



Appeal Decision

Site visit made on 14 January 2025

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2025

Appeal Ref: APP/K3605/D/24/3353911

George House, 16 Meadway, Esher, Surrey KT10 9HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission.
 - The appeal is made by Jack Nethercott against the decision of Elmbridge Borough Council.
 - The application Ref is 2024/2083.
 - The development proposed is erection of replacement outbuilding to be used as tennis pavilion following removal of existing building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. My assessment is based on the description of development in the header above, which is taken from the planning application form. The Council's decision notice includes a different description but there is no evidence to indicate that this has been agreed with the appellant. The name of the appellant in the header is the same as the applicant on the planning application form. Under section 78 of the Act, the right to appeal against the refusal of an application for planning permission extends only so far as the applicant and to no other person. As such, I am satisfied the appeal has been made in the name of an appropriate person.
3. A revised National Planning Policy Framework (the Framework) has been issued since the appeal was lodged. I have invited the main parties to submit comments on the Framework and I have had regard to those received.

Main Issues

4. The main issues are (i) whether the proposal would represent inappropriate development in the Green Belt having regard to the Elmbridge Local Plan Development Management Plan 2015 (the LP) and the Framework, and (ii) the effect on openness, and (iii) if the proposal would constitute inappropriate development in the Green Belt, whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

5. The appeal property lies in designated Green Belt. Policy DM18 of the LP sets out situations when development involving existing buildings would be

acceptable in Green Belt areas. The pavilion would be positioned a significant distance away from the main house and so part (b) of the policy is relevant. This states the replacement of a building in the same use will be permitted provided the new building is not materially larger than the original.

6. The Framework states development in the Green Belt is inappropriate unless it falls within one of the exceptions set out under paragraph 154. These include the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces. As such, there is a significant degree of consistency between LP policy DM18 part (b) and the Framework.
7. Part (b) of LP policy DM18 supports new buildings provided they are no more than 10% larger in terms of volume and footprint compared to the building to be replaced. According to the appellant, the existing summer house has a footprint of 24m² whereas the proposed pavilion would have a footprint of 64m². Such an increase would be significantly above the 10% allowed under LP policy DM18. Furthermore, the Council contends the volume of the proposed building would measure 235m³ whereas the volume of the existing is just 72.4m³. The appellant has not sought to dispute these figures. As such, the development would not accord with LP policy DM18 part (b) in terms of the increase in volume and footprint area.
8. I understand the current proposal would be smaller than a previous scheme for a replacement building. However, the policy test requires a comparison of the proposed development against the size of the existing building, not against the size of any previous proposal. Accordingly, this factor fails to influence my assessment on whether the appeal scheme represents inappropriate development in the Green Belt.
9. Therefore, I find the proposed building would be materially larger than the existing and so the development would not conform with the requirements for replacement buildings as set out in LP policy DM18 and paragraph 154 (d) of the Framework. The appellant does not claim the scheme would accord with any of the other categories of development allowed under LP policy DM18 or included as exceptions under paragraph 154 of the Framework. Consequently, I conclude the proposal would be inappropriate development in the Green Belt.

Effect on openness.

10. The existing building already affects the openness of the rear part of the garden to the appeal property. However, the proposed building would be significantly wider and deeper, albeit only slightly higher. The larger volume of the proposed building compared to the existing means the development would reduce the spatial openness of the Green Belt, even though it would only affect a small part of the sizeable back garden.
11. Mature trees and hedges on the boundaries would mean the pavilion is not seen from outside the appeal site and so it would have a very limited visual impact. Nonetheless, I find the volume of the development would have a minor detrimental effect on the spatial aspect of Green Belt openness.

Other considerations.

12. The appellant claims the erection of the pavilion would normally constitute permitted development as defined under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

However, I am advised the planning permission for the erection of the main house at the appeal property is subject to a condition that in effect removes permitted development rights on the erection of outbuildings. As such, it appears there is no legitimate fallback position that could lead to the erection of a building on the site under permitted development rights if this appeal is dismissed.

13. There are no objections from neighbours and the development would not affect living conditions at any nearby residence. Also, the pavilion would be appropriately designed. Acceptability in these regards is a neutral factor rather than a benefit to which I attach positive weight.
14. The building would be positioned at the end of the long garden near to a tennis court. I understand it would be used as a facility for those playing tennis without the need to return to the main house. I am sure the pavilion would serve a useful purpose for the occupiers of the appeal property. However, it is not an essential facility and so the benefits of the scheme to the residents in these respects attracts little weight in my assessment.

Green Belt balance.

15. Under the terms of the Framework, very special circumstances to justify inappropriate development in the Green Belt will not exist unless the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations. In carrying out the balancing exercise, substantial weight is to be given to any harm caused to the Green Belt.
16. As well as harm by reason of inappropriateness, the proposal would cause a minor loss of openness, thereby adversely impacting on one of the essential characteristics of the Green Belt. The benefits of the proposal and all other considerations in support of the scheme attract modest weight. These would not clearly outweigh the harm caused by the development to the Green Belt and its openness. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, I conclude the proposal would be contrary to LP policy DM18 and the Framework.

Conclusion

17. For the above reasons, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR