
Appeal Decision

Site visit made on 24 May 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 21 June 2017

Appeal Ref: APP/J1915/W/17/3169035

113 Burnham Green Road, Burnham Green, Welwyn AL6 0NH

- 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 & Mrs Connolly against the decision of East Hertfordshire District Council.
 - The application Ref 3/16/2308/FUL, dated 10 October 2016, was refused by notice dated 21 December 2016.
 - The development proposed is demolition of existing house and erection of replacement dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. 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)¹ and any relevant development plan policies;
 - The effect 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. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

3. The appeal site comprises a relatively modest detached bungalow set back from the road. It has a garage and utility room to the east, joined to the main house by a small glazed side extension. A conservatory has been added at the rear and there is a dormer window in the southern slope of the roof. The site lies within the Metropolitan Green Belt. It is proposed to demolish the existing dwelling and associated extensions and replace them with a new two storey house.

¹ Published 2012

4. The Framework represents government policy and is a significant material consideration in all planning decisions. Section 9 of the Framework sets out national policy in relation to development in the Green Belt. Paragraph 89 states that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to certain limited exceptions. One of those exceptions, referred to in the fourth bullet point, is the replacement of a building, provided that the new building is in the same use and not materially larger than the one it replaces.
5. Policy GBC1 of the East Herts Local Plan Second Review April 2007 (LP) contains similar types of exceptions. However, point (e) of the policy says that to qualify, replacement dwellings should be in accordance with various additional criteria detailed in Policy HSG8. That policy refers to matters such as, whether the original dwelling is of poor appearance or construction and not capable of retention. Given the age of the LP, due weight should be given to relevant policies according to their degree of consistency with the Framework, as stated in paragraph 215 of the Framework.
6. Overall, policies GBC1 and HSG8 are, due to the additional criteria, more restrictive than the equivalent 'replacement building' exception in the Framework. Therefore, I give limited weight to the relevant LP policies. It is also relevant that, according to the Council, policy GBR1 of the emerging East Herts District Plan refers out to the Framework's Green Belt policies. Although the emerging plan has yet to be examined, it illustrates the Council's direction of travel and its intention to rely on Green Belt policy in the Framework, which would, in any event, be a material consideration. In view of the above context, I will base this decision on relevant policies within the Framework.
7. According to the Council's figures, which have not been disputed, the replacement dwelling would have a slightly smaller footprint than the existing building, but the overall floor space would increase by 37%, from 214m² to 294m². Such mathematical calculations can be crude measures. For example, the 9% reduction in footprint would appear to be in part achieved as a result of the removal of the relatively low impact single storey side extensions and conservatory.
8. The appellants' agents assert that the 37% increase is '*well within the generally applied 'limited' increase*' which they say is used to assess whether extensions are disproportionate additions, in relation to the third bullet point of Framework paragraph 89. They also suggest that the upper limit increase applied in the District to assess whether extensions are 'disproportionate' is 50% to 60%. However, no examples or details of planning permissions or appeals referring to such percentage limits have been provided, or evidence of their application to replacement dwellings. In any event, it is significant that neither the Framework nor the LP contain such percentage limits or define how 'materially larger' should be assessed. That enables each case to be judged on its individual merits and particular characteristics rather than be subject to inflexible limits.
9. In this case, based on the submitted plans, my site visit and the information provided by the main parties, I consider that replacing a modest bungalow with the proposed two storey dwelling, would result in a much larger building of greater bulk and massing. That is supported by the marked increases in eaves

height, particularly, from about 2.2 or 2.4 metres (both figures are quoted by the Council) to 4.2 metres, and in ridge height from 6.3 metres to 7.7 metres.

10. Whilst the existing dwelling also has a protruding gable to the front, the two-storey height and scale of the new gable and expanse of roof would be significantly more prominent. The new building would also have two dormer windows above eaves height. Those design aspects, combined with an actual substantive increase in height and 37% increase in floor space amount to a new building that would be materially larger than the one it replaces.
11. The appellants' agents also suggest that the proposal might be considered as limited infilling in a village, in accord with the fifth bullet point of paragraph 89 of the Framework. However, infilling is normally considered to be the filling of a small gap between built forms usually along the frontage of a road. That would not be the case here as there is no gap because the site is already occupied by the existing dwelling. Neither would it meet the sixth bullet point of paragraph 89, which although it refers to the complete redevelopment of previously development sites, requires that there should be no greater impact on the openness of the Green Belt, which I will discuss further below.
12. Therefore, as the proposal does not meet any of the relevant exceptions in the Framework; it would be inappropriate development in the Green Belt.

