
Appeal Decisions

Site visit made on 31 October 2016

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 14 November 2016

Appeal A Ref: APP/P4415/C/16/3153708

The Bungalow, Penny Hill Lane, Rotherham, S66 9BQ

- 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 Jason Turner against an enforcement notice issued by Rotherham Metropolitan Borough Council.
- The enforcement notice was issued on 29 June 2016.
- The breach of planning control as alleged in the notice is the erection of a replacement bungalow, shown edged blue on the land, with a roof height of approximately 8 metres in contravention of condition 1 of planning permission RB2007/2307.
- The requirements of the notice are to reduce the main roof height to 6.4 metres and the roof height of the front gable wall feature to 6.2 metres, in accordance with drawing number TUR/PENBUNG/07/3 approved under planning permission RB2007/2307.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Appeal B Ref: APP/P4415/W/16/3151127

The Bungalow, Penny Hill Lane, Rotherham, S66 9BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Jason Turner against the decision of Rotherham Metropolitan Borough Council.
- The application Ref: RB2016/0044, dated 11 January 2016, was refused by notice dated 18 March 2016.
- The application sought planning permission for demolition of existing bungalow and erection of replacement bungalow without complying with a condition attached to planning permission Ref: RB2007/2307 dated 31 January 2008.
- The condition in dispute is No.01 which states: The permission hereby granted shall relate to the area shown outlined in red on the approved site plan and the development shall only take place in accordance with the submitted details and specifications as shown on the approved plans (as set out below) except as shall be otherwise agreed in writing by the Local Planning Authority. (Drawing numbers TUR/PENBUNG/1-A and TUR/PENBUNG/07/3)(received 7 December 2007).
- The reason given for the condition is: To ensure that the development is carried out in accordance with the approved/amended plans.

Summary of Decision: The appeal is dismissed.

Preliminary matter

1. At the appointed time for my site visit, no representative appeared on behalf of the Council. After waiting a short period, I indicated to the appellant that, with his agreement, I could carry out my inspection unaccompanied. He agreed to this, retired to a discreet distance and I carried out my site visit.

Appeal B

2. The appeal site is located in the Green Belt, in open countryside between the villages of Ulley and Brampton en le Morthen. It comprises a plot of land fronting Penny Hill Lane on which a new bungalow has been built to replace a 1960s bungalow. On an adjoining part of the site are a hay barn and a stables building. The replacement bungalow was granted planning permission by the Council in January 2008 (ref: RB2007/2307). The bungalow as constructed complies with the approved plans in terms of its siting, footprint and internal layout. However, the roof has been built with a much steeper slope, with the result that the main ridge height has been increased by some 1.6m and the height of the projecting front gable by some 1.2m.
3. The main issue is whether the proposal would be inappropriate development in the Green Belt for the purposes of development plan policy and the National Planning Policy Framework (the Framework); the effect of the proposal on the openness of the Green Belt and on the character and appearance of the area; and if the proposal would be inappropriate development, 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 it.
4. At the time of the 2008 permission, the Council had no published guidance for the size of replacement dwellings in the Green Belt but, as a rule of thumb, allowed an increase of up to 33% in floor area, to align with its guidance on extensions to existing dwellings in the Green Belt. National policy was set out in PPG2: Green Belts, 1995. It stated that the construction of new buildings in the Green Belt was inappropriate, with certain exceptions. The relevant exception allowed limited extension, alteration or replacement of existing dwellings. However, it stated that the replacement of existing dwellings need not be inappropriate, providing the new dwelling was not materially larger than the one it replaced; 'materially larger' was not defined.
5. Turning to current policy, the Core Strategy (adopted September 2014) at Policy CS4 states that land within the Rotherham Green Belt will be protected from inappropriate development as set out in national planning policy, ie the Framework, issued March 2012. Save for the reference to replacement 'buildings' rather than 'dwellings', the policy is very similar to that of PPG2 in stipulating that the new building is not materially larger than the one it replaces. The Framework also does not define 'materially larger' but the Council's Interim Planning Guidance – *Development in the Green Belt* indicates that replacement buildings should not exceed the volume of the existing building by more than 10%.
6. I do not agree with the appellant that the relevant assessment of 'materially larger' is by way of comparison with the approved building. The original bungalow is the one that was replaced and this must be the relevant baseline against which the present building is judged.

7. The 2008 approved replacement bungalow would have resulted in an increase in volume of some 55% and the Council must then have assessed that as being not materially larger than the original. However, the present building has resulted in an increase of some 71%. Moreover, it is significantly higher and more imposing than the approved scheme and therefore further reduces the openness of the Green Belt. Taking both the additional volume and height into account, it is my view that the existing bungalow is materially larger than the original building which it replaced, whether judged against the relevant policies of 2008 or of the present day. Accordingly, it is an inappropriate form of development in the Green Belt and, by definition, harmful to the Green Belt. Such development should not be approved except in very special circumstances.
8. The appellant claims that the shell of the present building was in place by 2009 and that it was not challenged by the Council for a number of years. However, he has not submitted any written or photographic evidence to that effect and no date is given for the Building Regulations completion certificate to which reference is made. Accordingly, I can give this matter little weight. In any event, the appellant is professionally represented and, had there been evidence of substantial completion more than 4 years ago, I would have expected an appeal on ground (d) to have been made against the enforcement notice.
9. The appellant has pointed to the high cost of complying with the notice by reducing the roof and the gable to their permitted dimensions. However, that carries little weight as he must have been aware of the very significant discrepancy between the drawings approved by the Council and the bungalow that he actually built. He must also have been aware of the Council's objection to a larger dwelling, given that he made other applications in 2007 and 2008 for larger dwellings that were resisted by the Council. Any works which differ from those shown on the approved drawings were carried out entirely at his own risk.
10. The appellant has also pointed out the local context of his barn and stables, which together amount to a significant volume of building. However, the bungalow is detached by some distance from these buildings and must be judged on its own merits.
11. In conclusion, the bungalow as built is an inappropriate form of development in the Green Belt. The additional height and volume compared to the approved scheme unduly diminishes the openness of the Green Belt. The development therefore conflicts with the development plan and national policy. The material considerations set out by the appellant are not sufficient to outweigh the harm to the Green Belt by way of inappropriateness and loss of openness so as to amount to the very special circumstances necessary to justify the development. Appeal B therefore fails

Appeal A, ground (g)

12. To my mind, the building works required to conform to the requirements of the notice could be carried out very comfortably within the stipulated 6 months period. However, I recognise that the timing of this decision letter coincides with the onset of winter, in which adverse weather conditions may hamper progress. I also recognise that some time may be required to arrange the necessary finance. Accordingly, I consider it appropriate to extend the

compliance period to 9 months. To that limited extent, the appeal on ground (g) is successful.

Formal Decisions

Appeal A

13. The enforcement notice is varied by extending the time for compliance to nine months from the date on which the notice takes effect. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

14. The appeal is dismissed.

B.S. Rogers

Inspector