
Appeal Decision

Site visit made on 15 October 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref: APP/A1910/W/19/3233936

Two Bays, Long Lane, Bovington HP3 0NE

- 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 James Cosgrave against the decision of Dacorum Borough Council.
 - The application Ref 4/00926/19/FUL, dated 14 April 2019, was refused by notice dated 12 July 2019.
 - The development proposed is two new detached residential dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has submitted additional plans with the appeal referenced 4/00926/19/FUL A-X and requested that they are considered as part of the appeal. For the most part these plans seek to illustrate and compare the appeal proposal with the existing dwelling, as well as the permission to extend the existing dwelling reference 4/01975/18/FHA and a scenario referring to permitted development rights. However, 7 drawings referenced 4/00926/19/FUL R-X show a proposal whereby the footprint and volume of proposed plot 2 has been reduced and is referred to in the appellant's case as the 'Reduced Volume Option' or 'Reduced Volume Scheme'. Whilst this Option was submitted to the Council for discussion prior to them making their decision, it is reasonably clear from the Planning Casework Delegated Report that it was considered to be indicative and did not supersede the original proposal. Nor were the plans subject to public consultation, which the Council consider would otherwise have been necessary¹.
3. The advice given in relation to appeal procedure² states that if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application. Furthermore, the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. I am aware that a notable number of representations were received in relation to the original proposal, and therefore I consider that my consideration of the reduced volume option upon which third party views have not been sought, would be prejudicial to them.

¹ Email dated 11 July 2019 from Council to Appellant

² Procedural Guide to Planning Appeals (England), August 2019 Annexe M

4. Accordingly, whilst I will take account of drawings 4/00926/19/FUL A-Q in my determination, which seek to illustrate and compare the original proposal, I will not consider the reduced volume option set out in drawings 4/00926/19/FUL R-X.

Main Issues

5. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt, including its effect upon openness, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on the living conditions of the neighbouring occupiers at Bienvenida, with particular regard to privacy, outlook and light, and;
- If inappropriate, would the 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 inappropriate development

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 as the essential characteristics of Green Belts are their openness and their permanence.
7. New buildings within the Green Belt are inappropriate with the exceptions of the types of development listed in Paragraph 145 of the Framework. It is the appellant's view that the proposal is not inappropriate by virtue of the exceptions contained in either sub paragraph d) or sub paragraph g) of paragraph 145. Criterion d) of Paragraph 145 allows for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Criterion g) allows for the limited infilling or the partial or complete redevelopment of previously developed land. However, the caveat to paragraph 145 g) is that the development should not have a greater impact on the openness of the Green Belt than the existing development.
8. Policy CS5 of the Dacorum Borough Council, Core Strategy 2006-2031, September 2013 (CS) indicates that national Green Belt policy will be applied to protect the openness of the Green Belt, and therefore, accords with the Framework policy.
9. At the time of my site visit the site accommodated a detached bungalow. Although the evidence indicates that there was previously a large outbuilding within the garden³, the appellant states that it was dismantled in 2017. Furthermore, whilst my attention has been drawn to a permission for a

³ Land Registry map & Sales particulars 2017

significant extension to the existing dwelling⁴, which I shall return to later, I did not observe buildings arising from that permission at the point of my visit.

10. Paragraph 145 d) refers to the replacement of a building not being materially larger than the one it replaces. Similarly, paragraph 145 g), amongst other matters, indicates that the proposal should not have a greater impact on the openness of the Green Belt than the existing development. In order to make that comparison, it follows that, if buildings are not currently in existence, they cannot be replaced by the appeal proposal or currently have an impact on the openness of the Green Belt.
11. Accordingly, for the purpose of paragraph 145 d) the central question is whether the proposed development would be materially larger than the building that would be replaced, rather than developments that were present in the past or might be undertaken in the future whether under permitted development or a specific permission. Furthermore, for the purpose of assessing paragraph 145 g) the impact of the proposed development on the openness of the Green Belt would need to be compared with the impact of the existing development at the site.
12. The appellant refers⁵ to the existing volume and footprint on site, which includes the outbuilding that has been dismantled, as amounting to 445.84 cubic metres and 154.04sqm respectively. He further indicates that the proposed dwellings, with sheds, would have a volume of 1455.25 cubic metres and a footprint of 226.68sqm⁶ which would, by comparison, result in a considerably larger volume and footprint of built form across the appeal site. In addition, drawing number 4/00926/19/FUL E illustrates the difference in height and mass between the existing bungalow and dismantled outbuilding with the proposed dwellings, the front view of which is calculated to increase from 70.9sqm to 103.08sqm.
13. Taking these factors together, the increase in volume, footprint and mass would result in two dwellings that would be materially larger than the existing bungalow even when accounting for the dismantled outbuilding. As such, the proposal would not fall within the remit of paragraph 145 d) of the Framework.
14. For similar reasons, it follows that the appeal proposal would markedly increase the size of the overall built form at the site causing spatial harm to the openness of the Green Belt. Moreover, the sub-division of the plot into two separate dwellings would increase the associated lighting, activity, boundary treatments and domestic paraphernalia within the site. The layout⁷ plan shows a significant area of gravel hardstanding to the front of both plots which would provide 4 parking spaces for each dwelling. This would be at the most visually prominent part of the site with views possible from Long Lane that as a consequence, would result in visual harm to the openness of the Green Belt.
15. Accordingly, the proposal would have an adverse spatial and visual impact on the openness of the Green Belt that would have a greater impact than the existing development. On that basis, it would not fulfil the criteria of paragraph 145 g). However, given the relatively minor scale of the proposal for 2

