The Planning Inspectorate

Appeal Decision

Site visit made on 17 May 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13th September 2023

Appeal Ref: APP/C3430/C/22/3302201
Stourbridge Lodge, Prestwood, Stourbridge DY7 5AQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Sarah Walker against an enforcement notice issued by South Staffordshire District Council.
- The notice was issued on 27 May 2022.
- The breach of planning control as alleged in the notice is Without planning permission, unauthorised operational development on the Land consisting of the construction of a two storey front to rear extension on the western elevation, first floor extension on the eastern elevation, and remodelling of front central elevation with additional dormer extension.
- The requirements of the notice are
  - i) Remove from Stourbridge Lodge the double storey extension to the western elevations extending from front to rear with property as marked on the Plan
  - ii) Remove from Stourbridge Lodge the first floor extension to the eastern elevation as marked on the Plan.
  - iii) Remove from Stourbridge Lodge the front remodelled façade and additional dormer extension as marked on the Plan and rebuild in accordance with the Plan set out in Appendix 1
  - iv) Permanently remove from the Land all materials that arise from compliance with step i) & ii)
  - v) Permanently remove from the Land all materials that arise from compliance with step iii) above
  - vi) Following completion of steps (i), (ii) and (iii) restore Stourbridge Lodge back to its pre-existing condition that it was in before the unauthorised development commenced, and fully in accordance with the plans at Appendix 1, save for the infill extension to the rear of the property, located in the position shaded blue on Appendix 1 that was constructed in excess of four years ago that may be retained.
- The period for compliance with the requirements for steps i) ii) & (iv) is 6 months and for steps iii) v) and vi) is 12 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Decision

1. It is directed that the enforcement notice is corrected and varied by

   a) Deleting the allegation in full and replacing it with "without planning permission, unauthorised operational development at the Land consisting of the construction of a first-floor rear extension to the eastern elevation, a two-storey extension to the western elevation and the remodelling and enlargement at first floor level which has resulted in the creation of a second projecting first floor gable element that has replaced a single dormer window."

b) Deleting the requirements in full and replacing them with

i) remove the first floor rear extension to the eastern elevation and the two storey extension to the western elevation

ii) remove the additional first floor projecting gable element and restore this element to its previous condition by replacing it with a single dormer window in the same position and of the same dimensions that existed previously.

iii) remove all materials arising from compliance with requirements i) and ii) from the Land

2. Subject to the corrections and variations, the appeal 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.

Planning History

3. The Council granted planning permission[1] for a two storey extension to the western and rear elevations to the appeal dwelling in July 2007. A second planning permission[2] was granted that year for a dormer window. Both of these permissions imposed conditions removing permitted development rights under Schedule 2 Part 1 Class A,B,C,D and E and Part 2 Class A and B of the Town and Country Planning (General Permitted Development) (England) Order as amended (GPDO).

Preliminary Matters

4. The appellant considers that the conditions removing permitted development rights which were imposed on the 2007 planning permissions should be removed as part of this appeal. However, the deemed planning application (the DPA) under ground (a) derives from the wording of the allegation. I do not therefore have the power within this appeal to assess or discharge conditions attached to previous permissions.

5. The appellant did not pursue an appeal under ground (g) in her appeal form which relates to the period for compliance with the notice. However, due to the extent and nature of the breach which alleges significant changes to a family home, the parties' views were sought and obtained with regard to timescales arising in the event of the notice being upheld and those views are addressed under ground (g).

The Notice

6. Although the appellant has understood the allegation, the wording of the allegation lacks clarity. The parties were given the opportunity to comment upon the wording and the Council suggested the following "Without planning permission, unauthorised operational development on the Land consisting of the construction of a first-floor rear extension to the eastern elevation, a two-

[1] 06/00966/FUL
[2] 07/01216/FUL

storey extension to the western elevation and the remodelling and enlargement at first floor level which has resulted in the creation of a second projecting first floor gable element that has replaced a single dormer window."

7. The proposed wording is clearer than the original wording. The requirements should flow from the amended allegation. A single requirement can require the removal of the first floor rear extension to the eastern elevation and the two storey extension to the western elevation. A second requirement can provide for the removal of the additional first floor projecting gable element and restoration to its previous condition by replacing it with a single dormer window in the same position and of the same dimensions that existed previously. This amended requirement is more precise and less onerous than the original requirement to rebuild in accordance with an attached plan.

