

# Appeal Decision

Site visit made on 6 March 2017

**by P Eggleton BSc(Hons) MRTPI**

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

**Decision date: 20<sup>th</sup> March 2017**

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**Appeal Ref: APP/J1915/D/17/3166395**

**The Walled Manor, St Marys Lane, Hertingfordbury,  
Hertfordshire SG14 2LX**

- 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 R Taylor against the decision of East Herts Council.
  - The application Ref 3/16/1705/HH, dated 26 July 2016, was refused by notice dated 13 October 2016.
  - The development proposed is a subterranean extension to form basement with swimming pool, parking area and two pedestrian glazing panels.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are whether the proposal would amount to inappropriate development within the Green Belt; whether there would be any other harm to the Green Belt; and whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

## Reasons

3. The proposal would result in a large subterranean basement under part of the enclosed garden of this dwelling. The Council's concern is that the proposal represents inappropriate development within the Green Belt. Policy GBC1 of the East Herts Local Plan Second Review 2007 advises that permission will not be given for inappropriate development unless very special circumstances exist that clearly outweigh the harm by reason of inappropriateness or any other harm. It accepts limited extensions or alterations to existing dwellings, in accordance with Policy ENV5, as not being inappropriate.
  4. Policy ENV5 accepts extensions within listed settlements providing they would not harm the character and appearance or amenities of the dwelling or adjoining dwellings. Outside these settlements, in addition to the above, any addition should be of a scale and size that would itself, or cumulatively with other extensions, not disproportionately alter the size of the original dwelling nor intrude into the openness or rural qualities of the area. It should also be considered against Policy ENV6 which sets out design considerations.
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5. The *National Planning Policy Framework* advises that new buildings should be regarded as inappropriate unless they fall within an exception set out in paragraph 89. This includes extensions of buildings provided that they do not result in disproportionate additions over and above the size of the original building. The Council's policies have clear similarities with those of the *Framework*, particularly with regard to the matters that are relevant to this development. However, they also differ from its requirements in a number of ways. I therefore afford moderate weight to them and greater weight to the requirements of the *Framework*. The Council's emerging District Plan is at an early stage but in any event, it requires that decisions be made in accordance with the *Framework* with regard to the Green Belt.

*Inappropriateness and any other harm*

6. The subterranean extension would accommodate parking for nine cars, a motorbike display area and a swimming pool. The Council advise that the floor space within the proposal would be in the order of 462sq.m. It also advises that the floorspace of the original dwelling was 400sq.m and this has already been extended by 65.5%. It is suggested that the increase overall would be 210%.
7. The above figures do not appear to be in dispute. In any event, the scale of the additional works when considered against the original size of the dwelling cannot reasonably be considered to be proportionate additions over and above the size of the original building. The proposal therefore represents inappropriate development in the Green Belt.
8. Although subterranean, the proposal would reduce the openness of the Green Belt as the works would result in development over a large area that has not previously been developed. It would therefore conflict with the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. I accept however, that as the works are closely related to the house; are within the garden area which itself is entirely enclosed by high walls; and would be subterranean with the open garden area reinstated above, the reduction in openness and the harm from it would be extremely limited and not significant overall.
9. Given the nature of the works, the proposal would not result in any harm to the character or appearance of the area or the amenities of adjacent land users.

*Very Special Circumstances*

10. It is accepted that in most respects, there would be no significant harm as a result of the proposal because of its subterranean character and position within the walled garden. This is however not a positive matter to be weighed in favour of the development but a matter that does not weigh against it. The proposal would provide the appellant with additional accommodation that would enhance the enjoyment of the property. The personal circumstances of individuals can weigh in favour of a proposal but no specific evidence has been put forward in this case and very limited weight can be afforded to the aspirations of the applicant with regard to this particular development.
11. The appellant makes reference to a recent permission which accepted a smaller subterranean extension at this property. The Council concluded that the

underground extension would be inappropriate development. The appellant advises that the Council accepted that the removal of the need for any above ground extensions, allowing the property to be extended without harming the openness of the Green Belt or falling foul of any of the purposes of including land with the Green Belt, represented very special circumstances that outweighed the harm from inappropriateness.

12. My understanding is that the original permission for the house removed permitted development rights for extensions and garden buildings. The planning history indicates that the Council successfully resisted a rear and side extension in 2015. A swimming pool was permitted but this permission has expired. Allowing underground accommodation may reduce the pressure for above ground development but I am not clear that without the permission granted by the Council, significant harm would have resulted. I accept that I do not have the full details of the determination that was made by the Council at that time.
13. Notwithstanding the above, as the Council has accepted a subterranean development of 177sq.m, this is a matter that weighs in favour of allowing a similar development. The approach to decision making should also be consistent. Although I do not have the full details, the Council's previous view as to the weight to be afforded to the benefits of the approved basement when balancing the considerations in support of the development against the substantial harm from inappropriateness, also provides weight in favour of a similar development. I am unclear however, what additional benefit there would be to a greater scale of development, other than to the living conditions and aspirations of the appellant.
14. Reference has been made to the proposed use of the basement and whether it would remain ancillary or incidental to the use of the dwelling house. A change of use has not been sought and an alternative use would require a different assessment. The lawfulness of the proposed use is not a matter before me and evidence as to this has not been submitted. I have therefore assessed the proposal on the basis of the details provided.

### *Conclusions*

15. Substantial weight must be given to the harm from inappropriate development. Although I accept that when compared to the previously permitted basement, there would be no significant additional harm to openness and no other harm would result, the harm from inappropriateness would remain. I am not satisfied that there would be any further benefits to those previously accepted, other than those relating to the living conditions of the appellant. I do not accept that the harm from inappropriateness, in relation to a smaller basement, should be considered as being exactly of the same magnitude as for a larger basement, as appears to be suggested by the appellant. It would in my view, increase with the increasing scale of development beyond that accepted as not being inappropriate by the *Framework*.
16. Overall, there are a number of considerations that do not weigh significantly against the proposal such as the very limited impact on openness; the very limited conflict with the fundamental aim of Green Belt policy; the lack of any visual harm or harm to amenities. However, of more importance are the

considerations that weigh in favour of the proposal, such as the previous permission; the previous approach of the Council, including the potential for a reduction in pressure for above ground development; and the benefit that can be afforded to the aspirations of the appellant. I conclude, that these considerations when taken together are not sufficient to clearly outweigh the substantial harm that would result from inappropriateness.

17. The *Framework* is clear 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. As the considerations in this case do not clearly outweigh the harm from inappropriateness, the very special circumstances necessary to justify the development do not exist.
18. The proposal would be contrary to the requirements of the *Framework* and would also conflict with the Council's policies. I therefore dismiss the appeal.

*Peter Eggleton*

**INSPECTOR**