the appellant, I have used the Council's analysis, which formed the basis of the 2023 permission.
18. When taking account of the previous extensions, retention of the pergola would exceed the SPD guidance by a significant amount. In terms of the SPD and Framework paragraph 154c), retention of the pergola would result in a disproportionate addition over and above the size of the original building. The pergola therefore constitutes inappropriate development in the Green Belt, and its proposed retention conflicts with Local Plan Policy GB1.
19. The appellant has suggested that Framework paragraph 154g) is also relevant. However, even if the site were to fall within the Framework definition of previously developed land, erection of the pergola does not constitute limited infilling, nor does it constitute redevelopment of the site. Paragraph 154g) does not, therefore, apply here.

Openness

20. From the immediately surrounding area, the pergola is viewed within the context of existing buildings in and around the site. Nonetheless, this substantial structure, with its large area of tiled roof, adds to the overall impression of built form on the site, eroding the visual openness of the Green Belt in this location. By adding further built form to the site, the pergola also detracts from spatial openness, albeit only by a small amount.

Other considerations

21. The appellant contends that the only reason that planning permission is required for the pergola is that permitted development rights have been removed from the property, without the clear justification required by Framework paragraph 54.
22. This matter is the subject of Appeal B below, in which I have found that the removal of permitted development rights for outbuildings and garages is reasonable and necessary in this case to protect the Green Belt. Given my findings in relation to Appeal B, no permitted development fallback position exists in this case which would justify allowing Appeal A.

Green Belt balance and conclusion

23. I have found that the pergola constitutes a disproportionate addition over and above the existing building in terms of the SPD, Local Plan Policy GB1

² Warwick DC v SSLUHC, Mr J Storer & Mrs A Lowe [2022] EWHC 2145 (Admin).

and Framework paragraph 154c). Retention of the structure is therefore inappropriate development, which according to Framework paragraph 152 is harmful to the Green Belt by definition.

24. The very special circumstances needed to outweigh the harm to the Green Belt have not been demonstrated. Appeal A is therefore dismissed.

Appeal B

Main Issue

25. The main issue is whether condition 3 of the original permission is reasonable and necessary to protect the Green Belt and preserve its openness.

Reasons

26. The appellant objects to the removal of the following permitted development rights listed under condition 3:
- iii) – garages and outbuildings,
 - iv) – vehicle standing space or hardstanding,
 - v) – gates, walls, fences or other structures, and
 - vi) – vehicular access.
27. Condition 3 does not specifically refer to the relevant provisions of Schedule 2 of the General Permitted Development Order (GPDO), but it is evident that the parts of the condition listed above correspond with Part 1 Class E (garages and outbuildings); Part 1 Class F (hardstanding), Part 2 Class A (gates, walls and fences) and Part 2 Class B (vehicular access).
28. In considering this appeal, I have taken account of Framework paragraph 54, which states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Also of relevance is advice in the Planning Practice Guidance, which says that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity³.
29. There is no dispute that, in setting out domestic permitted development rights, the GPDO does not distinguish between areas within the Green Belt and those outside. On its own, the location of the site within the Green Belt does not provide a reason to remove permitted development rights. However, the Council has commented that the assessment of the original application (2021/40621) was finely balanced, and that the removal of permitted development rights was felt to be necessary to make the development acceptable in Green Belt terms.
30. In assessing whether removal of rights is justified in this particular case, I have taken account of the history of the site, and the potential effect on the Green Belt of future development which could take place under permitted development rights.

Part 1 Class E – garages and outbuildings

³ Paragraph: 017 Reference ID: 21a-017-20190723

31. The site previously formed part of what was once a much larger garden, associated with the adjacent property. The Council has provided evidence that the buildings on the site had already been extended quite significantly prior to the original permission for the domestic use at Cuerdon Cottage being granted. Additional buildings have also been erected in the curtilage, both within the area which now forms the appeal site, and the wider site within the appellant's ownership, including two small garage/sheds and a larger domestic gym/office building.
32. Some of the buildings were provided under permitted development rights, which were intact prior to the site being subdivided. Even so, photographs provided by the Council show that, over time, there has been a marked increase in built development at the site.
33. The appeal site extends into the Green Belt beyond the line of built form associated with dwellings along Cuerdon Drive and Stoneleigh Gardens. Buildings at the appeal site, whilst low in height, are visible from the immediately surrounding area. Development at the site has resulted in a loss of Green Belt openness, in spatial and visual terms.
34. The subdivision of the site to form the appeal property has not resulted in any additional encroachment into the Green Belt, but it has meant that the site is more intensively used. Permitted development rights for curtilage buildings were previously in place for the wider site, but the presence of an additional dwelling on the site has the potential to increase the demand for ancillary buildings.
35. The property has a reasonably sized garden, so if permitted development rights under Class E were fully utilised, there could be a significant increase in built form on the site. Additional buildings constructed in the curtilage are likely to be visible from outside the site, and would further erode Green Belt openness. This is particularly the case for any new curtilage buildings on the eastern part of the site, which forms the garden area for the appeal site, where the land rises slightly.
36. In justifying its approach to removing Class E rights for outbuildings and garages, the Council has referred to its SPD, which suggests that any curtilage building could count towards floorspace for the purposes of assessing proposals under Framework paragraph 154c). Whilst this approach may be justified buildings which were physically very close to the main house (as I have found for the pergola in Appeal A), I am not persuaded that it could reasonably be applied to a shed at the end of the garden.
37. The SPD does not provide a clear reason for removing Class E permitted development rights. However, given the extent of development that has already taken place at the appeal site, and the potential for further harm to the openness of the Green Belt, I am satisfied that a clear justification for the removal of permitted development rights under Class E does exist in this case.

Part 1 Class F – parking space and hardstanding

38. Ample parking space has already been provided at the appeal site to accommodate several vehicles, and I agree that further hardstanding could

detract from the green character of the site. However, hardstanding is flat and the provision of further areas of hardstanding would not detract from the openness of the Green Belt. The need to protect the Green Belt does not provide a clear justification to remove permitted development rights under Class F. Part iv) of condition 3 is not necessary or reasonable, and should be deleted.

Part 2 Class A - gates, walls and fences

39. The subdivision of the wider site to create a separate property at Cuerdon Cottage has not resulted in any new external boundaries around the site, so there is no additional incursion into the wider Green Belt for which boundary treatments might be sought. Any additional impact on Green Belt openness which might derive from fences, gates and walls is therefore restricted to the new internal boundaries which have been created.
40. Fences have been erected around the edge of the new curtilage, including a fence has along the internal access road, but the topography of the site, and the surrounding buildings and vegetation, mean that the effect on Green Belt openness of these boundary treatments is very small. Given the circumstances of the site, there is no clear justification to restrict permitted development rights for boundary treatments, under Class A of Part 2.

Part 2 Class B – vehicular access

41. There is a single access to the property, formed from the existing shared access which links to Cuerdon Drive and, by a narrow track, to Weaste Lane. Given the backland character of the site, with no other highway nearby, it is difficult to see how any other vehicular access could be provided from the site. Part vi) of condition 3 is therefore unnecessary, and is not required to protect the openness of the Green Belt.

Part 1 Class A – extensions and alterations

42. Given the previous extensions at the property, the appellant does not object to parts i), ii) or vii) of condition 3, relating to extensions, alterations and windows. Even so, if these elements of condition 3 are to be retained, it is necessary to consider whether they would meet the six tests set out in Framework paragraph 56.
43. It has previously been established in decisions made by the Council and at appeal that the property has now been extended as far as is acceptable under the terms of the Council's SPD and Framework paragraph 154c). It follows that further additions above and beyond those already consented (including the pergola, as discussed above) would be considered to be disproportionate, and therefore inappropriate development in the Green Belt.
44. Further extensions and alterations, which could be added under permitted development rights, would increase the footprint of the building, and the amount of built form on the site, and would further reduce openness. Given the extent of development that has already taken place at the site, and taking into account the great weight afforded to the protection of Green Belts in the Framework, I am satisfied that in this case, a clear justification does exist to restrict permitted development rights for extensions and alterations under Class A.

45. Both parties have identified previous appeals⁴ relating to sites in the Green Belt, in which the removal of permitted development rights have been considered. Different conclusions have been reached depending on the circumstances of each cases, but all differ from the appeal before me, which concerns the subdivision of a site leading to a more intensive residential use, which has already been the subject of considerable development. I have assessed this appeal based on the particular circumstances of the site and its history, and none of the appeals which have been referred to provide a reason to come to a different view.
46. In relation to Appeal B, I conclude that clear justification exists to remove permitted development rights under Part 1 Classes A and E. Parts i), ii), iii) and vii) of condition 3 are reasonable and necessary to protect the Green Belt and preserve openness, and ensure that the development complies with Local Plan Policy GB1 and paragraph 154 of the Framework.
47. However, for the reasons set out, the removal of permitted development rights is not reasonable or necessary in relation to Part 1 Class F and Part 2 Classes A and B (parts iv), v) and vi) of condition 3). The condition should be varied accordingly.

Conditions

48. In light of the above considerations, I have removed condition 3 and replaced it with another condition (renumbered 2) which removes permitted development rights under Part 1 Classes A and E, but leaves other domestic permitted development rights remain intact.
49. The appeal proposal effectively results in the issue of a new grant of planning permission that sits alongside permission ref 2021/40621. It is therefore necessary to consider whether the other conditions attached to that permission are still necessary. If so, they should be reimposed.
50. As the permission has been implemented and the use in place, condition 1 is not needed. Condition 2, which specifies plans, is still required in the interests of certainty, and I have reimposed it (renumbered condition 1).
51. Condition 4, which required the structure shown in green to be removed within 3 calendar months, is no longer needed, following the grant of planning permission ref 2023/00919.
52. Condition 5 requires the provision and retention of electric vehicle charging points, so remains relevant. The requirement in condition 6 to adhere to the mitigation measures in the Flood Risk Assessment also still apply. Conditions 5 and 6 are still needed, so I have re-imposed them.

Conclusion

53. For the reasons set out, a clear justification exists to remove permitted development rights for Classes A and E of Part 1 Schedule 2 of the GDPO, to protect the Green Belt and preserve openness. Removal of other rights under condition 3 is not reasonable or necessary, and I have varied the condition accordingly.

⁴ Appeal refs APP/P1805/W/20/3256333 – The Croft, Portway; APP/Z4718/W/20/3255705 – Westfield Lane, Emley, APP/A1910/W/21/3273994 – Cedar Barn, Pepperstock

54. Although the outcome only partially meets the appellant's objectives and will no doubt be disappointing, as I have changed condition 3, Appeal B is allowed.

R Morgan

INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out in accordance with the following documents:
 - a. The planning applications forms, design and access statement and additional information received by Warrington Borough Council on 14 December 2021.
 - b. Submitted drawing nos. P20146A-07; P20146A-08 received on 3 March 2022; and P20146A-05 Rev A; P20146A-06 Rev A received on 5 May 2022
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A or E of Part 1 of Schedule 2 to the Order shall be undertaken.
- 3) A scheme for the provision of electric vehicle charging points, or passive provision, shall be submitted to and agreed in writing with the Local Planning Authority. The agreed scheme shall be provided prior to first occupation of each unit and retained as such thereafter.
- 4) The development shall be carried out in accordance with the submitted flood risk assessment (Prepared by ARK Environmental Consultancy, dated November 2021) and the following mitigation measures it details:
 - Change of use proposal with extent of dwelling (building) to remain solely within Flood Zone 1 (low risk).
 - Flood resilient and resistant technologies and materials to be incorporated into the design and conversion of the building.
 - Access and egress from the building within Flood Zone 1 to be maintained.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/ phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.