⁴ Reference 4/01975/18/FHA

⁵ Drawing 4/00926/19/FUL A

⁶ Drawing 4/00926/19/FUL D

⁷ Drawing 14 of 26 - site setting, entrance, parking, storage, landscaping

dwelling, this would result in moderate harm to the openness of the Green Belt.

16. I have not seen evidence to suggest that the appeal proposal would comprise any of the other exceptions for new buildings listed within paragraph 145 of the Framework. It therefore follows that the appeal proposal amounts to inappropriate development in the Green Belt.

Character and appearance

17. In terms of built form, the section of Long Lane nearest to the appeal site predominantly comprises clusters of detached dwellings set within generous verdant grounds, which is interspersed with pockets of woodland and fields. The dwellings, although of mixed style and materials, generally take a traditional form utilising pitched roofs which assists in reducing their visual profile in the street. When this is combined with the generous setbacks often employed and planting and hedgerows along the front boundaries, the built form generally takes an unassuming role in the street scene conveying a pleasant, spacious, semi-rural character.
18. The appeal site currently accommodates a conventional, detached bungalow, with a hipped roof set within a large garden. Its modest scale and appearance combined with the set back from Long Lane allows for considerable space and planting that positively contributes towards the sense of spaciousness and semi-rural character of the area.
19. The proposal would introduce two detached two-storey dwellings with rectangular footprints and flat roofs that would result in a somewhat boxlike appearance. The shorter ends of the dwellings would comprise the most visible front elevations facing towards Long Lane, that notwithstanding the mix of materials, would, due to the mass of the structures have an abrupt appearance at odds with the prevailing form of residential development nearby.
20. Furthermore, given the increased amount and height of the built form overall, it would be more conspicuous from Long Lane, and would diminish the sense of spaciousness. The appellant indicates that the new front boundary and central access point would allow for increased views into the site⁸. Nevertheless, the significant area of gravel hardstanding and parking between the dwellings and Long Lane with limited opportunities for planting would result in a harder, more urban appearance that would be harmful to the semi-rural character of the area.
21. The Design and Access statement indicates that the design strategy for the appeal proposal is a modern interpretation of the traditional, agricultural Black Barn. However, to my mind, given that all the examples shown⁹ incorporate a pitched roof, the use of a flat roof in the appeal proposal ignores an integral part of the simple form of the agricultural building that is intrinsic to its character. Therefore, the design falls short of being clearly derived from the traditional Black Barn, and consequently, would have a discordant, harmful impact on its surroundings.
22. The appellant points to the diversity in housing style along Long Lane. Whilst I accept that there is some variety in the style of building and the use of

⁸ Page 5, 2nd paragraph Appellant's statement

⁹ Pages 17-19 Design and Access Statement

materials, as identified above, there is coherence derived from the use of pitched roofs¹⁰ which in turn assists in reducing the profile and massing of buildings in the vicinity of the appeal site. I am referred to several decisions¹¹ at a site whereby flat roofed housing was found acceptable by the Council. However, the characteristics of each individual site and settlement are different and the example given is some miles away from the appeal site. Based on the limited information provided, I am unable to make a meaningful comparison with the appeal proposal. In any event, I have determined the proposal on its own merits based on the evidence before me.

23. I further accept that the careful use of colours for the external materials and the employment of a green roof may assist in softening the appearance of the development to a degree. Nevertheless, this would not be sufficient to entirely overcome the harm to the semi-rural character and appearance of the area that I have identified.
24. Accordingly, I find that the proposal would be harmful to the character and appearance of the area contrary to policy CS12 of the CS which, amongst other matters, requires a quality of site design for new development which integrates with the existing street scape character and respects adjoining properties in terms of the bulk of the development. In addition, it would conflict with saved Appendix 3 of the Dacorum Borough Council Local Plan 1991-2011, April 2004 which sets out relevant criteria to be considered in relation to the layout and design of residential areas. This includes that new residential development should respect the character of the surrounding area and that the design of individual buildings should respect the overall street scene.
25. The Council has also referred to policies CS11 and CS13 of the CS, and saved Appendix 7 of the LP in the refusal reason on the decision notice. However, policy CS11 relates to the quality of neighbourhood design within settlements and neighbourhoods and policy CS13 relates to the quality of the public realm. On that basis, it is not shown that either policy is particularly relevant to the circumstances of the appeal proposal which lies in a semi-rural area outside of a defined settlement and does not propose significant development within the public realm. Furthermore, Appendix 7 sets out advice in relation to small-scale house extensions. However, the appeal proposal is for 2 new dwellings and so it is of little relevance. As such, I do not find that the proposal would conflict with these policies.

Living conditions

26. There is an established tall hedgerow along the boundary between the appeal site and the adjacent property, Bienvenida, that provides a significant degree of screening.
27. Plot 2 of the appeal proposal would in part align with the flank wall of Bienvenida but in part would be positioned forward of the property. Two windows are shown in the first floor of the elevation of Plot 2 that would face towards the boundary, both of which serve bathrooms, and therefore, would be obscure glazed. This could be secured by condition such that the proposed development would safeguard a reasonable level of privacy for the occupants of Bienvenida.

¹⁰ Examples given on page 16 Design and Access statement

¹¹ Referenced 4/02774/17/FUL & 4/02430/18/FUL

28. Notwithstanding that plot 2 is higher than the existing bungalow, and more directly aligned with Bienvenida, the degree of separation that would be maintained between the built form would allow for the existing planting to be retained or a similar boundary treatment planted. Based on the limited evidence presented, the resulting relationship with Bienvenida in terms of the levels of light and outlook for the occupants from the windows on the south facing elevation, would not be significantly different to the existing situation.
29. Accordingly, the evidence does not show that the appeal proposal would result in an unacceptable impact on the living conditions of the occupants of Bienvenida in terms of a loss of privacy, outlook or light. Therefore, I do not find that the proposal would conflict with policy CS12 of the CS which, amongst other matters, requires new development to avoid visual intrusion, loss of sunlight and daylight and loss of privacy to the surrounding properties. Neither would the proposal be contrary to the criteria set out in saved Appendix 3 of the LP in order to achieve privacy and a satisfactory level of sunlight and daylight for existing residents.

Other considerations

30. The appellant refers to two alternative fallback positions that, in each case, he asserts, would be less preferable than the appeal proposal. The first is in relation to a previously permitted proposal for a large extension to the bungalow and detached double garage at the appeal site¹². I accept that, if the appeal proposal were not permitted, there is a realistic prospect of this permission being carried out given the express statements of the appellant and that he indicates construction has commenced. As such, consistent with the findings of the case law¹³ and Council decision¹⁴ to which I am referred, this permission does amount to a fallback position, and is therefore of considerable relevance.
31. However, in comparison to the appeal proposal, the extended dwelling, would have a lower volume and footprint¹⁵ than the proposed development and the evidence does not indicate that a similar degree of hardstanding and parking would result to the front of the proposal. In addition, the approved development would incorporate a pitched roof¹⁶ that would assist in reducing the visual impact of the mass of the building. Therefore, notwithstanding the sight line drawings and analysis of site coverage, site width and mass and bulk provided by the appellant, this fall-back position would be likely to have less impact on the spatial and visual openness of the Green Belt. Hence, I do not agree that it is shown that the fallback position would be preferable to the appeal proposal and therefore, the existence of it does not attract weight in support of the appeal proposal.
32. The second, alternative fallback position relied upon by the appellant relates to the potential extensions to the existing dwelling that might be carried out under permitted development as established through a series of recent prior approvals and certificates of lawfulness¹⁷. Drawing 4/00926/19/FUL B shows a footprint and calculated volume of the extended dwelling if all the permitted

¹² Reference 4/01975/18/FHA

¹³ Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

¹⁴ Reference 4/02528/16/FUL

¹⁵ Volume 1233.59 cubic metres & Footprint 221.19sqm Drawing 4/00926/19/FUL C

¹⁶ Artistic impression, page 6 Design and Access Statement

¹⁷ References 4/0269/18/HPA, 4/00454/18/HPA, 4/00513/18/LDP.

development established were to be carried out¹⁸, which would be larger than the appeal proposal.

33. Even so, there is little basis to suppose that the appellant would realistically carry out all the approved extensions to the existing dwelling given that he states he would carry out the planning permission already obtained and has discharged the relevant conditions and started work in relation to the footings of the double garage. Moreover, the Planning Casework Delegated Report indicates that the permitted development position was established principally in order to support the case for that planning application. As such, I am less certain that, in the absence of the appeal proposal, all the extensions would be implemented, which reduces the weight I can give to it as a fallback position.
34. Furthermore, domestic extensions and outbuildings under permitted development are primarily single storey and I have not seen evidence to suggest otherwise in this case. By comparison, the appeal proposal comprises development of a greater height and prominence within the street scene. On the evidence presented, it is not shown that the permitted development fallback position would result in greater harm to the openness of the Green Belt in comparison to the appeal proposal, and therefore, overall, it is of limited weight.
35. The appeal proposal would result in the net gain of one family dwelling towards the overall housing supply that would bring some associated economic benefits and utilise some sustainable construction methods, including solar panels. I have had regard to the representations received in support of the development that amongst several matters, refer to the benefit that a wider mix of housing would bring to the area. Nevertheless, the scale of benefits likely to accrue from one additional dwelling overall, would be comparatively small and therefore, notwithstanding that there is no dispute that the Council cannot demonstrate a five year supply of deliverable housing sites, I give this limited weight in favour of the proposal.
36. The appellant refers to the appeal site making effective use of previously developed land as defined in the Framework. However, the definition does advise that it should not be assumed that the whole of the curtilage should be developed. Moreover, whilst paragraphs 117 and 118 of the Framework encourage the use of 'brownfield' land, the footnote to paragraph 117 clarifies that this is only where it would not conflict with other policies in the Framework. Paragraph 145 g) of the Framework sets out the approach to new buildings on previously developed land in the Green Belt stating that new buildings must not have a greater impact on the openness of the Green Belt than the existing development. I have found that the proposal would cause harm to openness and therefore, this exception would not apply. Accordingly, I attribute little weight to the reuse of brownfield land in these circumstances.
37. The appellant has referred to a Council decision and appeal decision¹⁹ as accepting residential development within Long Lane. However, I have not been provided with the details of either case and so cannot make a direct comparison with the proposal before me. Furthermore, I do not consider that the use of planning conditions, including the restriction of householder

¹⁸ Volume 1729.79 cubic metres & 449.30sqm footprint Drawing 4/00926/19/FUL B

¹⁹ Reference 4/02504/14/FUL and APP/A1910/W/17/3185846

permitted development rights, would be able to overcome the harm to the Green Belt that would result from the appeal proposal.

38. Further concerns are outlined by the appellant in relation to the length of time it took the Council to determine the decision. However, this is a matter that falls outside the scope of my decision, which is based on the planning merits of the case.

Green Belt balancing exercise

39. Paragraph 144 of the Framework advises that substantial weight should be given to any harm to the Green Belt. Moreover, very special circumstances to allow inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In this case, the proposal amounts to inappropriate development, and in addition, moderate harm would be caused to the openness of the Green Belt. These factors attract substantial weight. In addition, significant weight is given to the harm the would result to the character and appearance of the area.
40. Limited weight is given to the permitted development fallback position outlined and the benefits of the scheme identified. Therefore, I find that the other considerations in this case do not clearly outweigh the harm that I have found. Consequently, the very special circumstances necessary to justify the development do not exist.
41. Therefore, the proposal would be contrary to the Framework and to policy CS5 of the CS which seeks to protect the Green Belt from inappropriate development.
42. Furthermore, notwithstanding that the Council is currently unable to demonstrate a 5 year supply of deliverable housing land, as the proposal is inappropriate development it would conflict with the advice in paragraph 143 of the Framework and this provides a clear reason for refusing the development proposed in line with paragraph 11(d)(i) of the Framework in relation to the presumption in favour of sustainable development.

Conclusion

43. For the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector