
Appeal Decision

Site visit made on 11 November 2015

by **H Lock BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 04 December 2015

Appeal Ref: APP/J1535/W/15/3008001

Tilegate Lodge, Tilegate Road, High Laver, ONGAR, Essex, CM5 0EA

- 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 & Mrs Tony Finch against the decision of Epping Forest District Council.
 - The application Ref. EPF/2514/14, dated 15 October 2014, was refused by notice dated 5 January 2015.
 - The development proposed is change of use of land from agricultural to residential garden land, erection of two-storey rear extension (ground and basement) and associated landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposal (1) is inappropriate development within the Green Belt (GB) for the purposes of planning policy set out in the National Planning Policy Framework (the Framework) and the development plan; (2) would affect the openness of the GB and the purposes of including land within it; and (3) 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 necessary to justify the development.

Background

3. Extensions to the appeal property have commenced. The Council has confirmed that a Certificate of Lawfulness (CL) was issued for a side and rear single storey extension to the building under ref. EPF/0038/11. However, the parties agree that the development under construction has exceeded the limits of the CL, hence the submission of the appeal application. There appear to be some differences to fenestration between what has been built and the proposed plans, but for the avoidance of doubt I have determined this appeal on the basis of the development shown on the plans supplied.

Reasons

Whether the Proposal is Inappropriate Development

4. The Framework confirms that the extension or alteration of a building is not inappropriate in the GB provided that it does not result in disproportionate additions over and above the size of the original building. The glossary to the Framework defines 'original building' as that as existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.
5. The Planning, Design & Access Statement (PDA) confirms that Tilegate Lodge originally had a built footprint of approximately 86 square metres, but that extensions which could be constructed as Permitted Development (PD)¹ would add a further 124.6m². The proposed footprint is stated as 224m². The proposal would therefore more than double the 'above ground' footprint of the original building. Whilst the extended building would have the appearance of a single-storey structure, it would nonetheless extend across a much larger portion of the site than the original building.
6. The Council's Committee report confirms that the proposal is not policy compliant, and that an examination of the plans indicates a more than doubling in volume which could not be considered proportionate. I consider the matter of very special circumstances below, but as a matter of fact and degree, I share the Council's view that the proposal would be a disproportionate addition over and above the size of the original building. The development would therefore constitute inappropriate development that is, by definition, harmful to the GB, in conflict with the aims of the Framework, and Policy GB2A of the Epping Forest District Local Plan Alterations 2006 (LP) which although it predates the Framework is largely consistent with its objectives. In accordance with paragraph 88 of the Framework, this harm would have substantial weight.
7. Having regard to case law², the proposed change of use to garden land does not fall within the scope of the specific exceptions set out in paragraphs 89 and 90 of the Framework, and as such it would also be inappropriate development.

Effect on Openness

8. The appeal building is prominently positioned next to the road and adjacent to the driveway to Tilegate Farm. Although there is roadside planting, the existing building was clearly visible from the public domain at the time of my site visit.
9. The Framework states that the essential characteristics of Green Belts are their openness and their permanence. The attribute of openness is largely related to the absence of buildings or development, and not necessarily to visibility. In this case, the proposed extensions to the dwelling would result in a significant increase in built form at the site that would intrinsically affect the sense of openness, and these would also be perceived due to the prominent position of the building. I note from the submissions that a number of outbuildings have been cleared from the site, and the parties advise that this has increased openness. However, these structures have already been removed, and dealing

¹ By virtue of the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015

² *Fordant Holdings Ltd v SCLG & Cheshire West and Chester Council* [2013]

with this proposal on its own merits the material increase in the size of the dwelling would have its own impact.

10. Although it is a reasonably large area, in principle the proposed extension to the garden would not materially intrude into the landscape. However, the creation of a network of patios and formal lawns, complete with low retaining walls, high wall enclosures, steps and the extensive shingled driveway, would have an unacceptably urban impact in the GB, and would materially reduce the sense of openness at the site. The proposal would conflict with the aims of LP Policy GB4, which supports garden extensions provided that they do not have an adverse effect upon the open character of the landscape.
11. I therefore conclude that the proposal would be harmful to the GB by reason of inappropriate development, but that there would be additional harm to the GB arising from the effect of a development of the scale proposed on its openness, in conflict with the aims of the Framework. I give substantial weight to this harm, in accordance with paragraph 88 of the Framework.

