



Appeal Decisions

Site visit made on 19 October 2009

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

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**Decision date:
30 October 2009**

Appeal Ref: APP/R1845/C/09/2107001

Kimberley Cottage, Worcester Road, Harvington, Kidderminster, DY10 4LJ

- 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 Phillip Terrana against an enforcement notice issued by Wyre Forest District Council.
- The Council's reference is AP09/6017 WFA 1340.
- The notice was issued on 20 May 2009.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey extension with parapet wall above.
- The requirements of the notice are:
 1. Remove the single storey extension and parapet wall above;
 2. Remove from the land all building materials and rubble arising from compliance with requirement (1) above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Appeal Ref: APP/R1845/A/09/2107008

Kimberley Cottage, Worcester Road, Harvington, Kidderminster, DY10 4LJ

- 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 Phillip Terrana against the decision of Wyre Forest District Council.
- The application Ref 09/0091/FULL, dated 3 February 2009, was refused by notice dated 11 May 2009.
- The development proposed is a single storey rear extension (retrospective).

Decisions

APP/R1845/C/09/2107001

1. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

APP/R1845/A/09/2107008

2. I dismiss the appeal.

Reasons**The appeal on ground (a) and the s78 appeal**

3. As the planning merits of both appeals are similar, I have dealt with them together.
4. The appeal property was originally two traditional brick built-cottages which have been combined into a single dwelling and extended on a number of occasions.

Main issues

5. The main issues in these appeals are:
 - i) whether the unauthorised development is inappropriate development in the Green Belt for the purposes of PPG2¹ and development plan policy,
 - ii) whether there would be any other harm to the Green Belt and
 - iii) 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.

Inappropriate Development

6. Paragraphs 3.4 and 3.6 of PPG2, make it clear that the limited extension of a dwelling is not inappropriate development in the Green Belt provided it does not result in a disproportionate addition over and above the size of the original building. This is reflected in Policy GB.1 of the Wyre Forest District Local Plan.
7. Cumulatively, the addition of the most recent extension has led, roughly, to a doubling in the volume and floorspace of the dwelling. Although the appellant points out that Policy GB.1 does not provide a numerical description of what constitutes disproportionate, I do not regard this to be important as it is a matter of judgement by the decision maker based on the facts of each case. The appellant makes reference to permissions granted by the Council for extensions elsewhere. However I am not aware of the circumstances relating to those cases but in any event I have considered this appeal on its own merits.
8. The current extension has gone beyond what may previously have been regarded as acceptable. The question of proportionality is even more apparent as a result of the extensions enveloping much of the original building. Cumulatively the extensions are not subservient in massing, scale and volume to the original dwelling and the latest extension represents a disproportionate addition to the original dwelling. I consider it to be inappropriate development in the Green Belt and I give the resultant harm considerable weight in determining the appeals.

Other harm

9. The size of the extension and the parapet wall is such that they represent prominent additions to the dwelling. PPG2 makes it clear that the most

¹ PPG2, Planning Policy Guidance, Green Belts

important attribute of Green Belts is their openness. The extension reduces openness and consequently harms the openness of the area.

10. The extension is an incongruous addition to the property as it fails to respect the character of the building by virtue of its size, flat roof design with parapets and the high parapet wall at the rear. It conflicts with the intentions behind Policies GB.6 and D.17 of the Local Plan. Policy D.17 refers to extensions being in scale and in keeping with, and subservient to, the original building. The unauthorised extension does not achieve this. The addition of a pitched roof suggested by the appellants would do no more than increase the size and volume of the extension further without addressing the fundamental point about the cumulative extensions being disproportionate to the original dwelling. Similarly, reducing the parapet wall to 4m would not overcome the unsatisfactory design of the unauthorised development.
11. The fact that the unauthorised development may have been constructed with high quality materials does not outweigh the harm caused by its design and scale.

Other Considerations

12. The appellant has offered to demolish an unauthorised conservatory and a small outbuilding in the garden to reduce the cumulative increase in the extensions. However, the demolition of these structures would not in my view have any significant impact and would not offset the harm caused through the unauthorised extension or reduce the harm to openness. I therefore attach little weight to the offer.
13. I have considered the appellants' argument regarding a fallback position arising out of permitted development rights through the GDPO. Whilst it remains a possibility that the appellants may wish to make use of permitted development rights in the future, this would result in a building significantly different in size in comparison to the unauthorised extension. The CLOPUD referred to by the appellant is for a smaller extension not relating to the unauthorised extension subject to this appeal.
14. I have had regard to the cases referred to by the parties in considering the fallback position² and I accept the fallback position represents a material consideration. However, I am satisfied that the difference between the unauthorised extension and what would be permitted under the GDPO or by the CLOPUD is significant and that the harm caused by the unauthorised extension would not be offset by this fallback position.

Conclusions

15. The erection of the unauthorised extension is inappropriate development which causes harm to the openness and visual amenities of the Green Belt. The other considerations of the fallback position and the offer to demolish the outbuilding and conservatory do not clearly outweigh the harm by reason of inappropriateness and to the openness and visual amenities of the Green Belt. Very special circumstances to justify the development do not exist. The

² Samuel Smith Old Brewery (Tadcaster) v SoS and others [2009] EWCA Civ333; Brentwood Borough Council v SoS and Gray [JPL 930] 1996; Spackman v SoSE [1977] 1 ALL ER257.

development is therefore contrary to PPG2, the Regional Spatial Strategy for the West Midlands and to the saved policies of the Worcestershire County Structure Plan and the Wyre Forest District Local Plan relating to development in the Green Belt.

16. For the reasons given above and having had regard to all relevant planning matters, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application and the s78 application.

The appeal on ground (f)

17. This ground of appeal is that the steps required to comply with the notice are excessive and lesser steps would overcome the objection. The appellant considers that the removal of that section of the unauthorised extension that could be part of an extension permitted under the GPDO is unnecessary.
18. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
19. The requirements do not, therefore, exceed what is necessary. The appeal on ground (f) fails.
20. It is a matter for the Council to consider whether it wishes to use the power under s173A(1)(b) to waive or relax any requirement of the notice and it would be up to the appellant to negotiate with the Council whether some of the works might be retained in connection with a lawful development.

P N Jarratt

Inspector