

CHOICE OF PROCEDURE

There are 3 possible choices:- written representations, hearings and inquiries. You should consider carefully which method suits your circumstances before selecting your preferred option by ticking the box.

1. THE WRITTEN REPRESENTATIONS PROCEDURE _____ ✓

This is normally the simplest, quickest and most straightforward way of making an appeal. The 'Householder Appeals Service' written procedure is particularly suited to small-scale developments.

2. THE HEARING PROCEDURE _____

This procedure is likely to be suited to more complicated cases which require detailed **discussion** about the merits of a proposal. At the hearing the Inspector will lead a discussion on the matters already presented in the written statements and supporting documents. Although you may indicate a preference for a hearing, the Inspectorate must also consider that your appeal is suitable for this procedure.

Please answer the question below.

- a) Is there any further information relevant to the hearing which you need to tell us about? If so please explain below. YES NO

3. THE INQUIRY PROCEDURE _____

This is the most formal of procedures. Although it is not a court of law the proceedings will often seem to be quite similar, as the parties to the appeal will usually be legally represented and expert witnesses may be called to give evidence. Although you may indicate a preference for an inquiry the Inspectorate must also consider that your appeal is suitable for this procedure against the indicative criteria.

Please answer the questions below.

- a) How long do you estimate the inquiry will last? No. of days
(Note: We will take this into consideration, but please bear in mind that our estimate will also be informed by others' advice and our own assessment.)
- b) How many witnesses do you intend to call? No. of witnesses
- c) Is there any further information relevant to the inquiry which you need to tell us about? If so, please explain below. YES NO

H. (part one) SITE OWNERSHIP CERTIFICATES

We need to know who owns the appeal site. If you do not own the appeal site or if you own only part of it, we need to know the name(s) of the owner(s) or part owner(s) and be sure that you have told them that you have made an appeal.

You must tick below which of the 'certificates' applies.

If you are the sole owner of the whole appeal site, certificate A will apply:

CERTIFICATE A

A

I certify that, on the day 21 days before the date of this appeal, nobody except the appellant, was the owner of any part of the land to which the appeal relates:

OR

CERTIFICATE B

B

I certify that the appellant (or the agent) has given the requisite notice (see the *Guidance leaflet*) to every one else who, on the day 21 days before the date of this appeal, was the owner of any part of the land to which the appeal relates, as listed below:

Owner's name

Date the notice was served
(this must be within the last
21 days)

CERTIFICATES C & D

C/D

If you do not know who owns all or part of the appeal site, complete either Certificate C or Certificate D enclosed with the accompanying *Guidance leaflet* and attach it to the appeal form.

H. (part two) AGRICULTURAL HOLDINGS CERTIFICATE

We need to know whether the appeal site forms part of an agricultural holding. Please tick either (a) or (b).

(a) None of the land to which the appeal relates is, or is part of, an agricultural holding:

A

OR

(b) The appeal site is, or is part of, an agricultural holding and the appellant (or the agent) has given the requisite notice to every person (other than the appellant) who, on the day 21 days before the date of the appeal, was a tenant of an agricultural holding on all or part of the land to which the appeal relates as listed below:

B

Tenant's name

Date the notice was served
(this must be within the last
21 days)

I. ESSENTIAL SUPPORTING DOCUMENTS

If we do not receive both your appeal documents by the end of the 12 week appeal period, we will not accept your appeal.

You must send the documents listed below with your appeal form. Please tick the boxes to confirm the documents are enclosed.

- | | | |
|---|---|---|
| 1 | A copy of the original planning application sent to the LPA. | ✓ |
| 2 | A copy of the LPA's decision notice . | ✓ |

J. OTHER APPEALS

If you have sent other appeals for this or nearby sites to us and these have not been decided, please give details and our reference numbers.

K. NOW SEND...

● 1 COPY to us at:

The Planning Inspectorate
Customer Support Unit
Room 3/15 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

● 1 COPY to the LPA

Send a copy of the appeal form to the address from which the decision notice was sent (or to the address shown on any letters received from the LPA). There is no need to send them all the documents again, send them any supporting documents not previously sent as part of the application. If you do not send them a copy of this form and documents, we may not accept your appeal.

● 1 COPY for you to keep

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to householderappealform@pins.gsi.gov.uk. If posting, please enclose the section of the form that lists the supporting documents and send it to PO Box 2606, Bristol, BS1 9AY.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number:

APP/C1950/D/11/2152717

Please ensure that a copy of your appeal form and any supporting documents are sent to the local planning authority.

* The Documents Listed Below Were Uploaded With The Appeal Form *

===== GROUNDS OF APPEAL =====

TITLE: Grounds of Appeal 1
DESCRIPTION: Grounds of appeal
FILENAME: Grounds of appeal.pdf

TITLE: Grounds of Appeal 1
DESCRIPTION: Statement award of costs
FILENAME: Statement for award of costs.pdf

===== ESSENTIAL SUPPORTING DOCUMENTS =====

TITLE: 01. A copy of the original planning application sent to the LPA.
DESCRIPTION: planning application
FILENAME: ApplicationForm - orangery.pdf

TITLE: 02. A copy of the LPA's decision notice.
DESCRIPTION: decision notice
FILENAME: decision notice.pdf

**TOWN & COUNTRY PLANNING ACT 1990
SECTION 78**

APPEAL BY MR & MRS B BESTER

**APPLICATION FOR AN AWARD OF COSTS AGAINST WELWYN
HATFIELD BOROUGH COUNCIL IN RESPECT OF ITS DECISION TO
REFUSE PLANNING PERMISSION FOR THE ERECTION OF A SIDE
EXTENSION TO CREATE A NEW ORANGERY WITH BASEMENT AT
WILDEWOOD, KENTISH LANE, BROOKMANS PARK, HATFIELD,
HERTS. AL9 6JG**

**LOCAL AUTHORITY REFERENCE
S6/2011/208/MA**

1.0 BASIS UPON WHICH THE CLAIM FOR COSTS IS MADE

- 1.1 CLG Circular 03/20091 advises that, irrespective of the outcome of a planning appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
- 1.2 In this case the local planning authority has acted unreasonably in terms of its failure to give any weight whatsoever to the fact that it granted planning permission for an identical above ground extension at the appeal property in 2005. The 2005 permission was granted because it met the provisions of all of the relevant policies of the then operative Local Plan and the advice within PPG2 on Green Belts.
- 1.3 The current application was assessed by the case officer under the same Local Plan Policies and in particular Policy RA3 relating to extensions to dwellings in the Green Belt and the same PPG. The provisions of Policy RA3 and the advice in PPG 2 have not changed since 2005.
- 1.4 In her report upon the application and the discussion section that led to her recommendation that permission should be refused the case officer did not once mention the 2005 permission or attribute any weight to it as a material planning consideration in her assessment of the proposed extension. Her failure to do so and the resultant decision to reach a fundamentally different conclusion from that which was reached in 2005 through the application of the same relevant Development Plan Policies is, we believe, indicative of the Council's unreasonable behaviour. Had there been any changes in planning policy or other circumstances that would have had a bearing upon the decision then we would have expected the report to have said so and maybe provided justification for the Council reaching a different decision.

- 1.5 As a direct result of the Council reaching a different decision for a virtually identical development which it had approved less than 6 years ago the appellants have been forced to incur expense unnecessarily by having to contest that decision through the appeal process. Had the case officer given due weight to the previous proposal and the reasons why it was approved then she too would have found that the current scheme would similarly not have an unacceptably harmful impact on residential amenity or the integrity of the Green Belt as it would still be in keeping with the original building in terms of scale and design and still represent only a modest increase in building footprint.
- 1.6 This failure to even acknowledge the relevance and materiality of the 2005 permission amounts to unreasonable behaviour in our view and an award of costs against the Council is therefore fully justified in these circumstances.

**Hertford Planning Service
May 2011**

**TOWN & COUNTRY PLANNING ACT 1990
SECTION 78**

APPEAL BY MR & MRS B BESTER

**AGAINST THE DECISION OF WELWYN HATFIELD
BOROUGH COUNCIL TO REFUSE PLANNING
PERMISSION FOR THE ERECTION OF A SIDE
EXTENSION TO CREATE A NEW ORANGERY WITH
A BASEMENT**

AT

**WILDEWOOD, KENTISH LANE, BROOKMANS PARK,
HATFIELD, HERTS. AL9 6JG**

**LOCAL AUTHORITY REFERENCE
S6/2011/208/MA**

**HERTFORD PLANNING SERVICE
MAY 2011**

GROUNDS OF APPEAL

1.0 THE APPEAL SITE

- 1.1 Wildewood is a large detached dwelling standing in landscaped grounds of around 1.6 hectares. The house is located roughly centrally within the plot, which tapers to a point at its northern end, where it meets the junction of Kentish Lane with Wild Hill, in a predominantly rural part of the District.
- 1.2 The dwelling was built pursuant to a planning permission granted in 1997 as a replacement for an existing dwelling, glasshouses and barns that had previously stood on the site. It has a roughly rectangular plan form, with a single storey extension on its south-western side that formed part of the original permission and a basement. In June 2005 planning permission was granted for the erection of a single storey extension on the north-eastern side of the dwelling to form an orangery. That extension, which balanced the plan form and appearance of the dwelling, was not constructed within the 5 year time limit imposed upon the 2005 permission but, as we shall demonstrate throughout this statement, this permission has a material bearing upon the outcome of this appeal, as the application to which it relates is essentially a renewal of the above ground element of that earlier permission.
- 1.3 The main entrance into the site is from the west, via a gravel driveway off Kentish Lane. The house stands at a slight angle across the site with its main entrance and orientation facing northwards towards the apex of its curtilage, with its formal grassed and landscaped grounds running southwards.

2.0 THE PROPOSED DEVELOPMENT

- 2.1 The development involved in the appeal is the erection of what externally would be a single storey side extension to create an orangery. It would be added to the north-eastern end of the dwelling and measure 8.6m long and 4.1m wide, with a parapet wall surrounding a glazed pitched lantern roof. It would be constructed with white rendered walls to match the existing dwelling and would mirror the size, scale, design and external appearance of the single storey element of the original dwelling. The extension has been designed with a basement to link with the existing basement which spans the length and depth of the original dwelling.
- 2.2 The details of the extension are shown on drawing no 10424/P/002A and whilst our practice was not responsible for securing the planning permission to add an orangery to the existing dwelling in 2005, the size, scale, design and overall external appearance of that which is now proposed are, to all intents and purposes, identical to the 2005 scheme. To enable the necessary comparisons to be made, and because the materiality of the 2005 proposal and the terms under which it was permitted are now material to the outcome of this appeal, we have included a copy of the previously permitted plan (CLS 173/504) with this statement, together with a copy of the formal decision notice dated 30/06/2005.

- 2.3 At this point in the statement and before we move on to examine the Council's rejection of this proposal, we should point out that as the 2011 application has, in effect, sought to renew the 2005 permission for the orangery and because we believe that there has been no change in planning policy or any other circumstances since 2005 that would indicate that permission should not again be granted we intend to accompany the appeal with a full claim of costs against the Council in this particular case.

3.0 THE COUNCIL'S DECISION

- 3.1 Having assessed the proposal the Council concluded that permission for the orangery should not be 'renewed' on the basis that it would result in a disproportionate extension, not to the size of the new dwelling but to the size of the dwelling that once stood on the site. In order to gain a full appreciation of how this assessment was carried out and why it was concluded that the application should be rejected we have examined the case officer's delegated report, before accepting our client's instructions to lodge this appeal. On the basis that it will comprise the Council's statement of case, we shall now look in detail at the report that led to the recommendation of refusal, to assess whether or not that recommendation was justified.
- 3.2 Based upon the case officer's report, we consider that the grounds upon which the appeal should be lodged are threefold. The first and fundamental ground is that the case officer has failed to acknowledge anywhere in her identification of the main issues the fact that an identical extension in terms of size, scale, design and external appearance had been permitted in 2005. Whilst this permission lapsed in June 2010, it should, we contend, have been identified as the principal material planning consideration under which the 2011 application was assessed and decided. Nowhere in her report does the case officer cover this issue.
- 3.3 The second ground of the appeal arises only if the Inspector considers that the existence of the 2005 permission was not material to the outcome of the 'renewal' application. If that proves to be the case then we shall examine whether or not the Council was correct to relate the size of the extension to the size of the dwelling that once stood on the site, which it considers should be regarded as the original dwelling for Green Belt purposes, rather than the dwelling as it now stands.
- 3.4 The third ground, assuming that the first two fail, is that the grant of planning permission for the extension in 2005 represents the very special circumstances that justify permission being granted for this extension, which when viewed externally is of an identical size, scale, design and external appearance to that which was approved in 2005.

3.5 Comparisons with the 2005 scheme

- 3.5.1 Whilst the latest application incorporates a basement to link with the existing, which was not included within the 2005 scheme, that element would have no

effect whatsoever upon the external appearance of the extension or upon the openness of the Green Belt and is therefore inconsequential in terms of making physical and visual comparisons between the two applications.

- 3.5.2 Had the case officer looked in detail at the 2005 scheme, and in particular the formal decision notice that was issued on 30th June 2005, she would have seen that the Council's reasons for approving the orangery at that time were stated to be as follows:

"It is considered that the proposed development does not have an unacceptably harmful impact on residential amenity or the integrity of the Green Belt as the development is in keeping with the original building in terms of scale and design and represents only a modest increase in building footprint."

The decision notice then went on to confirm that the relevant Development Plan policies against which the 2005 application was judged were:

"Hertfordshire Structure Plan Review 1991- 2011: NONE Welwyn Hatfield District Plan 2005: D1, D2, RA3 Supplementary Design Guidance: Residential Design Guidance."

- 3.5.3 Whilst the relevant policies do not mention PPG2 on Green Belts, as that was published in a revised version in January 1995 it is safe to assume that it would have been relevant to the Council's consideration of the 2005 application.
- 3.5.4 It will be noted that in refusing to permit the 2011 proposal the reason given by the Council is that the development would fail to comply with the requirements of Policy RA3 of the Welwyn Hatfield District Plan 2005 and PPG2. So, whereas the orangery that was proposed in 2005 met the provisions of Policy RA3 and PPG2, the Council has changed its mind in 2011 and considers that an orangery of identical above ground size, external appearance and design does not now meet the same provisions of the same policy or PPG2. This, we suggest, is both unreasonable and unjustified.
- 3.5.5 Had there have been any changes in planning policy, PPG/PPS's or other any material considerations since 2005 that could or should have indicated that a different decision be made upon the 2011 application then we would have expected the case officer to have covered them in her report. She did not, even though she would have noticed from within the Planning History section of her report that permission for an orangery to the side of the building was granted in June 2005.
- 3.5.6 On the basis then that there had been no material change in planning circumstances between 2005 and 2011 that indicated to the Council that a different decision upon what was effectively an application for the same development should be taken, we contend that the 2011 application should also have been permitted, for exactly the same reasons which were given for the approval of the 2005 orangery. Both applications have been considered

under the same policy of the Local Plan (RA3) and, like the reasons for the approval of the 2005 application, the renewed extension would not have an unacceptably harmful impact on residential amenity or the integrity of the Green Belt as it would (still) be in keeping with the original building in terms of scale and design and (still) represents only a modest increase in building footprint.

3.6 Green Belt considerations

- 3.6.1 If it is considered that the Council had every right to re-assess the proposed extension differently from the 2005 extension then we further contend that it would still cause no harm to the openness of the Green Belt. In her report the case officer acknowledges that the extension is modest in size and does not impact upon either the character of the dwelling or its surroundings. She also confirms that it would have no impact upon the amenities of any neighbouring property. Her only 'issue' relates to what constitutes the 'original' dwelling for the purposes of assessing whether or not the extension would result in a disproportionate increase in the size of the original dwelling.
- 3.6.2 The first and significant point to make here is that in permitting the extension in 2005 the Council stated on the formal decision notice that that permission related to an extension that was in keeping with the "original" building. We presume then that in 2005 the Council considered the building that existed at that time to be the 'original' dwelling and not that which originally stood on the site.
- 3.6.3 In her assessment of the latest application the case officer takes a different approach and compares the modest floorspace of the side extension to the existing dwelling with the floorspace of a dwelling that once stood on the site. Neither PPG2 nor Policy RA3 of the Local Plan, which deals with extensions to dwellings in the Green Belt, define what is meant by the original dwelling and there has been considerable debate through the Courts in recent years about the term original building, as defined in paragraph 3.6 of PPG2. The prevailing view of the Courts is that where Local Plan policies are silent upon the definition of the word 'original', the term could only apply to a building that exists. This was the High Court's view in a case in 1997, (*Sevenoaks D.C. v. Clarke*) where it was found that an Inspector had rightly identified a replacement dwelling as the original, not that which it replaced. He allowed an extension accordingly.
- 3.6.4 In *Ascot Wood Ltd. V. SSETR* in 2000 it was judged that there were very compelling reasons for accepting that the term "original building" in paragraph 3.6 of PPG2 could only apply to a building which exists. This judgement was also referred to by an Inspector who allowed an appeal in the Essex Green Belt, concluding that the existing building should be judged as the 'original' dwelling under PPG2.
- 3.6.5 In all of the cases that we have researched in an attempt to identify whether or not disproportionality should be judged against an 'original' dwelling or its

replacement it is apparent that it is for Development Plans to make it clear what approach should be taken in such cases. The 2005 Welwyn Hatfield Local Plan is silent in this respect. In the absence of any clarity within the Local Plan, and setting aside the 2005 extension and the basis upon which it was approved, we consider that a pragmatic approach is called for here. If such an approach is taken then we find it hard to understand how a modest orangery attached to a large modern dwelling can be related to the unknown floor plans of a single storey cottage that no longer exists, in order to establish whether or not the openness of the Green Belt would be harmed.

- 3.6.6 If, as we believe should be the case here, the floorspace of the orangery is related to that of the existing dwelling and not the original cottage that once stood on the site, then using the case officer's figures it would amount to an increase of just under 7%. Such an increase is clearly not disproportionate to the dwelling. Indeed by replicating the extension at the other end of the building the proposal would provide the dwelling with symmetry and a degree of proportionality that was missing when it was first built.

3.7 Very Special Circumstances

- 3.7.1 In her report the case officer argues that it is for the applicant to show why permission should be granted. Had we, as the applicant's agents, known that the case officer was going to ignore the 2005 permission for the same basic development then we would have put that permission forward as providing the special circumstances that she required.
- 3.7.2 In the event, we are obliged to put the 2005 permission forward now as the very special circumstances why a further permission should be granted, given that the planning considerations that led to the side extension being approved in 2005 have not changed.

4.0 SUMMARY

- 4.1 In determining this application the Council has disregarded the fact that an extension of identical size, scale, design, external appearance and proportions was permitted in 2005. That orangery extension was considered to be acceptable under the provisions of PPG2 and Policy RA3 of the Local Plan. The failure to regard that permission and the circumstances under which the 2005 application was approved as a material consideration in the determination of this 2011 application is, we believe, a fundamental flaw in the Council's decision. Had the 2005 approval been given the weight it deserved and given that there has been no change in circumstances, we further contend that planning permission should and would have been granted, effectively renewing the 2005 permission.
- 4.2 Even if the 2005 decision is afforded no weight at all, the Council's reliance upon assessing the extension against the floorspace of a dwelling that no longer exists is unsustainable, when it has no clear Local Plan policy advice upon what constitutes the 'original' dwelling for the purposes of applying the

provisions of Policy RA3. In these circumstances we contend that the Courts have held that the original dwelling for the purposes of PPG2 must be judged to be the replacement dwelling as it now exists, and not that which it replaced. The new dwelling has effectively signalled a new chapter in the planning life of the appeal site.

- 4.3 Although in this case we are doubtful whether or not it is necessary to advance very special circumstances to justify why permission should be granted, should we need to do so then we consider that the 2005 permission and the lack of any changes to Policy RA3 or PPG 2 since that decision was taken provide such circumstances. As with the 2005 scheme, the proposal continues to comply with PPG2 and Policy RA3 and during her assessment of the application the case officer should have discovered that the Council shared that view in 2005.
- 4.3 Having regard to all of the foregoing considerations we contend that the Council's decision to permit the side extension to Wildewood in 2005 was soundly based and, as there has been no change in circumstances since that decision, this latest application to build an identical above ground extension should similarly have been permitted. In the words of the 2005 permission it *"does not have an unacceptably harmful impact on residential amenity or the integrity of the Green Belt as the development is in keeping with the original building in terms of scale and design and represents only a modest increase in building footprint."* With this in mind, the Inspector appointed to determine the appeal is respectfully requested to agree and to grant a further planning permission for this side extension accordingly.

Hertford Planning Service
May 2011