



Appeal Decision

Site visit made on 30 July 2019

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2020

Appeal Ref: APP/V1505/W/19/3229713

Alameda House, Bells Hill Road, Basildon SS16 5JR

- 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 Tony Ball against the decision of Basildon Borough Council.
 - The application Ref 18/01427/FULL, dated 12 October 2018, was refused by notice dated 7 January 2019.
 - The development proposed is the demolition of an existing bungalow to be replaced with a new bungalow.
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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 any relevant development plan policies and the National Planning Policy Framework ("the Framework"), including its effect on openness; and
 - If the proposal is inappropriate development, 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 required to justify the scheme.

Reasons

Whether the scheme is inappropriate development within the Green Belt and its effect on openness

3. The appeal site lies within the Green Belt. The scheme proposes the demolition of the existing dwelling in the rear corner of the site and the construction of a single storey dwelling towards its centre.
4. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate in the Green Belt, subject to a number of exceptions as set out in paragraph 145 of the Framework.
5. One of the exceptions (at paragraph 145d) is the replacement of a building, provided the building is in the same use and not materially larger than the one

it replaces. Policy BAS GB3 of the Basildon District Local Plan Saved Policies (2007) ("the SP") states that replacement dwellings in the Green Belt will be allowed to enlarge on replacement to 90 square metres or a maximum of 35 square metres over and above the floor area of the original dwelling, whichever is the greater.

6. Whether or not the existing building constitutes a dwelling is dealt with in Policy BAS GB5 of the SP. Under this policy a building that has become a dwelling through the granting of a Lawful Development Certificate ("LDC") is not considered to be a dwelling for the purposes of assessing a replacement dwelling under Policy BAS GB3 of the SP. The Framework does not make any similar such distinction, it merely requires a new building to be in the same use as the one it replaces. In this regard Policy BAS GB5 of the SP is inconsistent with the Framework. As such in my judgement it is appropriate to consider Policy BAS GB3 of the SP.
7. The appellant contends that Policy BAS GB3 of the SP is inconsistent with the Framework and should not attract full weight. The Framework requires assessment as to whether a replacement dwelling is materially larger. In my judgement this is not just an assessment of floorspace, as indeed Policy BAS GB3 sets out. Policy BAS GB3 requires several additional criteria to be met for replacement dwellings in the Green Belt. Having regard to paragraph 213 of the Framework I find that Policy BAS GB3 should only be afforded limited weight due to its conflict with paragraph 145 of the Framework.
8. The proposed dwelling would replace a former stable block which received a LDC¹ for the continued use of the building as a dwelling.
9. The appeal proposes the construction of a dwelling, and there is nothing before me to suggest that this is a different use from that which is the lawful use of the building to be replaced by virtue of the LDC. The proposed dwelling would be in the same use as the current building for the purposes of the first part of paragraph 145d) of the Framework.
10. The second part of paragraph 145d) of the Framework requires an assessment of whether the replacement building is materially larger than the one it replaces. The appellant contends that the removal of the mobile home on the appeal site should form part of this assessment. However, on the evidence before me I cannot be satisfied that any lawful use of the mobile home as a dwelling exists. No planning permission or LDC has been presented to demonstrate that it can be used as a dwelling. Consequently, based on the evidence before me it should not form part of the assessment.
11. The existing building is a modest structure arising from its initial purpose as a stable block. The proposed replacement dwelling would be more prominently located in the centre of the site and would have a significantly larger footprint. Furthermore, although the proposed replacement dwelling is a bungalow, its bulk and massing would be greater than that of the existing building. Consequently, having regard to the scale, form, design and height, I find that the proposed replacement building would be materially larger than the one it replaces. Only limited details of the height of the existing dwelling are before me. However, even if its height is comparable with that proposed, its footprint is significantly less.

¹ Local Planning Authority Ref: 12/00621/LDC, 24 September 2012

12. The Council issued a LDC² in December 2012 for a proposed single storey extension to the existing dwelling. The proposed extension has not subsequently been constructed.
13. Whilst limited details of the proposed extension are before me, the appellant contends that, if it were to be constructed, the unimplemented extension development results in a potential fallback which establishes a larger building than that currently proposed. As such the appellant considers this to demonstrate compliance with the replacement building exception within paragraph 145d) of the Framework.
14. The LDC is now of some age and there is no indication that any attempt has been made to implement the development it confirmed. Whilst it confirms that the proposed development would have been lawful on the date referred to, in relation to the permitted development rights at that time, it is therefore a "snapshot" in time and there can be no certainty that it would be constructed if the appeal were to be dismissed.
15. Furthermore, whilst the floor area of the existing dwelling may be larger than that currently proposed if it were extended, the resulting building would occupy a similar area of the site's width, but with a greater setback from the road which is likely to allow for greater openness. Thus, the effect of the proposed extension on openness is likely to be similar to, or less than, the appeal proposal. I therefore attach only limited weight to the effect of the proposed extension in determining the appeal.
16. The effect of the proposal in terms of encroachment into the countryside would be similar to the current situation, as the site area used for domestic purposes would remain the same. Any lack of conflict with the other purposes of including land in the Green Belt is a neutral matter which does not attract any particular weight in my decision.
17. Accordingly, the appeal proposal does not fulfil the exception requirements of paragraph 145d) of the Framework.
18. Paragraph 145e) of the Framework allows for limited infilling in villages. The Framework does not provide a definition for the term infill, however the term is generally understood to denote the development of a relatively small gap between existing buildings.
19. A dwelling and residential garden lie to one side of the appeal site. However, land to the other side of the site is an undeveloped field. Furthermore, given that the existing dwelling is to be demolished the proposed new dwelling would not lie in a gap between existing buildings and therefore could not be reasonably assumed to be infill.
20. The site lies within an area of residential development along Bells Hill Road. However, it is not a defined settlement and there is no indication that the development plan designates the area as a village. Thus, I do not consider that the site lies within a village. In failing to form infilling in a village the proposal consequently does not fulfil the exception requirements of paragraph 145e) of the Framework.

² LPA Ref: 12/01245/LDC

21. The Council has provided copies of policies within the emerging Basildon Borough Local Plan (2014-2034)³ ("the eLP") which I understand was submitted to the Secretary of State for examination in March 2019.
22. I have also been provided with extracts from the Green Belt Infill Policy Topic Paper of June 2017 ("the TP") which forms part of the evidence base for emerging development plan policies, including Policy GB4 concerning Green Belt residential infill development. The supporting text on the evidence base to the emerging policy sets out that the TP identifies a number of locations within the Green Belt which have the potential to provide new individual building plots in the future, when applying the emerging policy criteria. The appeal site is included within these.
23. Policy GB5 of the eLP is also partially relied on by the appellant, however this concerns extensions and alterations to buildings in the Green Belt. As the appeal scheme forms neither of these, I attach only minimal weight to the relevance of Policy GB5 in determining the appeal.
24. The TP is not associated with an adopted development plan. As such, it does not form part of the evidence base for the current development plan, and I accordingly attach only limited weight to its findings.
25. Whilst the appellant has used the emerging policies in his statement of case, the eLP has not yet been adopted. Therefore the appeal site does not currently form a potential building plot according to the adopted development plan. Furthermore, the Examiner's report on the eLP has not yet been issued. Thus, it is possible that a policy could be amended or deleted as a result of the examination, or that the plan is withdrawn or found unsound. Accordingly, I am only able to attach limited weight to the provisions of the emerging policies in determining this appeal.
26. Turning to the effect of the proposal on openness, the appeal site has an elevated position due to the slope of the land away from it towards a bypass. It is therefore likely to be prominent within longer range views, and more so in winter due to leaf loss from deciduous trees and hedgerow. Built form at the site currently consists of a mobile home and the former stable block. These have an unobtrusive scale, and visibility of them from the road is limited by wooden frontage fencing and their set back position against the site boundary. Views over the site's drive and wider area have an open appearance due to the lack of built form within them.
27. The proposed dwelling would interrupt views through and out of the site due to its position parallel to the road, its scale and its elevated location. These factors and the accompanying development, including car parking and boundary treatments, would inevitably lead to a loss of openness.
28. I therefore consider that the proposal would have a greater impact on the openness of the Green Belt than the existing development. This harm would be moderate because, whilst the site has a prominent location, the proposed development is of a limited scale.
29. Thus, for these reasons, the proposal would be inappropriate development in the Green Belt and, in this regard, it conflicts with the Green Belt provisions of the Framework.

³ Basildon Borough Revised Publication Local Plan 2014-2034, dated October 2018

Other Matters

30. I note the appellant's concerns regarding the Council's approach, however, these are not matters for this appeal, which I have determined on its planning merits.

Other considerations and the Green Belt balance

31. I have found that the appeal proposal is inappropriate development in the terms set out in the Framework. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
32. As the appellant contends that the proposal would not be inappropriate development in the Green Belt he has not presented any other considerations for me to assess whether they would constitute the very special circumstances necessary to justify the proposal.
33. Having regard to the comments of interested parties, any benefits of the proposal in meeting housing needs would be neutral given that there is an existing building which is used as a dwelling at the site.
34. Interested parties have additionally commented that the proposal would improve the character and appearance of the area. However, I have found above that existing development at the site has a relatively unobtrusive effect and that the site contributes open views. Thus, the site has a relatively neutral effect on the area's character and appearance, and therefore these submissions do not form any particular benefit of the proposal.
35. Any lack of harm in respect of the proposal's layout, materials and landscaping are also relatively neutral matters which do not attract any particular weight in its determination.
36. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

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

C Beeby

INSPECTOR