



Appeal Decision

Site visit made on 14 October 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2024

Appeal Ref: APP/N4720/C/24/3339761

Land at the Old Vicarage, The Ginnel, Bardsey, Leeds LS17 9DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr James Henry against an enforcement notice issued by Leeds City Council.
- The notice was issued on 1 February 2024.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey side extension to lower ground floor.
- The requirements of the notice are:
 - Step 1
Dismantle the single storey side extension to lower ground floor.
 - Step 2
Construct the sections of roof and side elevation walls so that the side extension accords in all respects with the approved plans and elevation drawings to planning permission reference 31/274/97/FUL stamp dated 15 October 1997.
 - Step 3
Remove any debris as a result of the above.
- The period for compliance with the requirement is:
9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Formal Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of a single storey side extension to lower ground floor at the Old Vicarage, The Ginnel, Bardsey, Leeds LS17 9DU as shown on the plan attached to the notice and subject to the following conditions:
 - 1) 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, AA, B, D and E of Part 1 of Schedule 2 to the Order shall be undertaken.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. I am satisfied that, other than changes to paragraph numbering and paragraph structure between the current and previous versions of the Framework, the sections relevant to the matter before

me have not materially changed. I have determined the appeal accordingly and in so doing I am satisfied that neither main party would be disadvantaged.

3. An application for planning permission was submitted retrospectively for a similar proposal to the appeal scheme in 2023¹. That application was refused in November 2023, the refusal reason for which broadly matches the reason for issuing the notice to which this appeal relates.
4. The appeal property is a large, detached stone-under-slate house which has been extended over time to create what is now a broadly L-shaped building. The building's main 2-storey axis runs east-west with a two storey extension having been added to its rear corner to create the current L-shaped form. A further conservatory-style extension lies in the angle of these two elements on the main building's rear gable elevation.
5. Ground levels fall sharply at the side and rear of the house. A single storey attached garage is accessed from yard level at the front of the house to which, prior to the construction of the extension now enforced against, was a single storey lean-to workshop / store. Given the changes in ground levels, this was accessed from the lower garden level. Although set down slightly when compared to the garage roof and thus visually a separate roof, its pitch nevertheless broadly reflected that of the garage.
6. The extension that forms the subject of this notice is essentially an addition to the workshop / store. The structure extends further into the property's rear garden area than the previous built element here but otherwise follows its width and the fall and roofline of that structure. It is common ground that the property has previously been extended.

The appeal on ground (a)

Main Issues

7. The main issues are:
 - Whether or not the development is inappropriate development in the Green Belt, having regard to the development plan and the National Planning Policy Framework (the Framework);
 - The effect of the development on the openness of the Green Belt; and
 - If 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

Whether inappropriate

8. Policy N33 of the Leeds Unitary Development Plan (Review 2006) (hereafter, UDP) sets out the Council's approach to the control of development within the Leeds Green Belt (GB). It explains that except in very special circumstances approval will only be given for, amongst other things, the limited extension of existing dwellings. What constitutes 'limited extension' is not defined by UDP Policy N33, but HDG3 of the 'Householder Design Guide' Supplementary

¹ LPA Ref No: 23/05371/FU

Planning Document (SPD) does provide a guideline figure of a 30% increase over and above the original house volume.

9. The UDP is however now of some age and pre-dates the current iteration of the Framework, with which it is not entirely consistent. Thus, whilst it considers the matter of extensions and alterations as an exception to GB restraint at paragraph 154(c) it does so in the context of buildings rather than only dwellings. It also qualifies the exception in terms of not resulting in disproportionate additions over and above the size of the original building, not just in terms of volume.
10. The Framework does not define 'disproportionate addition'. As such the consideration of proportionality is a matter of planning judgement, taking account of a range of factors including height, floorspace, volume, design and configuration of the plot, dwelling and appeal scheme. As neither UDP Policy N33 nor SPD HDG3 are fully consistent with the Framework in this respect, I therefore attach more weight to the wording of the more recent Framework.
11. It is nevertheless common ground that the property has already been extended and altered beyond the 30% volume threshold set out in SPD HDG3 which informs interpretation of UDP Policy N33. The Council's suggestion that this could amount to around 50% is unchallenged. Whilst there is no consensus between the parties as to whether or not the threshold figure set out by SPD HDG3 is definitive, it is clear that it applies to volume, whereas the wording of the more recent Framework refers more broadly to size as the context in which disproportionate additions should be considered.
12. The 'before' and 'after' photographs of the appeal property as supplied by the appellant were easy to understand and to compare when viewing the building during my visit to the site. It is clear that the extension continues the pre-existing roofslope of the workshop / store over the extended area, resulting in a lower ground to eaves height on its rear elevation than was previously the case. The additional projection of the extension is also partly offset by the sloping ground and adjacent raised patio terrace at the rear of the main house. Thus, despite its increase in overall projection the overall effect is of an extended structure that appears little larger than prior to its extension, particularly when viewed from garden locations.
13. In purely mathematical and volumetric terms, the extensions previously carried out at the appeal property go beyond 'limited extensions' per the terms of SPD HDG3 and UDP Policy N33. It follows that a further extension to the property must also be considered as such in that context. However, whilst the wording of SPD HDG3 is clear that proposals in excess of 30% are considered to be inappropriate development the appellant is correct in pointing out, at the very least, the tension between this wording and that of the supporting text to SPD HDG3. Indeed, the supporting text to SPD HDG3 is quite clear that this figure is not definitive.
14. The GB exception provided by Framework paragraph 154(c) is contingent upon the extension not resulting 'in disproportionate additions over and above the size of the original building'. Noting the Framework's use of the plural with regard to 'disproportionate additions' the Framework is clear that it is not a determination of whether just the extension in question results in a disproportionate addition, but rather that of any extensions over and above the original building would result in disproportionate additions.

15. There are already extensions to the building that comfortably exceed 30%, which the Council suggest have amounted to an increase of 'around 50%'. Whilst I have noted the appellant's extension volume calculations in the context of the existing house (note, not the original building) it is clear that the appeal scheme adds further to an already significantly extended building. Bearing in mind the phrasing of both UDP Policy N33 and SPD HDG3 regarding extensions, and the Framework in terms of disproportionate additions, the appeal scheme results in disproportionate additions over and above the size of the original building. As such, the appeal scheme is inappropriate development in the Green Belt.
16. In reaching this conclusion I have noted the example cited by the appellant where the Council concluded that an extension (or extensions) to another property within the Leeds Green Belt did not amount to inappropriate development. This was seemingly despite it resulting in extensions in the region of 45% over and above the size of the original building. Although I have been provided with the delegated officer report for that scheme I do not have the full details of that proposal before me, including the physical, spatial and visual context in which it lies. I cannot therefore be certain of the degree to which it may or may not be comparable to this appeal scheme. This does not therefore alter my conclusions in this respect.

Openness

17. Openness has both a visual and a spatial aspect and is described in the Framework as being one of the essential characteristics of Green Belts. The extension would not be seen from the Ginnel by virtue of various elements of the existing building. Nor would it be widely seen from beyond the appeal site given the extensive garden planting, vegetation, hedgerows and prevailing landform. That it is visible from within the garden is not unexpected but is not a determinative factor in its effect on Green Belt openness.
18. Nevertheless the extension adds to the outward spread of the appeal building, albeit that it does so to only a limited degree in visual terms. Its dimensions, form and appearance follow closely that of the pre-existing structure whilst the garden ground contours and patio terrace largely disguise the elongated projection and longer flank in some garden views.
19. Viewed from the other side of the garden, the additional projection of the flank elevation and additional bulk in the angle of the falling roof add to the visual impact of the extension, but in the context of the appeal building and the surroundings, the additional impact is limited. Moreover, the appeal scheme has a more squat appearance on its rear elevation because of the continued fall of the roofline and thus, a lower and less bulky rear elevation than previously appeared to be the case.
20. The appeal scheme adds to the existing building where previously there was no structure or building. As such, there is an inevitable effect on openness in both spatial and visual terms. It is however a discrete addition at the rear of the existing building located some distance from the garden plot's boundaries and which is largely hidden from all but very close views from within the appeal site garden. It does not therefore result in encroachment into the countryside, or otherwise harm the five purposes of Green Belts, but it does nevertheless result in a reduction in openness, albeit that the effect on openness would be limited.

Other considerations

21. Inappropriate development is, by definition harmful to the GB and should not be approved except in very special circumstances. Substantial weight should be given to GB harm, including harm to its openness. Very special circumstances will not exist unless the harm to the GB by reasons of inappropriateness, and any other harm, is clearly outweighed by other considerations.
22. The appellant seeks to argue the existence of a fallback position afforded by Classes A and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (hereafter, the Order). The alternative scheme set out by the appellant would provide a single storey rear extension to the appeal property and a detached rear outbuilding within the garden plot. The Council granted a Lawful Development Certificate for proposed development (LDC) in relation to this scheme².
23. That alternative scheme would be significantly larger than the appeal scheme and would be split over two distinct built elements. In these respects, it would differ significantly from that of the appeal scheme. However, notwithstanding these differences, and mindful that the indicated use of the individual rooms created by both the alternative and appeal schemes cannot necessarily be controlled, I do not share the Council's conviction that the schemes cannot be comparable.
24. Thus, there are elements and uses of rooms that would be present within both schemes. Without the 'benefit' of the space created in the lower ground floor of the workshop / store building of the appeal scheme, other elements of floorspace and room usage at basement level may no longer be so practical or attractive to the appellant. The provision of these spaces elsewhere within the alternative scheme, whether within the extension or the detached outbuilding, does not to my mind render the two schemes incomparable.
25. That the Council granted an LDC for the proposed extension accepts that the fallback scheme would be permitted development. It is not clear to me why the Council expect the appellant, in addition to the fallback scheme backed by an LDC, to have put forward a further alternative scheme. Both parties have referred me to various examples of case law regarding the possibility of a fallback position and the likelihood, none of which appear to reflect (at least by specific reference) the more recent principles established in *Schneck v Secretary of State for Housing, Communities and Local Government & West Berkshire DC [2022]*³ (hereafter, *Schneck*) which held that 'the prospect of a fallback position does not have to be probably or even have a high chance of occurring; it has to be only more than a merely theoretical prospect'. The possibility may therefore only be very slight, but such a slight possibility of it happening is nevertheless capable of making it a material consideration.
26. The Council have queried the appellant's stated position regarding this possibility, citing the as-built extension as evidence that the alternative was no more than a theoretical possibility. The financial ability to implement the alternative scheme has also been questioned. Neither party has produced evidence to support their respective positions in this respect but, whilst not

² LPA Ref No: 23/07582/CLP

³ EWHC 3335 (Admin)

conclusive, the quality of build and the fit-and-finish of the appeal scheme did not suggest to me a 'wing-and-a-prayer' scheme in financial terms that would render the alternative scheme financially unachievable or only a theoretical prospect. I am satisfied therefore that the alternative scheme is capable of being a fallback scheme and is thus a material consideration. The weight that it should subsequently be given is considered below.

27. With regard to the two elements of the alternative scheme, the outbuilding would be positioned towards the southeastern corner of the appeal site's garden plot. As a consequence, it would be detached from the main building by a substantial margin and would introduce a sizeable built form to an area of the garden that is currently devoid of such structures. As such, it would have a materially greater and substantially more harmful effect on Green Belt openness than does the appeal scheme.
28. With regard to the extension to the main house, this would also be significantly larger than the appeal scheme's extension to the house. This portion of the fallback extension would be located on the southern side of the house and would reduce the spacing around the building between it and the property to the south. Although not widely visible from beyond the site in this location, the loss of space and thus openness around the building in this location would nevertheless result in a loss of openness and have a materially greater impact and thus more harmful effect on Green Belt openness than the appeal scheme. This harm, and also the extent to which the alternative scheme would give rise to greater harm than the appeal scheme, are matters to which I give substantial weight.
29. The appellant has suggested that, should the appeal succeed on ground (a), a suitably worded condition could be imposed to prevent the alternative scheme being constructed and the appeal scheme retained. The Council is concerned that the appellant's suggested condition to remove permitted development rights would not serve its intended purpose as the alternative scheme would remain lawful by virtue of the LDC. In the absence of a suitably worded legal agreement there would be no means to prevent such a scenario.
30. I disagree. Whilst the Framework advises that planning conditions should not be used to restrict national permitted development rights, they may be used if there is clear justification to do so, albeit that the Planning Practice Guidance warns that such conditions may not pass the tests of reasonableness or necessity. The implementation of permitted development rights, as demonstrated by the alternative scheme set out within the LDC, would have the potential to result in a considerable amount of built development within the garden of the existing house and attached to it.
31. Nor would the condition fail to 'bite' in the manner described by the Council. As any condition implied in relation to the appeal scheme would be upon the deemed planning permission granted by a successful appeal on ground (a), the removal of national permitted development rights would effectively be instantaneous as the permission would be granted retrospectively. Thus, unlike a planning permission granted for work yet to take place, it cannot be the case that the works authorised by the LDC could take place prior to the implementation of the appeal under ground (a) as success on ground (a) would relate to the structure already in place. Furthermore, success on ground (a)

would amount to a material change referred to be section 192(4) of the Act as to prevent the implementation of the LDC.

32. Thus, although I have found that the appeal scheme is inappropriate development in the Green Belt and would cause limited harm to Green Belt openness, the alternative scheme would give rise to a significantly greater degree of harm to Green Belt openness. I am also satisfied that there is a greater than merely theoretical prospect of the appellant implementing the alternative scheme should the appeal on ground (a) fail. A condition to restrict or remove national permitted development rights would therefore be clearly justified in Green Belt terms should the appeal on ground (a) succeed. The absence of a legal agreement or unilateral undertaking would be not fatal to the outcome of the appeal scheme.
33. Although the previous application to retain the appeal extension was refused in 2023, the Council's delegated officer report confirmed that there was no objection, in purely design terms, to the proposal's design, scale or form. As such, the extension in question was not considered harmful to the character or appearance of the appeal property or the surrounding area.
34. I agree. The choice of materials are a good match for the existing building and the extension's detailing and styling respond well to that of the main house, and to the garage / workshop / store to which it is attached. Setting aside the Green Belt considerations considered above, the appeal scheme is a small addition to the rear of the garage / workshop / store element of the appeal property, located discretely and designed sympathetically. It is, in these terms, a well-designed extension located modestly at the rear of the property. Nor would it give rise to harm to living conditions of occupiers of neighbouring properties given its location and the layout of the appeal property and of those around it.
35. As the appeal site also lies within the Bardsey-cum-Rigton Conservation Area (CA), I am also statutorily required to pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area. The appeal site lies within 'Character Area 2: Bardsey – dispersed settlement'⁴ (CACA) of the CA which, as its name suggests, covers the dispersed properties towards the southwestern edge of Bardsey, Bardsey Hill, The Ginnel and around the pond and green at Bardsey Hill. The Ginnel is noted within the CACA as providing an important pedestrian route to the village core, as is the essential rural character of the area and the vernacular built form and traditional detail of buildings. For the reasons set out, I am satisfied that the appeal scheme is consistent with these characteristics of the CA and would not cause any harm thereto. The appeal scheme therefore preserves the character of the CA, to which I am required to pay special attention.

Conditions

36. Other than discussion around the use of a condition to restrict national permitted development rights, no other conditions have been suggested or discussed by or between the parties in their submissions. However, given the nature of the appeal on ground (a), and the Council's conclusions regarding the detail and materials of the appeal scheme, should the ground (a) appeal

⁴ 'Bardsey-cum-Rigton Conservation Area Appraisal and Management Plan' – 16 March 2009

succeed there would be no need for a materials condition or a commencement condition.

37. For reasons set out above, I am satisfied that there is clear justification for a suitably worded condition for the removal of permitted development rights. The appellant has set out suggested wording for a condition which refers to the provisions of Classes A, AA, B, D and E of Part 1, Schedule 2 of the Order as those 'rights' to be removed. I am satisfied that the Classes specified in the appellant's suggested condition reasonably relate to those against which the alternative scheme would be considered. With slight amendment I am satisfied that such a condition would serve its intended purpose.

Green Belt balance and conclusion of the ground (a) appeal

38. The extension is inappropriate development in the Green Belt and would result in a limited loss of Green Belt openness. The appeal scheme is contrary in this respect to UDP Policy N33 and SPD HDG3. Framework paragraph 153 requires that any harm to the Green Belt, including to its openness, should be given substantial weight. Very special circumstances will not exist unless the harm to the Green Belt, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
39. The extension is well-designed using well-matched materials with attention given to detailing and appearance. The extension is, in isolation, of a modest scale and relates well to the building to which it has been added. It causes no harm to the character or appearance of the appeal property or to the surrounding area, whilst it also preserves the character and appearance of the Bardsey-cum-Rigton Conservation Area. Together these factors are sufficient to carry substantial weight in favour of the appeal scheme.
40. There are other ways of enlarging the property under permitted development, which may result in a greater increase in size, visual impact and effect upon openness than the appeal scheme. I am also satisfied that there is more than a theoretical possibility of such work taking place. The alternative scheme provides a fallback position to which I ascribe substantial weight in favour of the appeal scheme.
41. There are therefore no other areas of harm arising from the appeal scheme other than that relating to the Green Belt matters. Taking these favourable other factors together, I am satisfied that the particular circumstances of the appeal scheme and the appeal property are such that the harm to the Green Belt is clearly outweighed by other considerations sufficient to amount to the very special circumstances required.

Conclusion

42. For the reasons given above, I conclude that the appeal should succeed on ground (a). I shall therefore grant planning permission for the single storey side extension to lower ground floor as described in the notice. The appeals on grounds (f) and (g) do not therefore fall to be considered.

G Robbie

INSPECTOR