Other Considerations

12. The Framework advises that substantial weight should be given to any harm to the Green Belt, and that 'very special circumstances' will not exist unless the potential harm to the GB by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
13. A factor of some weight in support of the proposal could be the exercise of PD rights. A Certificate of Lawfulness was issued in 2011 (ref. EPF/0038/11) but the associated plans (supplied by the Council) showed a development of much smaller footprint than proposed in this appeal. The appellants refer to the option to construct an 8m deep rear extension as PD, but it is not evident that a prior approval application for such a development has been granted by the Council (the 'Planning History' supplied by the parties confirms that such an application, ref. EPF/1741/13 was refused).
14. Whilst the exercise of PD rights could enable a significant extension to the original two-bedroom dwelling, the proposal represents further expansion. In assessing whether or not a proposal is disproportionate in the context of the Framework, the starting point is the size of the original building rather than the original building plus any PD extensions. Given that the 'fallback' position set out in application EPF/0038/11 was for a materially smaller development than in this appeal, I ascribe it limited weight. Moreover, implicit to a 'fallback' position is the ability to be implemented, which is not evidently the case with an 8m deep extension.
15. The appellants advise that the development would have no greater impact on the openness of the GB. This is addressed above. For the reasons given, I do not find that the increase in footprint would have the limited impact considered by the appellants, albeit I acknowledge that the eaves and ridge heights would remain modest. This assertion therefore has limited weight. The removal of outbuildings and consequent increase in openness has already been secured, and as such this would not justify a substantial increase in the size of the associated dwelling.

16. The proposed basement would be wholly subterranean without any external evidence of its presence, such as lightwells. Although the Framework does not distinguish between extensions above and below ground, the inclusion of a basement would not conflict with the purposes of the GB or its designation. However, the absence of harm caused by the basement would have neutral weight, as it nevertheless forms part of the inappropriate development.
17. The appellants indicate that vacancy at the site has the potential to result in events including vandalism, anti-social behaviour, trespass, security risks and general deterioration of the site. However, the site could be secured and maintained through other less intrusive measures, and these potential risks – for which there is no evidence supplied – have limited weight. Given the works which have already taken place at the site, I am not convinced that the site would be left vacant as suggested by the appellants if the appeal fails.
18. The appeal property is adjacent to the Grade II listed Tilegate Farmhouse. However, given the clear subdivision between the two sites, I do not find that the condition of the appeal site, as a construction site, materially impacts upon the setting of the listed building. As such, the suggested enhancement of the site as a result of this appeal has only limited weight.
19. The appellants advise that there has been substantial engagement with planning officers, and a positive officer recommendation to the Planning Committee. Whilst the rationale for the recommendation is noted, for the reasons set out above I find that the formal decision of the Council was justified. As such I have placed modest weight on this factor.
20. A key argument set out in the appellants' Statement of Case is the decision-making process of the Council's Sub-Committee. However, there are other procedures to pursue concerns about the determination process, and such matters cannot be explored in a Section 78 planning appeal. The appeal must be considered on its planning merits, and as such this argument has little weight in this decision.
21. The appellants advise that the purpose of the proposal is to deliver a family-sized dwelling. However, I have ascribed this limited weight, as it is not evident that this aim may only be secured in a building of the size proposed.
22. The date of the Council's Local Plan policies is a factor of some weight, but the consistency of the policies with the Framework has been taken into account in this appeal, and the proposal has been assessed in the light of the more up to date national policies.
23. The appellants have drawn attention to a number of other sites in the GB, which they cite as precedents for the appeal proposal. However, in the absence of fuller details of the examples I am unable to gauge a comparison with the appeal proposal. As such, I can give these little weight in my assessment.
24. With regard to the proposed change of use of land from agricultural to residential garden land, I note the appellants' view that the land has been used as garden area in excess of ten years. However, whether or not planning permission is required for the use of the land is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the

matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.

Conclusion

25. Having balanced the various matters, other considerations do not clearly outweigh the harm to the GB by reason of inappropriateness, the additional harm to its openness, and the conflict with national planning policy. The very special circumstances necessary to justify the development do not exist, and for the reasons given above I conclude that the appeal should be dismissed.

H Lock

INSPECTOR