
Appeal Decision

Site visit made on 10 April 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 4th May 2017

Appeal Ref: APP/W4325/W/16/3162162

The Willows, Frankby Stiles, Frankby, CH48 1PL

- 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 S Balanaise against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/16/00614, dated 27 April 2016, was refused by notice dated 9 August 2016
 - The development proposed is a new detached bungalow.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are as follows:
 - Whether the development would be inappropriate development in the Green Belt;
 - The effect of the development on the openness of the Green Belt; and
 - If the development is inappropriate, 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 the development.

Reasons

Inappropriateness and Openness

3. The appeal property is located within the Green Belt. Paragraph 89 of the National Planning Policy Framework (the Framework) states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. Paragraphs 89 and 90 of the Framework list a number of exceptions to this. This is generally reflected in Policy GB2 of the Unitary Development Plan for Wirral (UDP), which also states that there is a presumption against inappropriate development in the Green Belt and provides a list of exceptions. Whilst these are largely similar to the exceptions set out in the Framework, it does not include the partial or complete redevelopment of previously developed sites. I find therefore that Policy GB2 is not consistent with the Framework and attribute it moderate weight.

4. Paragraph 89 of the Framework and Policy GB2 of the UDP allow for replacement dwellings in the Green Belt. The appellant contends that the proposed dwelling would replace the existing dwelling on the site and therefore should not be considered inappropriate development.
5. The appeal site comprises a chalet style property set within its own grounds with a number of outbuildings and a static caravan, which at the time of my site visit was used for general storage. The property has in the past been granted planning permission¹. Condition 1 attached to that permission states that the dwelling be permanently removed from the appeal site land within six months of Mr Victor Balnaves permanently ceasing to reside at the dwelling Springbank, Frankby Stiles. The Council argues that Mr Victor Balnaves has passed away and therefore, in accordance with condition 1, the dwelling should be removed.
6. The dwelling was erected more than 10 years ago and there is no evidence that it has ever been used for purposes other than residential. However, I do not accept the appellant's argument that for this reason the dwelling is immune from enforcement action. Planning permission was granted for the dwelling and therefore it was authorised development. However, condition 1 attached to that planning permission prevented the authorised residential use and required the removal of the dwelling following the six month period after Mr Victor Balnaves permanently ceased to reside at Springbank. The time limits within which the local planning authority can take enforcement action, as referred to me by the appellant, is with regard to *unauthorised* development.
7. During the time that Mr Victor Balnaves resided at Springbank, the dwelling was authorised. It is only after the six month period that he ceased residing at Springbank that the dwelling became unauthorised and the time limit for immunity commenced. As there is no evidence before me as to when Mr Victor Balnaves permanently ceased to reside at Springbank, I am not satisfied that, on the balance of probability, the relevant time limit for enforcement action to be taken has lapsed. I acknowledge the council tax records for the property. However, these only indicate that council tax has been paid for the property, not that it has been occupied. In any event, these records do not indicate how long the dwelling has been occupied in breach of condition 1. Consequently, based on the evidence before me, I consider that the dwelling is unauthorised.
8. As I have found that the existing dwelling is unauthorised I do not consider that its replacement with the proposed dwelling would accord with the exceptions set out Paragraph 89 and Policy GB2 with regard to replacement buildings.
9. Another exception set out in paragraph 89 of the Framework is limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
10. Paragraph 79 of the Framework indicates that openness is an essential characteristic of the Green Belt with a key objective being to keep land permanently open. Openness has both a visual and spatial dimension and the

¹ LPA Ref APP/04/07987

absence of visual intrusion does not, in itself, mean that there is no impact on the openness of the Green Belt.

11. The appeal site is located within a small enclave of dwellings that are located on a narrow lane that also serves a number of commercial premises. Immediately to the west is a more formal residential development that forms part of a larger settlement. Whilst the site is not surrounded by open fields and is enclosed by other residential development, it nevertheless forms part of the Green Belt, an essential characteristic of which is its openness. The properties within the small enclave are generally single storey, modest sized dwellings. In contrast to the formal setting of the urban development to the west, the sporadic positioning of the dwellings within the enclave and the narrow, hedge-lined lane provide a more rural setting.
12. I acknowledge that the proposed dwelling would be of a similar size to the existing dwelling, albeit slightly larger. It would be well contained within the site and would have a low profile, similar to other properties in the vicinity. As such, it would not be any more intrusive than the existing dwelling.
13. However, the existing dwelling is unauthorised and therefore I do not consider that the assessment of the effect of the proposal on the openness of the Green Belt should make a comparison with the existing dwelling. Therefore, notwithstanding the presence of the existing dwelling, the proposed dwelling would introduce an intrusive form of built development onto what would otherwise be a vacant site that would make a positive contribution to the openness of the area.
14. In addition to the intrusiveness of the development, I find that the erosion of three-dimensional space arising from the overall size of the building would in itself result in an erosion of openness, which would conflict with paragraph 79 of the Framework and fail to satisfy the exception regarding previously developed land set out in paragraph 89. Accordingly, I attribute significant weight to the effect it would have on openness.
15. Furthermore, due to its proximity to the neighbouring dwellings to the west, the appeal site provides a gap between the small enclave of Frankby Stiles and the neighbouring settlement. The proposed dwelling would permanently remove this gap, resulting in the coalescence of the two settlements, which would further erode the openness of the area and result in an encroachment into the open countryside, contrary to one of the purposes of the Green Belt.
16. I find therefore that the proposal would be inappropriate development under the Framework and Policy GB2 of the UDP, which is, by definition, harmful to the Green Belt. Furthermore, it would lead to a significant loss of Green Belt openness and impact on the Green Belt purpose of safeguarding the countryside from encroachment.

Other Considerations

17. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt and that 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. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from inappropriate development in the Green Belt, the erosion of

openness and the conflict with the purposes of including land within it so as to provide the very special circumstances required to justify a grant of planning permission.

18. I have had regard to the properties nearby which have recently been granted planning permission for the construction of replacement dwellings, in particular 'Summerville'. However, the Council confirms that the dwelling that has been replaced was authorised and therefore, it seems to me, it accorded with the relevant Green Belt policies.
19. The appellant states that the proposal would involve the removal of the existing outbuildings and replace the existing hardstanding with gardens, which would be more attractive. Whilst the proposal may well provide a more attractive setting than what is currently on site, I do not find that this, or any other matter raised, amounts to very special circumstances.

Conclusion

20. The appeal scheme has harmful implications for the Green Belt in terms of inappropriate development, the erosion of the openness of the Green Belt and the conflict with the purpose of including land within it. In accordance with national policy, such harm carries substantial weight, which the other considerations put forward by the appellant do not clearly outweigh. Consequently, the very special circumstances necessary to justify the development do not exist. As such, the proposal would fail to comply with saved Policy GB2 of the UDP and the Framework.
21. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR