



Appeal Decisions

Site visit made on 21 August 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2024

Appeal A Ref: APP/M4320/C/23/3333707

Appeal B Ref: APP/M4320/C/23/3333708

Land to the rear of End Cottage, Prescott Road, Melling L31 1AR and 2 Prescott Road, Melling, L31 1AR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Miss Anna Westhead and Appeal B by Mr Joe Parker against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The notice was issued on 25 October 2023.
 - The breach of planning control as alleged in the notice is a raised timber deck including an outbuilding has been erected, in the approximate position shown coloured blue on the attached plan 2.
 - The requirement of the notice is: You must remove the timber deck and outbuilding from the property.
 - The period for compliance with the requirement is: One month.
 - The appeals are proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. The appeals are dismissed, and the enforcement notice is upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. Since the appeals were lodged, a revised version of the National Planning Policy Framework ("the Framework") was published in December 2023. However, the parts of the Framework most relevant to the appeals have not substantially changed from the previous iteration. Consequently, it has not been necessary for me to seek further comments from the main parties in this respect. I have determined the appeals accordingly.
3. On 30 July 2024, the Government published its National Planning Policy Framework: draft text for consultation. While the document proposes changes to the Green Belt chapter of the National Planning Policy Framework, at the time of writing my decision, it remains in draft form and is therefore subject to change. I therefore afford it very limited weight.

Ground (a) - the deemed planning application

Main Issues

4. The appeal site comprises a two-storey dwelling which is situated within a large plot and located within the Green Belt. A third-party has questioned whether

the development is within the curtilage of the appeal property. The extent of the curtilage of a building is a question of fact and degree, and it is therefore a matter for the decision maker, subject to the normal principles of public law.

5. Curtilage defines an area of land in relation to a building and is not a use of land. Having had regard to the relevant case law¹, I find that the land concerned is intimately associated with and serves the purpose of the host dwelling in a useful way. Furthermore, when considering the physical layout, ownership, and the use and function of the land, I concur with the Council's finding that the appeal development is within the curtilage of End Cottage.
6. The main issues are therefore:
 - Whether the development is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - The effect of the development on the openness of the Green Belt;
 - The effect of the development on the living conditions of occupiers of Highfield, with particular regard to overlooking and outlook;
 - The effect of the development on the character and appearance of the area; and
 - If the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the development is inappropriate development

7. Policy MN7 of A Local Plan for Sefton (adopted April 2017) (LP) and the House Extensions Supplementary Planning Document (adopted May 2023) (SPD) sets out how the Council will apply and interpret the requirements of national Green Belt policy. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. 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.
8. Paragraph 154 of the Framework advises that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions. The Council state that none of these exceptions apply to the appeal scheme, whilst the appellants do not suggest that it should be considered under any of the exceptions set out under paragraph 154. Nevertheless, I shall consider whether the appeal scheme would fall under any of the exceptions.
9. The development comprises a timber outbuilding erected upon a raised timber deck at the extreme eastern end of the rear garden. Paragraph 154 c) of the Framework allows the extension or alteration of a building provided that it does

¹ Sinclair-Lockhart's Trustees v Central Land Board [1950] 1 P&CR 195, Methuan-Campbell v Walters [1979] 1 QB 525, Burford v SSCLG and Test Valley BC [2017] EWHC 1493 (Admin), and Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359

not result in disproportionate additions over and above the size of the original building.

10. Case law² indicates that extensions can include structures which are physically detached from the building of which they are an extension. However, the case law does not set a specific distance at which a freestanding building should, or should not, be considered an extension. In the case of the appeal development, whilst its function is related to the main dwelling, given its design and appearance which do not reflect that of the dwelling, and the considerable distance between it and the host property, spatially and visually, there is a conspicuous disconnection between them. As a result, the development is clearly perceived as an outbuilding rather than an extension.
11. Consequently, I do not consider it is reasonable to regard the building as an extension to the host dwelling, and so it does not fall under the exception at paragraph 154 c). Moreover, none of the other exceptions listed under paragraphs 154 or 155 appear relevant to the development in this instance, and neither party has suggested otherwise.
12. Thus, the raised timber deck and outbuilding do not meet any of the exceptions set out in the Framework and fail to comply with Policy MN7 of the LP and guidance contained within the SPD. Therefore, the development represents inappropriate development in the Green Belt and is, by definition, harmful to the Green Belt.

Openness

13. Paragraph 142 of the Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence. Openness has a visual and spatial dimension.
14. The raised timber deck and outbuilding sit immediately adjacent to the rear boundary of the property and is a substantial structure which occupies an area of land that was previously free from development. Therefore, given the obvious increase in both footprint and volume, the development has the unavoidable consequence of resulting in the reduction in the spatial openness of the Green Belt.
15. Despite the spatial reduction in the openness of the Green Belt, there is a more limited visual reduction in openness. Its location in the rear garden of the property means there is no visibility of the structure from Prescott Road. By virtue of its size and height, views of the structure will be possible from adjacent residential properties and their gardens, albeit these views are partially obscured by existing vegetation and boundary treatments. Whilst clear views of the development are possible from agricultural fields to the rear of the appeal site, I have no evidence before me to indicate that there is any public access or vantage points from this land.
16. Given that there are limited views available of the development, it makes only a minimal contribution to the visual aspect of openness. Notwithstanding this limited visual impact, spatially the development reduces the openness of the Green Belt through the introduction of a new building in an area of garden which was previously free from built form. Overall, the development does not

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

preserve the openness of the Green Belt and, given the fundamental aim of the Green Belt to keep land permanently open, this loss of openness weighs further against the development.

Living Conditions

17. The raised timber deck and outbuilding is constructed around a tree at the far end of the rear garden, close to the boundary with the neighbouring property Highfield. The boundary between the appeal site and Highfields consists of a timber fence measuring around 1.8m in height, with a further section of trellis attached on top that takes the overall height of the boundary treatment above 2m. In addition, there are trees positioned periodically along the boundary which provide some further screening.
18. The raised timber deck is around 2m above ground level, with the outbuilding that has been placed on the raised deck measuring around 2.1m in height. The outbuilding has one window which faces out across the agricultural fields to the rear, and therefore, there is no overlooking of the neighbouring property Highfield from inside the outbuilding itself. The only point where there is an open raised platform is a small seating area at the top of the steps next to the outbuilding.
19. The open seating area is partially enclosed by a solid timber fence along the side of the raised deck nearest to the boundary with Highfield. However, due to its height and the proximity of the neighbouring property, when stood on the raised timber deck views into the rear garden of Highfield are still possible. These views were possible despite the trees along the boundary being in leaf at the time of my visit. Therefore, it is likely that during winter months the opportunities for overlooking into the rear garden of Highfield will increase.
20. Given the significant distance between the development and the rear elevation of Highfield, along with the partial screening provided by the existing trees, I do not consider that views from the raised deck into habitable windows of the property are possible. Nevertheless, there remains opportunity for overlooking from the development into the rear garden of Highfield, thus resulting in a loss of privacy for neighbouring occupiers. Accordingly, the development has a harmful impact on the living conditions of occupiers of Highfield with regard to privacy.
21. Despite its size and overall height, any dominance or sense of overbearing from the structure towards Highfield is lessened by presence of existing trees. Whilst it is a solid structure, given its location in amongst trees at the far end of the rear garden, the development is not overly dominant or overbearing and does not have a significantly detrimental effect upon outlook.
22. Consequently, although I have not identified any harm with regard to outlook, the development causes harm to the living conditions of occupiers of Highfield with regard to privacy. As a result, the development conflicts with policy HC4(c) of the LP which seeks, amongst other things, to ensure that developments do not result in a significant loss of privacy for neighbouring residents.

Character and Appearance

23. The raised timber deck and outbuilding is located at the far end of the rear garden, and therefore it is not visible from Prescott Road or the wider street

scene. However, the elevated nature of the development means that it is visible from neighbouring properties.

24. The development is constructed around a tree which, along with further trees in the vicinity, result in it being visually contained. Furthermore, its construction in wood enables it to blend with the trees, although it would benefit from being painted or stained a darker colour. This would further reduce its prominence from neighbouring gardens, enabling it to blend in sympathetically such that it would be relatively unobtrusive. This is a matter that could be the subject of a condition.
25. The Council consider that the development is out of character with the pattern of the existing rear boundary treatment, which is predominantly hedging and vegetation. However, the raised deck and outbuilding is clearly viewed as a free-standing structure within the rear garden of a residential property and does not form part of the boundary treatment which is unaffected. Furthermore, visually the development has the appearance of a tree house which is not an alien concept within the rear garden of a residential property.
26. Consequently, subject to an appropriately worded planning condition, I conclude that the development does not result in any harm to the character and appearance of the area. In relation to this main issue, the development therefore accords with policies EQ2 and HC4 of the LP, and guidance contained within the SPD. Together these seek, among other things, to ensure that developments respond positively to the character, local distinctiveness, and form of its surroundings, and make a positive contribution through the quality of its design.

Other Considerations

27. The appellants state that the raised deck and outbuilding allows them to relax and unwind from the stresses of daily life, and to enjoy the views and watch birds and other wildlife. They also contend that it will help children learn about nature. Nonetheless, these are largely private benefits solely for the benefit of the appellants. Furthermore, it has not been demonstrated that the appeal development is the only means by which these can be achieved. These considerations therefore carry limited weight in favour of the development.
28. The appellants also refer to an intention to help biodiversity, which includes keeping bees, chickens, and butterflies. However, it is unclear how the appeal development will assist in achieving those aims which could equally be accomplished without the raised timber deck and outbuilding. I therefore attach no weight to this consideration.

Planning Balance and Conclusion

29. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be supported except in very special circumstances. It goes on to advise that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
30. I have found the development to be harmful to the Green Belt by reason of inappropriateness and loss of openness. This amounts to a matter of substantial weight, to which I must add the harm caused to the living

conditions of occupiers of Highfield. Although I have found that the development does not cause harm to the character and appearance of the area, the absence of harm is a neutral matter which does not carry weight in favour of the development.

31. The largely private benefits identified by the appellants attract only limited weight in favour of the development. Accordingly, these considerations do not outweigh the substantial weight that I have given to the harm caused to the Green Belt and the additional harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.
32. For the reasons set out above, the development conflicts with the development plan when read as a whole, and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all matters raised, I therefore conclude that the appeals on ground (a) should be dismissed, and planning permission be refused on the deemed applications.

Other Matters

33. Reference has been made by the appellants to other developments nearby in the Green Belt. These include a development of 1,600 homes, an outline application for 855 homes, a caravan site, and two tree houses. I have extremely limited details of the developments referred to, including any justification provided for them. It is also unclear whether some of the developments have been granted planning permission by the Council. Furthermore, from the information available it seems that many are of an entirely different context to the proposal before me, such as the 1,600-home scheme, and are likely to be subject to different site and policy contexts. As such, these examples do not assist the appellants.
34. Matters relating to a dispute between the appellants and the occupiers of Highfield regarding the removal of a hedgerow and fence, and the installation of CCTV cameras have been brought to my attention. However, such matters fall outside the scope of these appeals, and I can only have regard to the planning merits of the case.

Conclusion

35. For the reasons given above, I conclude that the appeals do not succeed. I have upheld the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

David Jones

INSPECTOR