



Appeal Decision

Site visit made on 3 December 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal Ref: APP/M0655/W/24/3346494

Mosswood Hall, Stretton Road, Appleton, Warrington WA4 4NW

- 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 and Mrs Pamela and Adamo Lau-Devoti against the decision of Warrington Borough Council.
 - The application Ref is 2020/38352.
 - The development proposed is extension to residential property, detached swimming pool building, detached three bay garage.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr and Mrs Pamela and Adamo Lau-Devoti against Warrington Borough Council. The costs application is the subject of a separate decision.

Preliminary Matters

3. On 12 December 2024 the Government published a revised National Planning Policy Framework (the Framework). The revised Framework is a material consideration which should be taken into account from the day of publication. Both parties have had the opportunity to comment on any implications for the appeal, and I have taken comments received into account. Where references are made to paragraph numbers of the Framework, these are references to the most recent version.
4. The size of the proposed basement was amended during the consideration of the planning application, and the Council determined the application with reference to plans (222/P/10/C). The appellants have expressed that they wish the appeal to be considered on the basis of their original submissions, Drawing 222/P/10/A, which were for a larger basement.
5. The procedural guide for planning appeals¹ advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference"

¹ Procedural Guide: Planning appeals-England (2024)

or a "fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.

6. Whilst the increase in size of the proposed basement would not impact upon the openness of the Green Belt, it would increase the scale of the overall development. The additions to the original building and whether the proposal would represent inappropriate development in the Green Belt are at the heart of the reason for refusal. The changes have not been consulted upon. I find that neither part of the necessary test set out in the relevant case law has been satisfied. Accordingly, I have determined the appeal having regard to the same proposal on which the Council made its decision.

Main Issues

7. The main issues are:

- whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- the effect of the proposal on the openness of the Green Belt; and
- whether any 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 required to justify the proposal.

Reasons

Whether inappropriate development

8. The appeal site lies within the Green Belt. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
9. Paragraph 154 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate, other than in a few exceptions. One exception, at Paragraph 154c) is 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.
10. Policy GB1 of the Warrington Local Plan 2021/22–2038/39 (2023) (LP) is consistent with the Framework, as it requires that within the Green Belt, planning permission will not be granted for inappropriate development, except in very special circumstances.
11. While the Framework does not define what might be considered a disproportionate addition, the Warrington Borough Council House Extensions Supplementary Planning Document 2021 (SPD) addresses the exception. The SPD sets out that any extensions and additions that result in an increase in size of over 33% to the original building will be considered to be disproportionate and therefore unacceptable. The SPD clarifies that in making such an assessment, measurements will be based predominately on volume and floorspace.

12. The evidence before me indicates that the proposed scheme would see both the volume and floorspace of the original building increase substantially. The proposed development would therefore result in a disproportionate addition over and above the size of the original building. As such, it would not meet the exception of Paragraph 154c).
13. The appellants have contended that the development might also be considered to fall under the exception to inappropriate development at paragraph 154g) of the Framework, relating to the partial or complete redevelopment of previously developed land which would not cause substantial harm to the openness of the Green Belt. Even if the part of the site where the house is located may be considered as previously developed land, the areas where the outbuildings would be sited are currently devoid of built form, and as such are undeveloped. The Framework states that it should not be assumed that the whole of the curtilage of previously developed land should be developed. The proposed development would therefore not meet this exception.
14. The updated Framework has introduced the concept of grey belt land. Even if I were to accept that the appeal site does not strongly contribute to the purposes of the Green Belt relating to unrestricted sprawl, the merging of towns or the setting of historic towns, in order for development not to be regarded as inappropriate Paragraph 155 of the Framework refers to the use of grey belt land satisfying a demonstrable unmet need for the type of development proposed. No evidence has been submitted to indicate that this is applicable in this appeal. Consequently, this paragraph does not render the development not inappropriate.
15. The proposal would therefore comprise inappropriate development which is by definition harmful to the Green Belt. It would therefore be contrary to Policy GB1 of the LP and the Framework.

Openness

16. The Framework identifies that the essential characteristics of Green Belts are their openness and permanence. The concept of Green Belt openness has both a spatial and visual dimension.
17. The proposed development would have a larger volume and floorspace than the existing buildings at the appeal site, and would see the introduction of ancillary buildings, introducing further built form.
18. The proposal would, therefore, have more of an impact on the openness of the Green Belt in spatial terms than the existing circumstances.
19. The ridge height of the property would not increase in size, and the proposal would fit well within the appeal property's large plot. Notwithstanding this, the increased floorspace and scale of the proposals would make the development more prominent in comparison to the existing dwelling and outbuilding.
20. The appeal site is set back from the road, screened by mature trees and vegetation along the boundaries, and has a generally secluded character. The proposed additions would be situated within the building lines of bordering built development, which would help screen the proposal. Consequently, the scheme would have no significant effect on the visual aspect of openness of the Green Belt.

21. Overall, whilst there would be no harm to the visual dimension of the openness of the Green Belt, there would be harm to the spatial dimension. This would be contrary to the Framework which states that an essential characteristic of Green Belts is their openness.

Other considerations

22. The appeal property benefits from a Lawful Development Certificate (LDC) for the construction of a detached garage/workshop and private swimming pool and an extant permission which was secured through the prior approval process for an extension to the rear of the dwelling.
23. The consideration of a fallback position, including what could be erected under permitted development, is a well-established principle. As the appellants have an LDC and have sought prior approval for additions to the property, there is a greater than theoretical possibility that, if the appeal is dismissed, the appellants might pursue the fallback scheme. As such it is a material consideration in my determination of the appeal.
24. For significant weight to be afforded to a fallback position there needs not only to be a real possibility of it being carried out, but it would also need to be equally or more harmful than the appeal scheme. Whilst the appeal scheme would be similar in size and scale to the fallback scheme, it would be less piecemeal and ad-hoc, making better use of the plot whilst remaining well screened. The appeal proposal would be well designed, and the additions would harmonise with the original building. As such, the appeal proposal would be less harmful than the fallback scheme. The possibility of the implementation of the fallback scheme, rather than the appeal scheme, would amount to the very special circumstances necessary to outweigh the harm to the Green Belt by reason of inappropriateness and harm to the openness of the Green Belt.
25. However, I cannot be confident that both the appeal scheme and elements of the fallback scheme would not be built. I note the appellants' comments that parts of the fallback scheme, such as the extension to the rear of the property, could not physically be carried out if the appeal scheme was to be implemented. Nevertheless, there remains the possibility that elements of the fallback scheme could be undertaken in addition to the appeal scheme.
26. Were I to allow the appeal proposal to go ahead, with no signed legal agreement or other mechanism to prevent it, there would be nothing to prevent the appellants from constructing parts of the fallback scheme before implementing the appeal proposal. This would result in a greater level of cumulative harm to Green Belt openness than the appeal proposal alone.
27. A planning condition cannot be imposed to achieve the same end as any such condition would only come into force upon the commencement of the new permission. It would not be able to prevent the prior implementation of the fallback scheme, followed by this planning permission.
28. Therefore, as there is no suitable mechanism for my consideration and no means available within the terms of the present appeal which would prevent elements of the fallback scheme from being implemented in the event of the appeal being successful, harm to the openness of the Green Belt from inappropriate development has not been overcome.

Green Belt Balance and Conclusion

29. The Framework requires that substantial weight is given to any harm to the Green Belt, including harm to its openness, and states that very special circumstances will not exist unless harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
30. I have found harm to the Green Belt by reason of the proposed development's inappropriateness and harm to the openness of the Green Belt.
31. Weighed against that are the other considerations set out above. However, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Given that no suitable mechanism currently exists to prevent elements of the fallback scheme being implemented, as well as the appeal scheme, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. The development would thus conflict with the Green Belt protection aims of the Framework and Policy GB1 of the LP.
32. The development would conflict with the development plan taken as a whole and material considerations do not indicate that the decision should be made other than in accordance with the development plan.
33. As a result, the appeal should be dismissed.

L C Hughes

INSPECTOR