
Appeal Decisions

Site visit made on 14 November 2017

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

Decision date: 13 December 2017

Appeal A Ref: APP/B1930/W/17/3180205

"Fairfolds", Roestock Lane, Colney Heath, St Albans AL4 0QP

- 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 N Jones against the decision of St Albans City & District Council.
 - The application Ref 5/17/0523, dated 22 February 2017, was refused by notice dated 24 April 2017.
 - The development proposed is replacement dwelling.
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Appeal B Ref: APP/B1930/W/17/3180203

"Fairfolds", Roestock Lane, Colney Heath, St Albans AL4 0QP

- 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 N Jones against the decision of St Albans City & District Council.
 - The application Ref 5/17/0524, dated 22 February 2017, was refused by notice dated 24 April 2017.
 - The development proposed is demolition of porch and part rear extension, and erection of front, rear and side extensions, with lowering of ground level.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary and Procedural Matter

3. The main parties have drawn my attention to a previous proposal for a replacement dwelling on the appeal site which was dismissed on appeal¹ in May 2013. I have had regard to this decision, however as each application and appeal should be considered on its own merit, that is the approach I have taken in determining this appeal.

Main Issues

4. The appeal site lies within the Metropolitan Green Belt, accordingly the main issues within both appeals are:
 - Whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;

¹ APP/B1930/A/12/2186604, decision dated 3 May 2013

- 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

5. "Fairfolds" is a single storey L-shaped detached bungalow set within a spacious plot. It is located to the north of Roestock, just outside the main built up area where dwellings are more spread out and the pattern of development is less uniform. The surrounding area is therefore characterised by dwellings of varying styles and designs. It is accepted that the dwelling has previously been extended to the rear and with a porch. Within the site there are already a range of buildings and structures, including 2 stable blocks and a car port, it is surrounded on 3 sides by paddocks. "Fairfolds" has an unobtrusive appearance with dark-stained timber cladding and slate roof.

Whether inappropriate development in the Green Belt

6. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence.
7. Paragraph 89 of the Framework states that the construction of new buildings within the Green Belt is inappropriate, unless it falls within various specific exceptions.
8. In relation to Appeal A, paragraph 89 gives one of these exceptions in the fourth bullet point as "the replacement of a building, providing the new building is in the same use and not materially larger than the one it replaces." The assessment is therefore in two stages, that of use and then the sizes of the existing and replacement buildings.
9. For Appeal B, Paragraph 89 gives one of these exceptions in the third bullet point as "the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original dwelling." The assessment is therefore one of size.
10. This national policy is to be read together with development plan policy, including Policies 1 and 13 of the City and District of St Albans District Local Plan Review 1994 (LPR). Policy 1 of the LPR states that permission will not be given for development for purposes other than those which it lists unless very special circumstances exist. It does not refer specifically to any form of residential development within the Green Belt.
11. Policy 13 of the LPR does allow for the replacement of dwellings in the Green Belt where, amongst other things, the new dwelling occupies the site of the original dwelling, is similar in character and size to the existing dwelling, plus any extension built as part of the original building² and is visually well integrated with its rural surroundings. In relation to extensions, Policy 13 of

² It is generally accepted that the 'original building' is as defined in the Framework. The glossary of the Framework defines 'original building' as that as existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

the LPR states that they should be modest in scale and visually well-integrated, and that the extensions may be permitted, unless the scale or visual impact upon the original building would create a building of significantly larger or different character.

12. Paragraph 215 of the Framework advises that due weight should be given to relevant policies in existing development plans according to their degree of consistency with the Framework. The closer the policies are to those of the Framework, the greater the weight that may be given to them.
13. Although policy LPR1 is not entirely consistent with the Framework with regard to previously developed sites, this is not a consideration for this appeal. Consequently, for the purposes of this appeal, I do not find that Policies 1 and 13 of the LPR are out of date and accordingly I have given these policies significant weight.
14. The Council's Residential Extensions and Replacement Dwellings in the Green Belt Supplementary Planning Guidance 2004 (SPG) provides supplementary information to assess whether or not the size of a replacement dwelling is acceptable in the context of Policy 13 of the LPR.
15. The SPG outlines that an increase in volume of between 90 cubic metres and 180 cubic metres may be acceptable and an increase in floorspace of between 20% and 40% (subject to a maximum increase in the cubic content of 300 cubic metres) with whichever being the greater of the two ranges being regarded as the top of the range. I note that these standards are related to extensions, however the Council has confirmed, and the appellant is also aware, that they are used in relation to replacement dwellings and as such are relevant to both Appeals A and B.

Appeal A

16. The main parties agree that the floorspace of the existing single storey previously extended dwelling is 123 square metres. They further agree that in the context of Policies 1 and 13 of the LPR and paragraph 89 of the Framework, that the appeal proposal represents inappropriate development.
17. Based upon the appellant's figure, the proposed replacement dwelling would have an increase in floorspace of 286% and a volume increase of 461 cubic metres. Accordingly, I take the view that such an increase in size cannot reasonably be considered to be anything other than materially larger than the one it replaces. Based on the evidence before me, the proposal substantially exceeds the size ranges as set out in the SPG.
18. The proposal relates to the replacement of one dwelling with another and therefore the new building would be in the same use as the one it would replace. However, in relation to the size increase it conflicts with Policy 13 of the LPR and the accompanying SPG, and would not be supported by the fourth bullet point of Paragraph 89 of the Framework.

Appeal B

19. The proposed extensions would be single storey additions to the side, front and rear of "Fairfolds." The entrance would be partially sunken into the ground. The internal layout would be altered to provide accommodation on two levels within the dwelling.

20. I note the discrepancy between the submitted floorplans and elevations. Accordingly I have used the figures set out by the appellant in his appeal statement.
21. It is not disputed between the main parties that the floorspace of the original dwelling (excluding the previous extensions) is around 85 square metres. The floorspace of the current dwelling is approximately 123 square metres. The appeal proposal extensions would result in a dwelling of around 270 square metres of floorspace. This would represent an increase of 293% of floorspace. The volume increase would be 642 cubic metres; consequently the main parties agree that the appeal proposal constitutes inappropriate development.
22. Accordingly, the proposed extensions would represent a disproportionate increase in scale. Consequently, there would be conflict with Policy 13 of the LPR, the SPG and the Framework.

Openness

23. The fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open. The Framework advises at Paragraph 79 that openness and permanence are essential characteristics of Green Belts. There is limited visibility of the site from either Roestock or Redhall Lane as a consequence of boundary treatment together with the large timber gates for vehicular and pedestrian access from Roestock Lane. The site can be viewed across the open field from the footpath within the adjacent woodland and in some locations along Bullen's Green Lane. Openness is generally defined by an absence of built form and not necessarily visibility.
24. Within the site there are already a range of buildings and structures, including 2 stable blocks and a car port, it is surrounded on 3 sides by paddocks. The proposed front elevation, in both Appeals A and B would be around 14 metres wide which is substantially larger than the present front elevation of just under 6 metres wide. The current hipped roof design on the existing bungalow would be replaced on the proposed replacement dwelling by a more substantial and bulkier roof structure. In appeal B, a significant addition to the roof structure would also be created.
25. Accordingly I find that the mass, size and bulk of both proposals would result in an increase in the built form within the site such that it would harm the sense of openness at the site in relation to both appeal proposals. Consequently, I find that the proposed replacement dwelling and the proposed extensions would in both appeals result in harm to the openness of the Green Belt. As such they would both conflict with the aims of the Framework which seek to preserve the openness of the Green Belt. I give substantial weight to that harm.

Other Considerations

26. Both appeal schemes constitutes inappropriate development in the Green Belt. Paragraph 87 of the Framework states 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 harm to the Green Belt by reason of inappropriateness, any other harm, is clearly outweighed by other considerations.

27. The appellant is arguing that the existence of a fall-back position through use of permitted development rights is not only a material consideration, but should amount to very special circumstances. Reference has been made to an appeal decision³ in Harpenden and case law⁴ which outlines the tests to be applied when considering a fall-back argument. The tests are (i) the nature of the alternative uses or operations and (ii) the likelihood of the alternative uses or operations being carried on or carried out.
28. The two proposals in these appeals are seeking to achieve the same objective of larger residential development on this site. The certainty of the cited fall-back position has been confirmed by two separate Certificates of Lawful Development. One Certificate was granted in 2014⁵ for front, side and rear extensions to the existing bungalow generating 170 square metres of additional floorspace. The other Certificate was granted in 2016⁶ for the insertion of 5 rooflights in connection with using the roofspace as an additional 50 square metres of habitable accommodation floorspace. I have been provided with a selection of the approved plans and Certificates. The combined total of additional floorspace within these two Certificates is 226 square metres.

Appeal A

29. The appellant identifies that the proposed replacement dwelling would have a smaller footprint (by 83 square metres) and less volume (by 258 cubic metres) than could be built under the permitted development rights as established in the two Lawful Development Certificates.
30. As a consequence of the nature of the existing dwelling and the current permitted development rights, the existing dwelling could be significantly reconfigured into a substantially larger structure without requiring planning permission. The increase in size, bulk and massing in the fall-back position would have a significant impact on the openness of the Green Belt but these extensions would be lawful by virtue of permitted development rights. The appeal proposal for the replacement dwelling would actually be smaller in footprint, floorspace and volume than in the fall-back position. However, the overall height would be greater than the extensions allowable under the permitted development rights regime. The bulk, size and massing of the replacement dwelling would be substantial.
31. The proposed replacement dwelling would have a different design and character to that of the existing dwelling, including the use of more extensive glazing and different form of roof structure. I find that it would be more harmful to the openness of the Green Belt than that which would arise through the fall-back position.

Appeal B

32. The appellant states that the proposed extensions would create a dwelling with a smaller footprint (by 11 square metres) and less volume (by 27 cubic metres) than can be built under permitted development rights as established in the two Lawful Development Certificates.

³ APP/B1930/A/09/2106457 (Harpenden) decision dated 24 December 2009

⁴ *Coln Park LLP v Secretary of State for Communities and Local Government* [2011] and *Simpson v Secretary of State for Communities and Local Government* [2011]

⁵ 5/2014/2596, dated 11 November 2014

⁶ 5/16/1632, dated 13 July 2016

33. The proposed extensions would be broadly similar in size and scale to those allowable under the fall-back provisions. However, their overall massing would be increased by the additional 1 metre in height to that in the fall-back scheme. Furthermore the proposed extensions would not appear subordinate to the main dwelling in the same way as they appear visually within the fall-back scheme. I find this increased bulk and massing arising from the overall height of the appeal proposal to be more harmful to the openness of the Green Belt than that which would arise through the fall-back position.

Likelihood

34. I am not satisfied that there would be a reasonable prospect and likelihood that the fall-back scheme would be implemented if Appeals A and B were dismissed. There has been a significant intervening period of time where no steps have been taken to implement the fall-back scheme. Consequently, the presence alone of the Certificates does not amount to certainty of their implementation and therefore I give the fall-back position moderate weight. Even if I had come to a different conclusion, the developments in the Lawful Development Certificates would be lawful developments which the appellant would be entitled to undertake and therefore two developments are not comparable.
35. For the sake of completeness, in the Harpenden appeal decision the Inspector noted that a Certificate of Lawful Development had been obtained to extend the existing dwelling. The proposed replacement dwelling was very similar in size and design to the fall-back position established through the Certificate. In that case the Inspector concluded that the proposed replacement dwelling and the fall-back permitted development right extensions gave rise to the same effect on the openness of the Green Belt. Accordingly he judged this to amount to the very special circumstances necessary to justify the development. As set out above, I do not consider that this would be the case with the two appeal schemes in front of me.

Other matters

36. I have had regard to the appellant's desire to continue living at the property, although they consider that it currently provides inadequate residential accommodation. The two options presented would create improved living conditions in a more convenient and usable layout. However, whilst personal circumstances could be material to a decision, they are generally not determinative.

Conclusion and Green Belt balance

37. The proposed replacement dwelling would give rise to an unacceptable and greater effect on the openness of the Green Belt than the fall-back position. Notwithstanding the fall-back position, my conclusion is that this consideration in this case does not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
38. The proposed extensions would give rise to a greater effect on the openness of the Green Belt than the fall-back position. Notwithstanding the fall-back position, my conclusion is that this consideration in this case does not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

39. For the reasons set out above, having regard to all matters raised, the two appeal proposals are unacceptable and consequently both appeals are dismissed.

Rachael A Bust

INSPECTOR