
Appeal Decision

Site visit made on 31 October 2024

by R Lawrence BSc (Hons), PGDip (TP), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2024

Appeal Ref: APP/K3605/W/24/3339401

38 Blackhills, Esher, Surrey KT10 9JW

- 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 Emin Guliev against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/2991.
 - The application sought planning permission for a detached two-storey house incorporating attached garage with rooms in the roof space and entrance gate to a height of 2.55m following demolition of existing house and outbuilding without complying with conditions attached to planning permission Ref 2020/2694, dated 11/12/2020.
 - The conditions in dispute are Nos 2 and 3 which state that:
 - 2) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 18-J2813-08 Rev A received on 09/07/2020; 19 - J2813 - 05 Rev B, 19 - J2813 - 07 Rev A and 19 - J2813 - 10 Rev A received on 08/09/2020 and 19-J2831-01 Rev D, 19-J2831-03 Rev C and 19-J2831-04 Rev D received on 10/12/2020.
 - 3) The development shall not be erected other than in the following materials: facing brickwork, plain clay roof tiles and painted timber windows and doors. Gates to be constructed from piers and metal railing gates.
 - The reasons given for the conditions are:
 - 2) to ensure that the development is carried out in a satisfactory manner, and
 - 3) to ensure that a satisfactory external appearance is achieved of the development in accordance with policy DM2 of the Elmbridge Development Management Plan.
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Decision

1. The appeal is dismissed.

Background

2. Planning permission was originally granted for a detached two-storey house incorporating an attached garage with rooms in the roof space and entrance gate to a height of 2.55m following demolition of existing house and outbuilding. I have not been provided with the full details of that permission. The development has since been amended by Section 73 application 2020/2694 to include a basement.
3. The appeal seeks to replace conditions 2 and 3 with conditions specifying the plans and materials which reflect the amended design. The amended design would enlarge the lightwell including a revised footprint and the addition of a glazed roof to enclose the light well. Whilst the proposal included other amendments to the design, including window and fenestration changes, the

other amendments have been subsequently approved through a separate Section 73 application¹ and are not in dispute between the main parties.

4. On 30 July 2024 the Government published a consultation on “Proposed reforms to the Framework and other changes to the planning system” and the “National Planning Policy Framework: draft text for consultation”. A Written Ministerial Statement entitled “Building the homes we need” was also published on 30 July 2024. The main parties were given the opportunity to comment on these publications, and I have had regard to comments received.

Main Issues

5. The main issues are, the effect of the amending the conditions, with particular regard to the enlarged lightwell on:
 - the Green Belt, including (i) whether or not the development would be inappropriate development in the Green Belt, and if relevant, (ii) the effect upon the openness of the Green Belt; and
 - if the development is inappropriate, 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 necessary to justify the development.

Reasons

Green Belt

(i) Inappropriate development

6. Policy DM18 of the Elmbridge Development Management Plan 2015 (DMP) states that replacement buildings in the same use will be permitted provided that the new building is not materially larger than the one it replaces and does not have a materially greater impact on the openness of the Green Belt. The policy also requires that development does not increase the volume or footprint beyond 10%. In relation to basements the policy requires that they do not exceed the footprint of the existing building and are served only by discreet light wells. Basements which do not comply will be regarded as contributing to the increase in volume and footprint.
7. The National Planning Policy Framework (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. The Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions. One such exception, set out at paragraph 154 d), is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
8. The lightwell, as originally approved, was an external space open to the elements, with a limited footprint. The current proposal would significantly change the character and scale of the lightwell, being for a fully enclosed space with a generous footprint. The footprint, based on the appellants own figures, would double in size which materially changes its character and potential use.

¹ 2024/0492

The fold back doors, whilst when closed provide a physical barrier, could readily be opened to facilitate use of the area as an extension to the basement.

9. Whilst my attention has been drawn to the absence of heating and light within it, this is not a matter that could be controlled in the long term, and in any event, would not preclude its use as an extension to the basement. My attention has been drawn to dictionary definitions of a basement, and a lightwell². The proposed lightwell and basement, form a floor of a building which is entirely below ground level, which aligns with the basement definition provided. As such, I find that the lightwell forms part of the basement and replacement dwelling. The recessed design and use of clear glazing are noted, however, whilst these factors soften the appearance of the lightwell, they do not avoid a significant change in character. Thus, I find that the basement would not be discrete.
10. Consequently, in line with Policy DM18, it is necessary to consider the effect the enlarged basement, on the bulk and mass of the replacement dwelling. From the limited details of the original dwelling before me, I note that it was a two-storey rectangular shaped dwelling, which was demolished at the time of my visit. There is no information to indicate that it had a basement. By contrast, the basement as proposed extends to the full extent of the ground floor footprint and beyond, through the addition of the lightwell. This is a significant uplift in the floor area, and overall scale of the dwelling. Based on the evidence before me, I therefore find that the replacement dwelling would be materially larger than that which it replaces.
11. The proposal therefore conflicts with Policy DM18 of the DMP, insofar as it advises that replacement dwellings should not be materially larger than those that they replace. As such, the proposal would also fail to meet the criteria of paragraph 154 d). No other exceptions are relied upon.

(ii) Openness

12. Openness can have both spatial and visual aspects. The appeal site is set within a residential area, which is made up of large, detached dwellings located within spacious, verdant plots. These characteristics add to the attractiveness of the area.
13. The increased scale of the replacement dwelling through the enlarged lightwell, would have an adverse impact on spatial openness. Relative to the scale of the replacement dwelling, the increase would be relatively modest. This limits the extent of harm to spatial openness.
14. The effect on openness in visual terms, would be limited by various factors. The lightwell and basement would be largely obscured given their subterranean nature, and the position of the lightwell. Nonetheless, the basement, through the addition of the lightwell would extend beyond the footprint of the ground floor and as such it would be visible from localised views within the site. This would add to the scale of the replacement dwelling, thereby resulting in an adverse effect on openness. The use of clear glazing whilst beneficial, would still be recognisable as a part of the dwelling and as such would not avoid an adverse effect on openness.

² Oxford English Dictionary definitions provided within appellants final comments

15. The basement, as originally approved, included a lightwell which extended beyond the footprint of the dwelling. However, that lightwell was an open area which did not form part of the building itself and was more modest in scale. The current proposal would be enclosed, and the extension to the basement and dwelling as a whole, would have a markedly different character, and thereby would impact upon openness in visual terms.
16. Whilst the scale, design and partial screening of the lightwell, would minimise the impact of the lightwell and the replacement dwelling as a whole, moderate harm would nonetheless occur both in terms of spatial and visual openness.
17. This results in a further conflict with Policy DM18, which requires that replacement dwellings avoid a materially greater impact on the openness of the Green Belt.

Other considerations

18. The proposed development would constitute inappropriate development in the Green Belt and would result in a loss of openness. The Framework establishes that substantial weight should be given to any harm to the Green Belt. Very Special Circumstances will not exist unless the harm to the Green Belt and any other harm, is clearly outweighed by other considerations.
19. My attention has been drawn to a potential fall-back scheme for the construction of a single storey side extension, up to 4m in height, by exercising permitted development rights. I understand that permitted development rights for the replacement dwelling remain intact and that the extension would be in place of the lightwell.
20. To construct an extension in place of the lightwell, would require a change to the approved plans. There are no plans before me, however, such a change could have significant implications for other aspects of the design, including the internal floor layout, and access and light to the basement. Based on the information before me, the proposal appears to be a merely theoretical prospect. For this reason, I attach limited weight to it.
21. A further fall back which has been presented to me is the possibility of a 2m high fence. A fence is a fundamentally different form of development to the lightwell, and it is unclear how this would provide any of the functions that would be offered by the lightwell. For this reason, I find such a proposal to be entirely theoretical and attach it negligible weight.
22. The use of a clear glazed roof and the enclosure of the lightwell would facilitate the use of passive solar gain, discrete ground source heat pumps and energy conservation devices are also proposed. The incorporation of passive solar gain within the development and improved energy efficiency is a clear benefit. However, given the orientation of the replacement dwelling, and the siting of the lightwell, including its proximity to the site boundary, there are limitations to the efficiency improvements from passive solar gain.
23. In the case of ground source heat pumps and energy conservation devices, it has not been demonstrated that these could not be achieved without the enlarged lightwell. Furthermore, whilst I note the findings of the Building Research Establishment regarding the energy efficiency of dwellings with basements, a basement is proposed as part of both the approved and current appeal schemes. Given these considerations, the energy efficiency benefits in

this case carry moderate weight.

24. Taken together, there are other considerations in this case that weigh modestly in favour of the development. However, the proposal would be inappropriate development in the Green Belt. There would also be some moderate harm to the openness of the Green Belt. Paragraph 153 of the Framework states that any harm to the Green Belt attracts substantial weight. Overall, the other considerations raised do not clearly outweigh the harm identified. Therefore, the very special circumstances necessary to justify development in the Green Belt do not exist.

Conclusion

25. To amend the conditions would result in a conflict with the development plan, and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Consequently, I find that the conditions are necessary.
26. Therefore, the appeal is dismissed.

R Lawrence

INSPECTOR