Openness

13. The essential characteristics of Green Belts are their openness and their permanence, as set out in paragraph 79 of the Framework. Openness can be defined as the absence of buildings or development. The physical presence of built form or increases in it, therefore, is likely to affect openness. There can also be a visual dimension but the absence of visual intrusions does not in itself mean that there is no impact on openness.
14. It is acknowledged that there is an existing dwelling on the site and a line of two storey dwellings to the south west. Although there is a large grassed area and driveway to the immediate south east, there are further two storey dwellings beyond but open fields opposite to the north. Notwithstanding the existing built environment, replacing a modest bungalow with a higher, more substantial two storey building would result in a reduction in openness in the Green Belt. In that context, I consider that the harm to openness would be moderate.

Other considerations

15. The appellants place much emphasis on pre-application advice received from the Council but that was in relation to proposed extensions to the existing dwelling rather than a replacement dwelling. Moreover, as the Council has indicated, planning authorities are not bound to accept the recommendations of their officers. The relevant letter specifically states that the advice is offered at officer level only and is not prejudicial to any future formal decision by the local planning authority. It also states that those proposals, which the appellants hold are similar in effect to the proposed replacement dwelling, were considered to be '*at the very upper limit of 'limited' extension in floor area terms*'. It also suggested changes to the scheme.
16. In any event, pre-application advice is not the equivalent of an extant permission or for that matter permitted development rights. It does not

represent a 'fallback' position as no permission actually exists. My responsibility is to determine the appeal based on an impartial assessment of its merits and in accordance with the development plan unless material considerations indicate otherwise.² Therefore overall, I give the pre-application advice limited weight.

17. It is said by the appellants that the existing bungalow does not fit well with the character of the street scene. Whilst most properties along the road are two storeys, they are of various sizes and designs, many detached but also some short terraces. In addition, there appeared to be one or more single storey dwellings on the adjoining plot to the east, although set further back at the end of a long driveway. I also saw a dormer bungalow further to the east at 75 Burnham Green Road. Therefore, whilst not predominant, there are some other single storey properties along the road.
18. The existing modest bungalow is set back from the highway, slightly behind the existing building line and constructed of similar materials to the two-storey dwellings to the west. The design is attractive and whilst it is visible from the road, it is not conspicuous. Therefore, I do not agree that it appears incongruous. Consequently, whilst the design of the new dwelling would be in keeping with the character and appearance of the area, as accepted by the Council, it would not represent a positive improvement or enhancement. Accordingly, its effect on the street scene would be neutral and I give that aspect no weight.
19. According to the appellants, there would be additional construction issues and costs associated with extending the existing property rather than replacing it. They also submit that a new build would provide an opportunity to use modern materials and improve insulation and energy efficiency with attendant environmental benefits. It is also said that the new property would have a greater lifespan. Whilst I understand those aspects, there would be costs associated with a new build and many of those benefits could equally be achieved via renovation of the existing property, although I accept that it may be a more complex process. Therefore, I give those factors moderate weight.
20. I appreciate the appellants' wish to improve their family home and acknowledge that the proposal would provide increased living space and facilities. However, planning is more generally concerned with the wider public interest rather than personal circumstances, unless a truly exceptional personal need can be demonstrated. For those reasons I give that aspect minimal weight.

Conclusions

21. The Framework indicates, at paragraph 87, that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
22. I have already found that the proposal would be inappropriate development. I have also identified moderate harm to the openness of the Green Belt.
23. Paragraph 88 of the Framework advises that substantial weight should be given to any harm to the Green Belt and that 'very special circumstances' will not

² Paragraph 11 National Planning Policy Framework, s38(6) Planning and Compulsory Purchase Act 2004 and s70(2) Town and Country Planning Act 1990

exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

24. As the weight that I have given to the other considerations, discussed above, has ranged from no weight to moderate, I find that cumulatively they do not clearly outweigh the harm to the Green Belt that I have identified. Therefore, the very special circumstances necessary to justify the proposal do not exist.
25. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR