

WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT
DELEGATED REPORT

APPLICATION No:	S6/2013/0233/FP
APPLICATION Site:	45 Kentish Lane

NOTATION:

The site lies wholly within the Metropolitan Green Belt as defined in the Welwyn Hatfield District Plan and Proposals Map.

DESCRIPTION OF SITE:

The application site is located to the north west of Kentish Lane and comprises of a large detached dwellinghouse set about 25m from the frontage behind a front garden, with a U-shaped gravel drive, lawn and flower beds. The house has an integral garage on its north-eastern flank. Behind the house is a garden area, also about 25m deep, where there is a detached garage some 9m from the back wall of the house, and about 5m from the south western plot boundary. The overall size of the plot and immediate garden is about 23m wide by 60m deep. The red outline of the site also includes a parcel of land beyond the immediate curtilage of the dwelling, about 60m wide by 95m deep. There is a timber stables building on this part of the land, built following grant of planning permission in 2006. The applicant also owns the parcel of land fronting onto Kentish Lane immediately to the south west of the No.45 (outlined in blue). On the frontage this has a road access, with a timber gate. This land does not form part of the application site.

The surrounding area and street scene are semi-rural in character consisting of large detached dwellings of individual design set within generously proportioned and spacious plots which form ribbon development to the east of Brookmans Park. To the east of the site on the opposite side of Kentish Lane is open farmland bound by hedgerows and trees. The house is at a slightly lower ground level to the neighbouring property No.47 Kentish Lane. The rear garden slopes gently uphill away from the house and is obscured from the surrounding area by trees within the site.

DESCRIPTION OF PROPOSAL:

This application seeks full planning permission for the erection of two storey side and rear extension, single storey rear extension and loft conversion.

PLANNING HISTORY:

S6/2012/0348/LUP – Certificate of lawfulness for proposed replacement stable block with garage (Refused 16/04/2012 & appeal dismissed 28/09/2012)

S6/2012/0338/LUP – Certificate of lawfulness for proposed erection of two storey rear extension and single storey rear and side extensions, basement, loft conversion incorporating rear dormer window and garage conversion (Granted 20/04/2012)

S6/2011/1999/LUP – Certificate of lawfulness for the erection of the erection of two storey rear extension, single storey side and rear extension, loft conversion, garage conversion, basement, swimming pool and new garage (Refused 3/11/2011)

S6/2011/1567/LUP – Certificate of lawfulness for the erection of two storey rear extension, single storey side and rear extension, loft conversion, garage conversion, swimming pool and garage (Refused 3/11/2011)

S6/2011/0008/LU – Certificate of Lawfulness for a proposed two storey rear and single storey side extension and loft conversion incorporating rear dormer and garage conversion (Granted 17/01/2011)

S6/2010/2281/LU – Certificate of Lawfulness for a proposed rear single storey and first floor extension and side single storey extension and loft conversion incorporating rear dormer and garage conversion (Refused 24/11/ 2010)

S6/2010/0298/FP – Formation of new crossover and driveway and erection of new boundary wall and gates (Refused 18/05/2010)

S6/2006/0641/FP – Replacement of existing small stable block, tack room and hay barn (Granted 11/07/2006)

S6/2004/1104/FP – Erection of one new dwelling (Refused 10/09/2004)

S6/2003/1687/FP – Erection of single storey side extension and demolition of existing utility room (Granted 9/02/2004)

SUMMARY OF DEVELOPMENT PLAN POLICIES:

National Planning Policy Framework, March 2012

Circular 03/09: Costs Awards in Appeals and Other Planning Proceedings

Welwyn Hatfield District Plan 2005

GBSP1: Definition of Green Belt

SD1: Sustainable Development

R3: Energy Efficiency

R11: Biodiversity and Development

RA3: Extensions to Dwellings in the Green Belt

D1: Quality of Design

D2: Character and Context

M14: Parking Standards for New Development

Welwyn Hatfield District Plan, Supplementary Design Guidance, February 2005

Welwyn Hatfield District Plan, Supplementary Planning Guidance, Parking Standards, January 2004

CONSULTATIONS

Welwyn Hatfield Borough Council Landscaping Team: No response (consultation expired 26/03/2013)

Hertfordshire County Council Transport Programmes and Strategy Department: Does not wish to restrict the grant of planning permission subject to suggested informatives.

TOWN/PARISH COUNCIL COMMENTS

North Mymms Parish Council: "North Mymms Parish Council objects on the grounds that the proposal would be over development in the Green Belt and would impinge on its openness."

REPRESENTATIONS

The application was advertised by site notice and neighbour notification letters. One representation was received from neighbouring occupier which stated that the proposal was generally in keeping with the style of the original house and scale of other properties in the road. The neighbour also pointed out that work had started on site and queried whether or not the flat roof on the north east corner could be used as a balcony. It was noted that the plans show two windows and a door on the north east wall at ground floor level which are not shown on the elevation drawing.

DISCUSSION:

The main issues are:

1. Whether the proposal is appropriate development in the Green Belt and the effect of the proposed extensions on the openness of the Green Belt, its character and visual amenity
2. The impact of the proposal on the on the residential amenity of neighbouring properties
3. Parking standards and impact on the highway
4. Other material considerations

1. Whether the proposal is appropriate development in the Green Belt and the effect of the proposed extensions on the openness of the Green Belt, its character and visual amenity

The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. As with previous Green Belt policy, the National Planning Policy Framework (NPPF) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' 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.

The NPPF accepts that within the Green Belt the construction of new buildings should be regarded as inappropriate development. Exceptions to this include buildings for agriculture and forestry; provision of appropriate facilities for outdoor sport and outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The extension or alteration of a building is not inappropriate provided that it does not result in disproportionate additions over and above the size of the original building. This advice is reflected in Local Plan Policy RA3(i).

The NPPF does not qualify what is said about inappropriate development in the Green Belt by any reference to whether or not such extensions would be readily visible or cause any harm to the appearance of the Green Belt. Also, whilst Policy RA3 of the Local Plan deals with visual impact it does so in a separate criterion from that which addresses whether or not a proposal would result in a disproportionate increase in the size of a dwelling. Appearance and visual impact are matters to be

weighed in the balance once a conclusion has been reached on whether or not a proposal would be inappropriate development.

Policy RA3(ii) states that permission for extensions to existing dwellings within the Green Belt will be allowed only where the proposal would not have an adverse visual impact in terms of its prominence, size, bulk and design on the character, appearance and pattern of development of the surrounding countryside. Policy RA3 is also applicable to those outbuildings which require planning permission.

The main issues are therefore:

- (i) Whether or not the proposed extensions would amount to inappropriate development in the Green Belt
- (ii) The effect of the extensions on the openness of the Green Belt, its character and visual amenity
- (iii) Whether there are any very special circumstances to clearly outweigh the by reason of inappropriateness and any other harm

(i) whether or not the proposed extensions would amount to inappropriate development in the Green Belt: The Local Plan makes clear that the judgement as to whether a proposal would result in a disproportionate increase in the size of the original dwelling must take into account any existing or approved extensions but it gives no detailed guidance as to what scale of increase will be considered 'disproportionate'.

The NPPF defines an original building as "*A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally*". However, neither the NPPF or Policy RA3 provide specific guidance on assessing the size of a property and there are a number of ways in which an extended property can be compared to an original building in order to assess whether or not an addition is disproportionate. The net total additional floor area added to the original building is one commonly used indicator, however, each and all other factors, including the proposed additional cubic content, the increase in footprint and any increase in height are also relevant and capable of being taken into account.

Notwithstanding the extensive planning history, the application dwelling is understood to be largely original with the only addition being a modest single storey side extension used as a utility room to the rear of the garage. Following a review of the planning history, the floor area of the original dwelling, as it existed in 1948, has been calculated as approximately 242sqm. Included within the floor area is the attached garage. Following demolition of the attached garage and the utility room, the extended dwelling would have a total floor area of approximately 563sqm, including the accommodation which would be provided within the roofspace. This increase in floor area is equivalent to a 133% over-and-above the original dwelling. In terms of footprint, the dwelling would increase from approximately 121sqm to 231sqm equivalent to a 91% increase over-and-above the original dwelling. By any measure this would be a significant increase therefore it is concluded that the extensions would amount to disproportionate additions over-and-above the size of the original building. The proposal is regarded as inappropriate development in the Green Belt which is by definition, substantially harmful to the Green Belt contrary to the National Planning Policy Framework, March 2012 and Policy RA3(i).

The effect of the proposed extensions on the openness of the Green Belt, its character and visual amenity: In terms of the effect of the proposal on the openness of the Green Belt and its visual amenity, the NPPF identifies in paragraph 79 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The second criterion of Policy RA3 of the Welwyn Hatfield District Plan requires extensions not to have an adverse visual impact on the character, appearance and pattern of development in the surrounding countryside.

The site has a number of trees and hedges on it, however, the application dwelling is still clearly visible from the front boundary and the highway. There are further trees within the rear garden that limit views of the application dwelling from the surrounding countryside. Notwithstanding this, the NPPF does not qualify what is said about extension of existing dwellings by any reference to whether or not such extensions would be readily visible or cause any harm to the appearance of the Green Belt. The effect on openness of the Green Belt is a matter of physical presence rather than visual qualities. The extension would inevitably reduce the openness of the Green Belt by reason of its three dimensional bulk. The impact of the proposed extension on the openness of the site would result in a degree of intrusion in the countryside and a limited amount of harm to one of the purposes of the Green Belt of assisting in safeguarding the countryside from encroachment.

Turning to visual amenity, character and pattern of development, the impact of a proposal is assessed giving regard to the bulk, scale and design of the development and how it harmonises with the existing building and the wider area. In addition to Policy RA3, Policies D1 and D2 respectively require high quality design in all new development and for proposals to respect and relate to the character and context of their location. These policies are expanded upon in the Council's Supplementary Design Guidance (SDG) which requires that residential extensions should be complementary in design and be subordinate in size and scale to the existing dwelling.

The surrounding area and street scene are semi-rural in character consisting of large detached dwellings of individual design set within generously proportioned and spacious plots. There is a mix of dwelling styles along Kentish Lane and, particularly towards the north end of the lane, there are some very substantial mansion-style dwellings. However, at the southern end of the lane, the character is more one of traditional form and scale of dwelling, respecting and integrating with the rural character of the lane rather than seeking to impose on it.

The extended dwelling would be clearly visible from the site frontage and the substantial increase in size and bulk would result in a considerably more massive structure. A large proportion of the increase in bulk would consist of a two storey side extension which would be prominent in views from the highway. In addition, the three dormers to the front elevation would result in additional bulk and mass at a high level. Dormers at the level proposed would give rise to a dwelling that would be instantly recognisable as a three storey property in a streetscene where no other properties appear to exceed two storeys in height. The additional bulk and massing proposed is not considered to be subordinate in size and scale to the existing dwelling and therefore fails to comply with the SPG. The architectural style and materials proposed would not be out of character with the existing dwelling or neighbouring properties, however, the increased scale of the dwelling and the resultant intrusion in to the countryside would fail to maintain the character of the

area contrary to criterion (ii) of Policy RA3 and the objectives of Policies D1 and D2. As a result, the harm in this respect is also afforded a significant degree of weight.

Whether there are any very special circumstances to clearly outweigh the by reason of inappropriateness and any other harm: No very special circumstances have been advanced by the applicant. In addition, there are no circumstances which on the opinion of the local planning authority could amount to very special circumstances required to outweigh the harm caused by reason of inappropriateness.

2. The impact of the proposal on the residential amenity of neighbouring properties

The impact of the proposed development on the residential amenity of neighbouring occupiers is considered in terms of the impact on access to day/sun/sky light, privacy and overbearing impact. Giving consideration to the scale of the proposal and its setting, it is considered that the proposed extension would not have an unreasonable impact on light amenity or the level of privacy afforded to the neighbouring residencies and would not appear visually overbearing.

One representation was received from a neighbouring occupier. The neighbour queried whether or not the flat roof on the north east corner could be used as a balcony. In this respect, no access to the flat roof is shown on either the proposed floorplans or elevations drawings. The use of the flat roof as a balcony would require full planning permission which would be the subject of a separate planning application.

It was also noted that the plans show two windows and a door on the north east wall at ground floor level which are not shown on the elevation drawing. The door and one window would serve the proposed utility/storage room whilst the second windows would serve the kitchen/breakfast area. These windows would provide an outlook towards the flank site boundary and the adjacent property No.47 Kentish Lane. The boundary in this location is well screened by a shiplap fence approximately 1.8m in height in addition to established planting on the side of No.47. As a result, the proposed door and windows would not significantly impact upon the privacy currently enjoyed by the occupiers of the neighbouring property. The proposal is considered to be acceptable in terms of the likely impact on the amenity of neighbouring occupiers.

3. Parking standards and impact on the highway

The submitted drawings show that the extended dwelling would provide a total of six bedrooms. Local Plan Policy M14 requires parking provision for new development to be made in accordance with the standards set out in the Council's Supplementary Planning Guidance (SPG) Parking Standards 2004. The SPG identifies the application site as within Zone 4 where residential dwellings with four or more bedrooms require a maximum of three car parking spaces. In this case, off street parking for more than three cars already exists within the front garden and it is proposed to retain these spaces. Access arrangements would remain unchanged. It is considered that the development would not have an unreasonable impact on the safety and operation of the adjoining highway in accordance with the National Planning Policy Framework; Policy M14 of the Welwyn Hatfield District Plan 2005 and Supplementary Planning Guidance

4. Other material considerations

Sustainable Development: The applicant has completed a sustainability checklist which highlights that the scheme generally responds positively to the topic areas that are required to be considered in accordance with policies SD1 and R3 of the Welwyn Hatfield District Plan 2005 and Supplementary Design Guidance, 2005.

Protected Species: The presence of protected species is a material consideration, in accordance with Natural Environment & Rural Communities (NERC) Act 2006 (section 40), Wildlife and Countryside Act 1981 as well as Circular 06/05.

Protected species such as great crested newts, otters, dormice and bats benefit from the strictest legal protection. These species are known as European Protected Species ('EPS') and the protection afforded to them derives from the EU Habitats Directive, in addition to the above legislation. Water voles, badgers, reptiles, all wild birds, invertebrates and certain rare plants are protected to a lesser extent under UK domestic law (NERC Act and Wildlife and Countryside Act 1981).

In the UK the requirements of the EU Habitats Directive is implemented by the Conservation of Habitats and Species Regulations 2010 (the Conservation Regulations 2010). Where a European Protected Species ('EPS') might be affected by a development, it is necessary to have regard to Regulation 9(5) of the Conservation Regulations 2010, which states:

"a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions."

The Conservation Regulations 2010, (Regulation 41) contains the main offences for EPS animals. These comprise:

- "Deliberate capture or killing or injuring of an EPS"
- "Deliberate taking or destroying of EPS eggs"
- "Deliberate disturbance of a EPS" including in particular any disturbance which is likely –
 - (a) to impair their ability –
 - (i) to survive, to breed or reproduce, or to rear or nurture their young, or,
 - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate, or
 - (b) to affect significantly the local distribution or abundance of the species to which they belong
- "Damage or destruction of a EPS breeding site or resting place" (applicable throughout the year).
 - e.g. bat maternity roost (breeding site) or hibernation or summer roost (resting place)
 - e.g. great crested newt pond (breeding site) or logpiles / piles of stones (resting place)
 - e.g. dormice nest (breeding site or resting place (where it hibernates)

In some circumstances a person is permitted to 'derogate' from this protection. The Conservation Regulations 2010 establishes a regime for dealing with such derogations via the licensing regime administered by Natural England. The approval

of such a license by Natural England may only be granted if three strict "derogation" tests can be met:

- the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative; and
- favourable conservation status of the species must be maintained.

Notwithstanding the licensing regime, the Council as Local Planning Authority (LPA) has a statutory duty to have regard to the requirements of the Habitat Directive and therefore should give due weight to the presence of an EPS on a development site. Therefore in deciding to grant permission for a development which could affect an EPS the LPA should:

- a) Consider whether an offence to an EPS is likely to be committed by the development proposal.
- b) If the answer is yes, consider whether the three "derogation" tests will be met.

A LPA failing to do so would be in breach of Regulation 9(5) of the Conservation Regulations 2010 which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.

The area surrounding the site includes attractive feeding habitats for bats, such as open countryside with grassland, mature woodland, trees, hedgerows, ponds, and watercourse. There is, therefore, a reasonable likelihood of bats foraging within the immediate locality of the application site. Bats may be roosting in the roof space of the property and that the proposed development could result in bats being harmed or killed and their roost site being destroyed.

No evidence has been submitted with the application to show that the site has been inspected for bats and an appropriate survey undertaken. The applicant has failed to demonstrate the development complies with the requirements of The Conservation of Habitats and Species Regulations 2010 and policy SD1 and RA11 of the Welwyn Hatfield District Plan 2005.

CONCLUSION

The size of the proposed extensions in comparison with the original dwelling, as a matter of fact and degree, would result in a disproportionate addition over and above the size of the original dwelling. The proposal is therefore regarded as inappropriate development in the Green Belt. Substantial weight must be given to the harm to the Green Belt by reason of the inappropriateness of the proposed development.

To the substantial harm by reason of inappropriateness must be added the inevitable loss of Green Belt openness locally that addition of the proposed extension would occasion. Taking account of the aim of the NPPF to protect Green Belts from development, it is considered that the significant increase in the size of the building would detract from the openness of the Green Belt and thereby conflict with one of its essential characteristics. The proposed reduction in, and harm to, openness provides significant weight against the proposal.

The additional bulk and massing proposed is not considered to be subordinate in size and scale to the existing dwelling and would result in a more prominent building which would fail to maintain the character of the area and would conflict with criterion (ii) of Policy RA3 and the objectives of Policies D1 and D2. As a result, the harm in this respect is also afforded a significant degree of weight.

No very special circumstances have been advanced by the applicant. In addition, there are no circumstances which on the opinion of the local planning authority could amount to very special circumstances required to outweigh the identified harm to the Green Belt.

Whilst extensions and alterations to neighbouring properties have altered the character of the area to some extent, the scale development at neighbouring properties does not provide robust justification for a proposal which would cause the harm outlined above and which conflicts with local and national policy. More importantly, each proposal must be considered on its own merits in the light of the prevailing Development Plan policies and all other material planning considerations.

There is a reasonable likelihood of bats foraging within the immediate locality of the application site. No evidence has been submitted with the application to show that the site has been inspected for bats and an appropriate survey undertaken. The applicant has failed to demonstrate the development complies with the requirements of The Conservation of Habitats and Species Regulations 2010.

RECOMMENDATION: REFUSAL AND REASON (S)

SUMMARY OF REASONS FOR THE REFUSAL OF PERMISSION:

1. The site lies within the Metropolitan Green Belt where there is a presumption against inappropriate development. The increase in size of the application dwelling resulting from the proposed extensions is considered disproportionate over-and-above the size of the original building and therefore inappropriate development within the Green Belt. Furthermore, as a result of its size, height and bulk, the proposed extension would result in a reduction in the openness of the Green Belt and harm to the character, appearance and visual amenity of the surrounding area. There are no circumstances which on the opinion of the Local Planning Authority could amount to very special circumstances required to outweigh the harm caused by reason of inappropriateness and other identified harm. The proposal is, therefore, contrary to the provisions of Section 9 'Protecting Green Belt Land' contained in the National Planning Policy Framework, March 2012; and criterion (i) and (ii) of Policy RA3 of the Welwyn Hatfield District Plan 2005.
2. The Local Planning Authority considers that the applicant has failed to demonstrate the development complies with the requirements of The Conservation of Habitats and Species Regulations 2010 as no appropriate bat survey has been submitted with the application to confirm whether bats are present in the existing roof of the application property. This is contrary to the requirements Policy SD1 and RA11 of the Welwyn Hatfield District Plan 2005, The Conservation of Habitats and Species Regulations 2010 and The Wildlife and Countryside Act 1981.

Note: The proposal has been considered against the National Planning Policy Framework and Development Plan policies SD1, GBPS1, R3, R11, RA3, D1, D2, M14 of the Welwyn Hatfield District Plan 2005, in addition to the Human Rights Act 1998, which, at the time of this decision indicate that the proposal should be refused for the reason(s) set out above. The decision has been made taking into account material planning considerations and where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework (see Officer's report which can be inspected at these offices).

REFUSED DRAWING NUMBERS

2012/0730 (Existing Location Plan) & 2012/0730 (Existing Plans & Elevations) & 2012/0730 (Proposed Plans & Elevations) & 2012/0730 (Proposed Plans & Elevations) received and dated 18 February 2013

Signature of author..... Date.....