



Appeal Decision

Site visit made on 25 September 2024

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

Appeal Ref: APP/R3650/W/24/3346590

Pinewood, Whitmead Lane, Tilford, Farnham GU10 2BS

- 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 & Mrs Stuart Redman Lusher against the decision of Waverley Borough Council.
 - The application Ref is WA/2023/02494.
 - The development proposed is erection of detached outbuilding.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - whether the development would be inappropriate development in the Green Belt having regard to any relevant development plan policies and the National Planning Policy Framework (the Framework);
 - the effect of the proposal on the openness of the Green Belt; and
 - on the basis that the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to very special circumstances required to justify the development.

Reasons

Whether inappropriate development

3. 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. Paragraph 154 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt, subject to a closed list of exceptions. Policy RE2 of the Waverley Borough Local Plan (Part 1) (2018) (Local Plan Part 1) is broadly consistent with this approach, permitting proposals where they do not conflict with the exceptions listed in national planning policy.
4. The exceptions set out at Paragraph 154 of the Framework include 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. There is no specific reference to residential outbuildings. However, for the

purposes of paragraph 154 of the Framework, it has been established in case law¹ that a residential outbuilding, which is physically separated from a dwelling, can be assessed as an extension of a dwelling where it is considered to be a normal domestic adjunct.

5. The parties have differing views on this, and I have before me several recent appeal decisions whereby the Inspector has undertaken an assessment of whether an outbuilding should be considered as an extension, for the purposes of Paragraph 154 of the Framework. Nonetheless, although I do not have the full details of the schemes relating to these appeal decisions, they appear to be quite different from the appeal proposal and to have different contexts. I therefore afford these decisions limited weight in my decision. In any case, whether the proposed outbuilding could be considered a normal domestic adjunct is a matter of fact and degree for the decision maker to assess. I assess this below.
6. In this case, the proposed outbuilding would comprise a garden room for the appellants to relax in and a store for garden equipment. This type of space would have a functional relationship with the appeal property and is a common addition to a residential dwelling. It would be positioned 12.6 metres from the appeal property and, while it would front the existing detached garage rather than the house, it would have a reasonably direct connection into the house via the drawing room.
7. Nevertheless, the proposed outbuilding would be a considerable size, with a floorspace similar to the minimum gross internal floor area of a 3-bed house. This would be much larger than the conventional size of a garden room and store. It would also include features, such as a porch and chimneys, which although would be traditional and attractive and in keeping with the host dwelling, are not typical features of a garden studio and store. By virtue of its size and design it would therefore appear to go beyond what can be reasonably considered a normal domestic adjunct.
8. Notwithstanding this, even if I was to assess the proposed outbuilding as an extension, given its considerable size, it would result in disproportionate additions over and above the size of the original building.
9. Policy DM14 of the Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies (2023) (Local Plan Part 2) builds on Policy RE2 of the Local Plan Part 1 and exception 154 (c) of the Framework. It explains that for development outside of defined settlement boundaries, such as the appeal proposal, extensions or alterations which would increase floorspace by 40% or more over that of the original building will normally be considered to be disproportionate. Although relying on the percentage increase in floorspace could be considered to oversimplify the matter, it provides a useful guide in understanding at what level an increase in floorspace may be considered disproportionate.
10. The appeal property is a replacement dwelling (host dwelling), which has already had an increase in floorspace of 40.8% over that of the original dwelling. In addition, a large 1.5 storey, triple garage has also been granted permission and built. The proposal would further increase the floorspace of the host dwelling significantly over that of the original dwelling. This is not

¹ Sevenoaks District Council v SSE and Dawes [1997]

disputed by the appellant rather they consider the proposed outbuilding would not be disproportionate when considered in relation to the scale and massing of the original dwelling.

11. However, while the host dwelling is a substantial structure, it already includes a significant increase in floorspace over that of the original dwelling. Although the proposed outbuilding would be smaller and may appear subordinate to the host dwelling, cumulatively, the previous increase in floorspace, the large triple garage and the proposed outbuilding, which would be a considerable size itself, would result in disproportionate additions to the original dwelling.
12. In coming to this view, I have taken into account that the appeal site is well contained and therefore the proposed outbuilding would not be seen from public vantage points or the neighbouring properties. Also, that the host dwelling has a large plot, which would accommodate the development comfortably. Nevertheless, this has not led me to a different conclusion.
13. Accordingly, whether or not the proposed outbuilding is assessed as being an extension to the host dwelling, it would constitute inappropriate development within the Green Belt as defined by Policy DM14 of the Local Plan Part 2 and Paragraph 154 of the Framework.

Openness

14. The proposed outbuilding is substantial in size and would take up space, which is currently open undeveloped garden. This would result in significant harm to the spatial openness of the Green Belt.
15. Any visual harm to the openness of the Green Belt would be limited by the mature vegetation that contains the appeal site. This landscaping, in my view, is likely to remain in a similar state for reasons of privacy, amenity, and local character, and would obstruct views of the proposed outbuilding from the public realm and the neighbouring properties.
16. Nonetheless, the additional built form would be evident from within the appeal site. While the proposed outbuilding would be positioned close to the mature vegetation that makes up the site boundary, this means it would be relatively far from the host dwelling, further than the existing garage. Given this, although it may be seen as forming a cluster of built development with the host dwelling and garage, it would spread that development across the plot, eroding the visual openness of the appeal site as a whole. This would result in some moderate localised harm to the visual openness of the Green Belt.
17. Accordingly, the proposed outbuilding would not preserve the openness of the Green Belt, contrary to the fundamental aim of the Framework.

Other Considerations

18. From the evidence before me, I understand that several permitted outbuildings could be erected at the appeal site. However, I saw on site that, except for the triple garage, none have been built to date. The appellant considers that any lawful buildings should form a viable fallback in this case, including those permitted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). I consider this below.

19. Planning permission was granted in 2020 at the appeal site for the erection of a detached outbuilding similar to the appeal proposal² (2020 permission). While this permission has now lapsed, I am satisfied that there is more than a theoretical prospect of a similar building being permitted and constructed in the event the appeal is dismissed. From the evidence before me, the scheme subject of the 2020 permission and the appeal proposal would overlap. Thus, in this case, there is no risk of both being implemented.
20. However, the scheme subject of the 2020 permission would result in less harm to the openness of the Green Belt than the appeal proposal. This is because it would be at least 0.9 metres shorter than the appeal proposal, therefore taking up less open space. It would also be positioned closer to the host dwelling, therefore forming a slightly tighter cluster of built development with the host dwelling and garage, than the appeal proposal would. While it may be that the roof profile of the appeal proposal better reflects that of the host dwelling, this modest aesthetic improvement would neither outweigh nor justify the additional harm to the openness of the Green Belt. As such, implementation of the proposal over this fallback position has not been shown to have an effect that would be broadly the same or better and therefore does not weigh in favour of granting permission.
21. I am also satisfied that there is a reasonable prospect of the appellant using the rights under Class E, Part 1, Schedule 2 of the GPDO to erect an outbuilding or outbuildings in the event the appeal is dismissed. Nonetheless, this would not justify allowing the appeal, rather it adds to the potential harm.
22. The Certificates of Lawfulness that relate to the appeal site³ are separate applications for separate development and the appellants rights under Class E, Part 1, Schedule 2 of the GPDO would apply whether in specific accordance with these Certificates of Lawfulness or not. Thus, the outbuildings permitted by Class E, Part 1, Schedule 2 of the GPDO are not limited to those that are subject of the Certificates of Lawfulness. Accordingly, although suggested by some of the evidence before me, a planning permission cannot relocate a building that benefits from a Certificate of Lawfulness.
23. The Certificates of Lawfulness do not grant permission rather they confirm that the relevant development schemes would accord with the provisions of the GPDO. The schemes subject of the Certificates of Lawfulness could therefore be implemented at any time and there is a tangible risk of these schemes being implemented alongside the appeal proposal.
24. While it would be possible for me to impose a condition removing the rights under Class E, Part 1, Schedule 2 of the GPDO relating to the appeal property in the event the appeal was allowed, this condition would only apply once the planning permission was implemented. There is no mechanism for me to ensure that the planning permission would be implemented before the construction of any outbuildings permitted under Class E, Part 1, Schedule 2 of the GPDO. The removal of these rights, if found to be necessary, would therefore need to be secured by a legal agreement. Yet, there is no legal agreement before me.

² Application Ref: WA/2020/1008.

³ Application Refs: WA/2020/0139 and WA/2022/01576.

25. Given this, any outbuildings permitted by Class E, Part 1, Schedule 2 of the GPDO, including those that are subject of the Certificates of Lawfulness, do not constitute a fallback position to the appeal proposal.
26. It has been put to me by the appellant that, in the event the appeal was allowed, I could ensure that another scheme was not implemented alongside the appeal proposal by means of another condition. Like the condition imposed by the Council on planning permission Ref: WA/2022/02468, the proposed condition would restrict the implementation of the respective planning permission if a scheme subject of the Certificates of Lawfulness had already been implemented. In this case, I assume the appellant is referring to the scheme subject of Certificate of Lawfulness Ref: WA/2020/0139.
27. Nevertheless, a planning condition cannot be used to achieve this, as it would not meet the tests set out in Paragraph 56 of the Framework. In this case, the planning permission would need to be rescinded as part of a planning obligation whereby the appellant agrees to not implement a previously granted but unimplemented permission. Furthermore, the proposed condition would still not ensure that the planning permission would be implemented before the construction of any other outbuildings permitted under Class E, Part 1, Schedule 2 of the GPDO.
28. It may be that the restrictive eaves height of the host dwelling limits the amount of storage available on the first floor and I appreciate that the host dwelling has no loft or cellar space. However, the host dwelling is a substantial size, and the appellants also benefit from additional space above the triple garage. Given this, I afford the appellants' essential needs for the proposed outbuilding to provide living and storage space limited weight in my decision.
29. There are several interested party representations in support for the appeal proposal, which clearly show the regard in which the appellants are held by those who live or have lived nearby. Nonetheless, the proposed outbuilding would be permanent and would remain after the appellants circumstances ceased to be relevant. It would not be reasonable to limit the permission to the appellants only. Furthermore, while the proposed outbuilding may have an attractive design, which is in keeping with the host dwelling, and would improve and add value to the appeal property, this would neither outweigh nor justify the harm I have identified to the Green Belt.

Green Belt Balance

30. Policy RE2 of the Local Plan Part 1 does not permit inappropriate development in the Green Belt unless very special circumstances can be demonstrated. Paragraph 153 explains that very special circumstances will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
31. The proposal would be an inappropriate form of development within the Green Belt and would also result in harm to the openness of the Green Belt. In line with Paragraph 153 of the Framework, I afford any harm to the Green Belt substantial weight.
32. Accordingly, the modest benefits of the proposal arising from the additional living and storage space, the proposed outbuildings energy efficient design and the spending associated with its construction would not clearly outweigh

this harm. Thus, there are not the very special circumstances necessary to justify the proposal. The proposal would therefore conflict with Policy RE2 of the Local Plan Part 1 and the associated provisions of the Framework.

Conclusion

33. For the reasons above, the proposal would conflict with the development plan, read as a whole. Having had regard to all relevant material considerations, it has not been demonstrated that there are any of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

Hannah Guest

INSPECTOR