The Planning Inspectorate

Appeal Decisions

Site visit made on 28 September 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2020

Appeal A Ref: APP/B5480/C/20/3248168
Land at Farmview, 85A Shepherds Hill, Romford RM3 0NP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr D Coombes against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice, numbered ENF/556/19, was issued on 4 February 2020.
- The breach of planning control as alleged in the notice is without planning permission, the construction of an outbuilding in the rear garden.
- The requirements of the notice are:
  (i) Demolish the outbuilding from the area as indicated hatched black on the attached plan; and
  (ii) Remove all rubble, debris accumulated when taking step 1 above.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)[a] 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.

Appeal B Ref: APP/B5480/W/20/3246541
Farmview, 85A Shepherds Hill, Romford RM3 0NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr D Coombes against the decision of the Council of the London Borough of Havering.
- The application Ref P1497.19, dated 25 September 2019, was refused by notice dated 26 November 2019.
- The development is an outbuilding at the rear of the property.

Decision – Appeal A

1. It is directed that the enforcement notice is varied by the deletion of 'two months' and the substitution of 'four months' as the period for compliance.

2. Subject to the variation, Appeal A is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Decision – Appeal B

3. Appeal B is dismissed.

Appeal A ground (a) and the Deemed Planning Application (DPA) and Appeal B

4. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

5. The main issues are

   - Whether or not the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework), including any relevant effects on the openness of the Green Belt, and with regard to any relevant development plan policies

   - 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 required to justify the proposal.

Reasons

Whether Inappropriate Development/effect on openness

6. There is no dispute between the parties that the site lies within the Green Belt, notwithstanding that the view of the appellant is that the Green Belt boundaries should be amended. Policy DC45 of the Core Strategy and Development Control Policies Development Plan Document (2008) (the Core Strategy and DC Policies DPD) relates to appropriate development in the Green Belt and specifically allows for extensions, alterations and replacement of existing dwellings provided that the cubic capacity of the resultant building is not more than 50% greater than that of the rest of the building.

7. In relation to extensions and alterations, Policy DC45 is broadly in accordance with the restrictive approach adopted by the Framework. However, it is inconsistent with the Framework through specifying a percentage increase as opposed to setting the test as a disproportionate addition over and above the size of the original building. Consequently, given this inconsistency, I have accorded Policy DC45 limited weight.

8. The development which has been carried out is not an extension. However, case law has established that in some cases it is appropriate to regard an outbuilding as an extension to the original building taking account of the distance from, and relationship with the original building and whether it is a normal domestic adjunct.

9. In this case the outbuilding is very close to the house and accessed via a patio which runs along the back of the building. It forms an integral part of the rear garden which is modest in size in comparison with those associated with neighbouring houses. The outbuilding accommodates a swimming pool, which could be regarded as being a normal domestic adjunct in the same way as a gym or home office.

10. Having established that the outbuilding can be assessed in the same way as an extension, the test which it has to pass to be considered not inappropriate development in the Green Belt is that it does not result in a disproportionate

addition to the host dwelling. If the outbuilding is found to be inappropriate development, then the second test of its effect on openness applies. However, if I find that it is not inappropriate then the effect on openness is not a consideration given that it would fall within paragraph 145 of the Framework.

11. Policy DC45 provides some assistance in making a judgement as to whether the outbuilding is a disproportionate addition in its reference to the cubic capacity of the resultant building being not more than 50% greater than that of the rest of the building. Nevertheless, it does not follow that if the 50% proportion is not breached, the outbuilding is acceptable given the test of whether it is disproportionate established by the Framework which postdates the adoption of Policy DC45.

12. Farmview is a substantial detached house which occupies the full width of its plot. The appellants say that the plot has a frontage to the road of 30 metres and a depth of 45 metres. The appellants do not dispute the Council's calculation that the outbuilding would be 336cu.m gross volume and 42.2% of the original dwelling. Clearly this is below the level specified in Policy DC45.

13. The patio to the rear of the house is on two levels adjacent to the outbuilding which is primarily accessed off its upper level. The eaves height of the outbuilding is substantial relative to the lower patio level and it has a dominating presence to one side of the house. The effect of the outbuilding on the site and its surroundings is exacerbated by the fact that it protrudes significantly above the garden wall which runs off the front elevation of the house.

14. The outbuilding takes up a significant proportion of the rear garden and the photographs provided by the appellant show that it is substantially taller than the boundary fence which screens the adjacent public house car park. In comparison with some neighbouring plots Farmview has a much shallower rear garden which results in the outbuilding being located close to the host dwelling and to the boundaries. Whilst the front garden is large, the outbuilding is cramped in its position relative to the location and scale of the footprint of the dwelling.

15. Drawing all of these strands together I conclude that the outbuilding, by virtue of its height and footprint is a disproportionate addition to the house. Consequently, it constitutes inappropriate development in the Green Belt and the effect on openness falls to be considered.

16. The Framework identifies that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and sets out the safeguarding of the countryside from encroachment as one of the purposes of the Green Belt. The Green Belt has both a spatial and a visual dimension.

17. The erection of an outbuilding on a site where there was previously no structure clearly affects openness of the Green Belt as it occupies part of the Green Belt. Furthermore, visual intrusion arises from the height of the outbuilding relative to the boundary wall and fences such that it dominates the space between the house and the boundaries.

18. The outbuilding has a moderate effect both spatially and visually, thus it has a moderate harmful impact on the openness of the Green Belt. The Framework

states that any harm to the Green Belt should be attached substantial weight in decision making.

19. I conclude that the outbuilding is inappropriate development in the Green Belt having regard to the Framework and its effect on the openness of the Green Belt. The development is contrary to Policy 7.16 of the London Plan which requires the strongest protection be given to the Green Belt, in accordance with national guidance and fails to accord with the underlying principles of Policy DM45 of the Core Strategy and DC Policies DPD.

20. I have considered the development in the context of its location in the Green Belt as required by Havering London Borough Residential Extensions and Alterations Supplementary Planning Document (2011).

Other considerations

21. The Appellant refers to a number of other sites in the vicinity which have been the subject of development in the Green Belt.

115a Shepherds Hill and 125 Shepherds Hill

22. Both of these properties are a significant distance from Farmview. The Council considered the effect of the development on the Green Belt in reaching their decisions and granted planning permission for the shed and pitched roof/extension respectively.

23. On the basis of the plans before me, the shed was screened from view by existing development and would not have had the same visual impact as the outbuilding at Farmview. With regard to the pitched roof/extension the Council did not consider the development to be a disproportionate addition to the host dwelling. Therefore, I do not find either of the two cases to be directly comparable to the outbuilding at Farmview.

131 Shepherds Hill

24. This site is also some distance from Farmview. In that case the development was a new dwelling which was considered not to be inappropriate development in the Green Belt. This was because it was regarded as infilling in a village which appears to be the same reason why planning permission was granted for Farmview itself. Again, this development is not directly comparable with that which is the subject of this appeal.

87 and 89 Shepherds Hill

25. These two dwellings lie to the immediate north of Farmview. There are outbuildings within the gardens of these houses which are visible from the road, particularly those adjacent to the boundary between the two houses. The outbuildings are substantial in size and form part of the character and appearance of this part of Shepherds Hill.

26. The Council says that all of these developments have been assessed on their own merits and conditions and that they do not set a precedent. It does not provide any detailed information about any of the cases above and specifically there is nothing to establish the status of the outbuildings at 87 and 89 Shepherds Hill (Nos. 87 and 89) or whether the Council has granted planning permission in respect of them.

27. The appellant is correct in his argument that previous planning decisions are capable of being material considerations. In this case, however, there is no information before me to confirm that the Council has made a planning decision in relation to the outbuildings at Nos. 87 and 89.

28. The outbuildings at Nos. 87 and 89 contribute to the character and appearance of the area, as does the outbuilding which is the subject of the appeals. However, the Council's reasons for issuing the notice and refusing the planning application relate to the impact of the development on the Green Belt not any adverse impact on the character and appearance of the area. The introduction of outbuildings in the positions occupied by those at Nos. 87 and 89 would have a similar impact on the spatial and visual aspects of the Green Belt. However, this is not a matter before me and in the absence of any evidence of the Council allowing those structures whilst taking account of their impact on the Green Belt, the presence of the outbuildings at Nos. 87 and 89 do not weigh in favour of the retention of the outbuilding at Farmview.

29. The appellant says that he was poorly advised and that he was not aware that permitted development rights had been removed by a condition imposed on the planning permission for Farmview. He argues that if permitted development rights had not been removed, substantial extensions could have been carried out without planning permission. However, notwithstanding the existence of the condition, the assessment of whether or not a new extension is disproportionate must be made against the 'original building'. This is defined by the Framework as 'a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally'. I have concluded that the outbuilding is a disproportionate addition.

30. Farmview is bounded on two sides by the Shepherd and Dog public house site. Works are currently taking place there and the appellant says that this includes a car park to be constructed along the rear garden of his property. He says that the outbuilding has the effect of screening noise from the adjacent site including the bottle bank. He also opines the health benefits of swimming, which are enhanced by a building which allows all year round use. Whilst these are not public benefits, they point in favour of the location and size of the outbuilding in terms of improving living conditions.

31. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. At best the lack of objections from local residents, which is highlighted by the appellant, is a neutral factor. Overall, the benefits which I have identified would not clearly outweigh the harm to the Green Belt by reason of inappropriateness. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.

Other matters

32. The appellant says that the Council treated him unfairly and unreasonably in issuing the notice in advance of taking account of his submissions in his appeal against the refusal of his planning application. There was no requirement for the Council to delay service of the notice pending the consideration of the planning application appeal. In any event the two appeals have been linked

which has enabled the submissions on both appeals to be considered comprehensively.

33. The appellant considers that the Council should use its resources more effectively to improve its performance in dealing with planning applications and housing delivery. He also contends that he has been treated differently to other dwelling owners in the area and that the Council has not acted in a fair and reasonable way in its dealings with him. These are both matters for the Council.

Conclusion in respect of Appeal A ground (a) and the DPA and Appeal B

34. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused (Appeal A) and that Appeal B should be dismissed.

Appeal A ground (g)

35. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of two months is too short because this allows insufficient time for the appointment of contractors and demolition of the outbuilding, particularly in view of the Covid-19 pandemic. He requests an extension of the compliance period to 6 months but adds that even the extended timescale may be difficult to achieve.

36. The Council considers that a compliance period of 2 months is reasonable, but this is on the basis that in its view the appellant has had ample time within which to contact builders and formulate actions in the event of the appeals being dismissed. However, this approach does not address the established principle that the appellant is entitled to assume success and that there is a reasonable period for compliance after the notice takes effect.

37. On one hand the appellant has not provided any evidence to support his claim that two months is an insufficient amount of time for compliance with the notice. On the other, the Council's response to the appeal undermines their position that two months is a reasonable period of compliance. On this basis I consider that an extension of the period of compliance to four months is appropriate.

38. For these reasons, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Conclusion

39. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the deemed application, and that Appeal B should be dismissed.

Sarah Dyer

Inspector