8. A third requirement to remove all materials arising from compliance with the first two requirements from the land is appropriate and is currently part of the notice. I do not consider that the original final requirement is necessary when the development enforced against will be removed and a replacement window will be provided at the front of the property. A further overall requirement to restore the appeal dwelling to its previous condition is potentially confusing. Even amending the requirement to delete the reference to the plan does not provide enough clarity when the development commenced in 2017 and I have no details of when other elements such as the porch were constructed.

9. I do not consider that the amendments to the allegation and the requirements cause injustice to either party as they provide clarity whilst still remedying the breach. I will amend the allegation and the requirements accordingly.

The appeal under ground (a) and the deemed planning application (the DPA)

The Main issues

10. The main issues are therefore:

- whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area,
- whether any 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 development.

Planning Policy

11. The development plan includes South Staffordshire Core Strategy Development Plan Document Adopted 11 December 2012 (the Core Strategy). The most relevant policies are Policies GB1, EQ4 and EQ11. Policy GB1 of the Core Strategy is a specific Green Belt policy which states that extensions or alterations which are not disproportionate to the size of the original building will be permitted. Policy GB1 is broadly consistent with the Framework.

12. Policy EQ4 of the Core Strategy refers to protecting and enhancing the character and appearance of the landscape including trees unless it can be demonstrated that removal is necessary and appropriate mitigation can be achieved. Policy EQ11 of the Core Strategy refers to development respecting local character and distinctiveness including the surrounding development and landscape in accordance with Policy EQ4. It also refers to development contributing positively to the streetscene and surrounding area in terms of scale, volume and massing. Core Strategy Policies EQ4 and EQ11 are not inconsistent with the Framework.

13. The Council has produced a document entitled The Green Belt and Open Countryside Supplementary Planning Document April 2014.(SPD). This provides guidance as to how certain policies including GB1 will be interpreted.

Reasons

14. Stourbridge Lodge is a detached dwelling to the front of the plot with a garden area to the rear and a detached three bay garage with accommodation above along the eastern boundary. The appeal dwelling is on Boundary Lane and is close to the junction with the A449 Wolverhampton Road. There is limited development in the immediate vicinity other than Prestwood Farm which is to the rear of the appeal site and has a variety of farm buildings. There are fields both to the side and opposite the appeal site which reflect the open character of the Green Belt.

Whether the development is inappropriate

15. The Framework states that inappropriate development in the Green Belt is, by definition, harmful and should not be approved except in very special circumstances. The construction of new buildings is inappropriate in the Green Belt unless it falls within one of the exceptions listed in paragraph 149.

16. Paragraph 149 c) sets out the relevant listed exception which refers to ”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”. The Framework defines ‘original building’ as a building as it existed on 1 July 1948 or if constructed after 1 July 1948, as it was built originally[3]. Prior to the grant of the 2007 permission, the ‘original building’ as defined in the Glossary was a modest building of around 89 square metres.

17. The works permitted under the 2007 permission were implemented and added around 96 square metres in the form of a two -storey extension to the western and rear elevations to the original building. The second permission added around one square metre. The appellant calculates the percentage increase to the appeal dwelling to be 32% based on an existing dwelling of 463 square metres with the addition of unlawful extensions is 576 square metres. However, the baseline for the calculation is the ‘original building’ not the dwelling that existed before the development took place. The ‘original building’ is the dwelling of 89 square metres which existed before the 2007 permission was granted. The appellant’s calculation of a 32% increase is clearly inaccurate when the 2007 permissions alone increased the size of the ‘original building’ by over 100%.

[3] This definition is set out in Annex 2 Glossary of the Framework.

18. Although both parties rely upon a current figure of 576 square metres for the current dwelling, neither party has provided any details as to how that figure is arrived at when in 2007 the dwelling with the additions was around 185 square metres. However, the Council estimates that the east and west extensions that form part of the development add on a further 140 square metres on floor space and the appellant refers to a figure of 120 square metres for the whole development.

19. Even using the appellant's more conservative figure of 120 square metres, the development results in a further percentage increase of over 100% of the size of the original building in addition to the increase of over 100% that has already taken place in 2007. The development therefore results in a percentage increase as compared to the original building in excess of 200%.

20. The Framework does not provide a definition of disproportionate. Whilst the SPD refers to all cases being dealt with on an individual basis, it also states that "*anything above the 20-40% range will be likely to be disproportionate simply because it would not be in proportion with the host building and therefore would be likely to have an impact on openness".* However, in this case, the development is significantly outside that range and does result in disproportionate additions over and above the size of the original building.

21. The appeal dwelling has six bedrooms to accommodate a large extended family and the appellant in her statement indicates that in the event of the notice being upheld she would be forced to demolish the house and build a similar sized dwelling. The appellant's view is that there is a 'fall back' position' in that she could demolish the appeal dwelling and build a larger replacement dwelling of between 562 and 613 square metres. Policy GB1 of the Core Strategy does permit as an exception in the Green Belt where "in the case of a replacement building, the new building is not materially larger than the building it replaces." The SPD refers to a range of between 10-20% as guidance whilst also referring to applications being made on a case by case basis.

22. However, a fallback position usually relates to what could be done on the land without any express planning permission if the development is not permitted. There is currently no lawful ability to undertake a replacement dwelling of any size. The appellant has also not explained why the appeal dwelling as it exists in its current form with substantial unauthorised extensions is the baseline for calculating the size of a new replacement dwelling.

23. In the absence of a planning permission for a replacement dwelling, I do not know what the size or design of any replacement dwelling would be. I am therefore unable to assess whether if permission were refused for the development, a replacement dwelling could be constructed that would be less desirable than the development. Any future application would be assessed by the Council, but on the information before me, and in the absence of a planning permission, I am unable to attach any weight to a fall-back position.

24. The appellant has made comparisons with what has been built at Prestwood Farm including a large agricultural storage building without prior approval. Whilst I do not have all the details of the buildings referred to, different exceptions and criteria apply to agricultural buildings in the Green Belt.

25. The development does amount to a substantial enlargement of the dwelling that represents disproportionate additions over and above the size of the

original building. Consequently, the development constitutes inappropriate development.

Openness

26. Reference is made by the appellant to the Lee Valley Judgement [4]. However, that judgement reinforced the principle that once development is found to be not inappropriate, there is no need for a subsequent assessment of the effect of the development on openness or to consider very special circumstances. In this case the development is inappropriate and an assessment of openness and very special circumstances are required.

27. The Framework indicates that openness is an essential characteristic of the Green Belt. Openness has both a spatial as well as a visual aspect. Whilst the first floor element to the rear is not visible from the road, it is visible from Prestwood Farm. The development at the front is particularly prominent and extends the width of the appeal dwelling and brings it closer to the boundary wall, changing the shape and massing of the dwelling. All of the development has a spatial impact in adding built development where it did not previously exist. The visual and spatial impact does reduce the openness of the Green Belt. The development does therefore harm and have a moderate impact upon openness of the Green Belt.

28. Furthermore, whilst the appeal extensions form part of an existing building, they physically extend the footprint of the dwelling and take the built form further towards the surrounding countryside. As such the development also fails to safeguard the countryside from encroachment.

29. I find that the development does represent disproportionate additions over and above the size of the original building. The development does not therefore fall within the exception contained in paragraph 149 c) of the Framework. It is therefore inappropriate development in the Green Belt for the purposes of Policy GB1 and the Framework. There is also a reduction in openness and conflict with one of the purposes of including land within the Green Belt contrary to paragraphs 137 and 138 of the Framework.

Character and Appearance

30. The Council has provided a street view image of the dwelling that existed in March 2009. At that stage, the dwelling had a single central dormer element in white render which extended from the eaves to the apex of the dwelling. The dormer elements to each side were of different sizes but both were significantly smaller than the central element which meant that the original shape and design of the pitched roof was visible.

31. The extent of the alterations and extensions does mean that it is not possible to identify the building that existed prior to the development taking place. The four gable elements to the front all in white render are visually incongruous and over dominant in views from the road. The appellant indicates that the work was intended to rectify an imbalance created by the smaller dormer window to the west. However, the works are extensive and include extending out at first floor level, adding a larger window, adding a fourth two storey front to rear extension to the west and a first floor rear element.

[4] *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1)* [2016] EWCA Civ 404.

32. The extent of the works carried out has significantly altered the external appearance of the dwelling. The character of the appeal dwelling is very different to what existed previously and as well as adding bulk gives the dwelling a prominence it did not previously have. In terms of local vernacular, its size which now dominates the plot together with the overall design appears out of keeping in a countryside location.

33. For the reasons given, I do find that the development does harm the character and appearance of the area. It is therefore in conflict with Policies EQ11 and EQ4 of the Core Strategy which collectively refer to refers to development respecting local character and distinctiveness including the surrounding development and contributing positively to the streetscene and surrounding area in terms of scale, volume and massing.

Other Matters

34. Whilst the Council has asked for a survey of trees, it has not identified which trees it considers to be at risk or provided any substantiated evidence that trees were removed or harmed as a result of the development taking place. I do not therefore consider that on the evidence before me that the development has caused harm to trees.

Other considerations

35. The appeal dwelling has six bedrooms which are occupied by the appellant and her extended family which includes three generations including a grandparent and four children. The appeal statement refers to compliance with the notice resulting in the loss of two bedrooms. I have no details of the internal layout of the appeal dwelling and whether other rooms can be utilised as bedrooms or remaining bedrooms shared. As part of the later ground (g) response, the appellant refers to the family size and dependants, her husband's ill health and being unsure as to how the existing accommodation will be remodelled in the event of the notice being upheld. The appellant refers to building the accommodation in good faith and believing that the work was permitted development. I acknowledge the distress and upset that the appeal process and the consequences of upholding the notice causes the family. I therefore attach moderate weight to the appellants' family circumstances

36. The appellant has sought to rely upon the re-instatement of permitted development rights even though permitted development rights cannot be applied retrospectively. I am unable to attach any weight to this matter as permitted development rights were removed as part of the 2007 permissions.

Green Belt Balance

37. The Framework sets out that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.

38. I have found that the development is inappropriate development and results in moderate harm to the openness of the Green Belt and is in conflict with one of the purposes of the Green Belt. The Framework establishes that substantial weight should be given to any harm in the Green Belt. In addition, I have found

that the development does cause harm to the character and appearance of the area. I then have to consider the other considerations which carry weight and whether they outweigh the substantial harm. I have attached moderate weight to the appellant's personal circumstances and no weight to permitted development rights. The absence of harm to trees is a matter of neutral weight. However, these other considerations do not either individually or cumulatively clearly outweigh the totality of the harm to the Green Belt.

39. Consequently, the very special circumstances necessary to justify the development do not exist and the development conflicts with the Framework and Policy GB1 of the Local Plan and Policies EQ4 and EQ11 of the Core Strategy.

Conclusion on ground (a)

40. Whilst not raised specifically by the parties, I am mindful of the rights of the appellant and her family under the Article 8 of the Human Rights Act 1998 which includes a right to a home. However, this is a qualified right whereby interference may be justified if it is in the public interest and has to balanced with the public interest of protecting the Green Belt. In this case, the interference would be proportionate and necessary. For the reasons given, the appeal on ground (a) should fail.

The appeal under ground (g)

41. An appeal on ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The notice as drafted provided for two different periods of compliance of 6 months and 12 months. However, the Council has subsequently indicated that a 12 month period can be applied to all of the requirements. The appellant has asked for a longer period than 12 months to comply but has not specified how long. She has referred to the need to involve a structural surveyor to advise on how best to proceed as the western extension is built out of steel sections which run through the original property and also to the cost of complying with the notice.

42. Whilst it is acknowledged that it will take some time for the appellant to instruct surveyors and to proceed with the work, I have no evidence to indicate that 12 months will not be long enough to address these issues. I have to balance the personal circumstances of the appellant and her family with the public interest in seeking compliance. Based upon the information I have before me, the Council's proposal of 12 months does appear to be a reasonable period for compliance for all of the requirements. Such a period will allow the appellant time to plan and arrange her finances before commencing work. The appeal on ground (g) succeeds to that extent.

Overall conclusion

43. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR