
Appeal Decision

Site visit made on 7 February 2017

by Caroline Jones BA (Hons) DipTP MTP MRTPI

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

Decision date: 7th March 2017

Appeal Ref: APP/R1038/W/16/3161210

The Beeches, Crow Hole, Barlow, S18 7TJ

- 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 and Mrs Fraser Ludlam against the decision of North East Derbyshire District Council.
 - The application Ref 16/00491/FL, dated 26 April 2016, was refused by notice dated 28 June 2016.
 - The development proposed is demolition of existing outbuildings and construction of new garage with home office in roof space and single-storey dependant relative accommodation.
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Decision

1. The appeal is dismissed.

Main Issues

1. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the proposal on the openness of the Green Belt.
 - Would any harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether or not the proposal would amount to inappropriate development

2. The appeal site lies within the Green Belt. The site comprises a detached property within a generous plot. A large outbuilding is located to the rear of the property and some smaller outbuildings and an area of hardstanding are situated at the rearmost part of the garden. The site already benefits from permission for the demolition of the large outbuilding and its replacement with a new garage with home office and single storey dependent relative accommodation¹. The appeal scheme proposes an identical building to that

¹ Planning application ref: 14/00385/FUL

- already approved albeit located approximately 80 metres to the rear of the dwelling at the rearmost part of the garden.
3. Section 9 of the Framework attaches great importance to the Green Belt, the essential characteristics of which are its openness and permanence. Paragraph 89 of the Framework establishes the construction of new buildings as inappropriate in the Green Belt subject to a list of exceptions. Bullet point 4 of paragraph 89 allows for the replacement of a building, providing the new building is in the same use and not materially larger than the one it replaces.
 4. Policy GS2 of the North East Derbyshire Local Plan (2005) (NEDLP) similarly seeks to protect the Green Belt. Whilst the policy predates the Framework, it is generally consistent with the aims of the Framework with regard to development in the Green Belt.
 5. Notwithstanding the Council's assertions regarding the use of the building which I will return to below, the appeal statements of both parties were predicated on the proposal being a replacement of the extant permission. However, in light of the judgement in *Athlone House Ltd v SSCLG*², an unimplemented planning permission cannot be included in the assessment of whether a building is materially larger in the context of paragraph 89 of the Framework. Therefore, the parties' views were sought on this matter as well as their views on whether the appeal building can be considered as replacing the existing garage and outbuilding which lies adjacent to the main dwelling. I have taken these views into consideration in the determination of the appeal.
 6. The dictionary defines 'replacement' as the act of replacing someone or something, or a person or thing that takes the place of another. The dictionary defines 'replacing' as being a substitute for something or putting something back in its previous place or position. I acknowledge that there is a building of a similar size and scale to the proposed building within the site, and the appellants intend to demolish this and are prepared to accept a condition to that effect. However, the proposed building would be in a materially different location to the existing outbuilding, some 80 metres from the rear of the dwelling. The building would not therefore be put back in its previous position in the meaning of the word 'replacing' as defined in the dictionary. Given the considerable distance between the existing outbuilding to the rear of the dwelling and the proposed building, I am not persuaded that the proposal can justifiably be considered a replacement building for the purposes of paragraph 89 of the Framework.
 7. I did note at my site visit that there were some smaller outbuildings at the rear of the site in the location of the proposed building, some of which had been partially demolished. However, the proposal would be materially larger than these outbuildings given their small scale and height thereby conflicting with the fourth bullet point of paragraph 89.
 8. Therefore, I do not consider that the proposal constitutes a replacement building in the Green Belt with respect to replacing the existing outbuilding and the proposal would be materially larger than the small outbuildings at the rearmost part of the site. It would therefore be inappropriate development which is, by definition, harmful to the Green Belt, contrary to paragraph 89 of

² *Athlone House v SSCLG* [2015] EWHC 3524 (Admin)

the Framework and in conflict with Policy GS2 of the NEDLP. I attach substantial weight to this harm.

Openness

9. The fundamental aim of Green Belt policy, as set out in paragraph 79 of the Framework, is to prevent urban sprawl by keeping land permanently open. In considering whether proposals would have a greater impact on the openness of the Green Belt, both the spatial and visual impact must be considered. Despite the presence of some small outbuildings in the location of the proposed siting, there would be an increase in the height and overall bulk of development in this part of the site thereby reducing the openness.
10. I have had regard to the fact that there would be a building of a similar size and scale to the appeal building which would be demolished as part of the appeal scheme. In terms of footprint and volume, there would not be a material increase in the bulk of built development on the site as a whole and insofar as loss of openness may be considered to be an absence of development, there would be a negligible effect. However, the existing outbuilding is tucked behind the dwelling and is screened significantly from views outside of the site to the south and is viewed in the context of the much larger dwelling in views from the north. The appeal scheme would result in a building located in a higher and more isolated position within the garden, detached from the main dwelling which would have the effect of drawing the eye in. In my view, it would be particularly visible from the public footpath to the north and Dobbins Lane to the west. The proposal would be more visually prominent than the existing outbuilding to the rear of the house and the smaller outbuildings at the rear of the garden. It would therefore have a greater visual impact resulting in moderate harm to the openness of the Green Belt.

Other Considerations

11. The extant permission is subject to a restrictive condition to prevent the use of the building as a separate dwelling. Notwithstanding that the facilities in the current proposal replicate that already approved, the Council asserts that the proposed building can no longer be considered ancillary accommodation by virtue of the separation distance to the main house and the proposal is therefore tantamount to a new dwelling contrary to Policy H3 of the NEDLP which only allows for new dwellings outside of settlement limits if they meet certain criteria. The appellants have made it clear that they would be agreeable to the same restrictive condition being attached to the current scheme. Given that permission has already been granted for a building of this nature and the fact that the proposed scheme would still be located within the residential curtilage of the dwelling, I am of the view that the increase in distance from the house is insufficient to make a material difference in this regard. I am satisfied that its use could be adequately controlled by the restrictive condition irrespective of where it is within the garden. The proposal would not be tantamount to a new dwelling and I therefore find no conflict with Policy H3 of the NEDLP. The lack of harm on this matter is a neutral factor neither weighing for or against the proposal.
12. The appeal proposal effectively replicates, in built terms, the building which benefits from permission. There is no indication that the appellants would not implement this permission and therefore development of a scale similar to the

appeal scheme could take place regardless of the outcome of the appeal. Even if the appeal were to succeed, an executed Unilateral Undertaking submitted under Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted which would revoke the existing planning permission. However, the appeal building would be in a materially different and more visually prominent location to the approved scheme. Consequently, although I concur that the appeal scheme would not increase the bulk of built development on the site, the fall back scheme would have less of an impact on the openness of the Green Belt. Therefore, in view of the differences between the two schemes I give only limited weight to the approved scheme.

13. I note that the Council has not raised any objections in relation to highway safety, living conditions and the design of the proposed building and I have no reason to take a different view. However, I regard these matters as neutral factors which do not weigh significantly either for or against the appeal.

Conclusion

14. The Framework indicates that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. In addition, any harm to the Green Belt carries considerable weight. In this case, I have found harm from inappropriateness as well as a loss of openness to the Green Belt. I give little weight to the other considerations referred to above. I consider that the substantial weight to be given to Green Belt harm is not clearly outweighed either individually or cumulatively by other considerations sufficient to demonstrate the very special circumstances that are necessary to justify inappropriate development in the Green Belt.
15. For the above reasons and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Caroline Jones

INSPECTOR