



Appeal Decision

Site visit made on 17 August 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th October 2021

Appeal Ref: APP/N3020/W/21/3275008

Lord Byron House, Newstead Abbey Park, Nottingham, NG15 8GE

- 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 Burns against the decision of Gedling Borough Council.
 - The application Ref 2020/1052, dated 19 October 2020, was refused by notice dated 9 April 2021.
 - The development proposed is replacement dwelling and associated works, including demolition of existing buildings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt;
 - 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

Whether the proposal would be inappropriate development in the Green Belt

3. The appeal site is situated in the Green Belt. The National Planning Policy Framework ('the Framework') indicates (para 149) that, other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt.
4. The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces, is one of the listed exceptions at paragraph 149(d). Policy LPD14 of the Gedling Borough Local Planning Document 2018 (LPD) states that the replacement or rebuild of existing dwellings in the Green Belt will be permitted provided that the total size of the dwelling would result in no more than a 50% increase in floorspace of the original dwelling.

5. In addition, replacements should be in keeping with the surrounding character in terms of height, bulk, form and general design and should not impact on the openness of the Green Belt. The subtext to the policy adds that increases over 50% may be considered acceptable where there are clear and demonstrable benefits, including an overall improvement on openness and through the removal of curtilage buildings.
6. Whilst this figure provides a useful guideline, the Framework does not provide a definition of 'materially larger'. Therefore, an assessment of whether a proposal would be materially larger is a matter of planning judgement. Therefore, I have given greater weight to the Framework in this regard.
7. The site is currently occupied by a single storey dwelling, within a large plot with a number of existing outbuildings. The existing dwelling has a floor area of approximately 120.9 sqm, the proposed replacement dwelling would have a floor area of 403.5 sqm. The site also includes 132 sqm from existing outbuildings, which would be replaced by the proposed garage, at 65.7 sq m.
8. The original dwelling and outbuildings have a floor area of approximately 250 sqm and the proposed development would increase this to around 469.2 sqm. However, I accept that floor area is not the only consideration in determining whether the building is materially larger.
9. The footprint of the proposed dwelling would result in an increase in the extent of development towards the frontage of the site and encroach into an area which is currently undeveloped and would also include elements of first floor accommodation. Although it would be possible for the proposed dwelling to be set into the site by the alteration of the ground levels, the works associated with altering the ground levels would result in further encroachment into the site. All of these factors indicate, that the proposed dwelling cannot reasonably be considered to be anything other than materially larger.
10. In not complying with any of the listed exceptions, the scheme would be inappropriate development in the Green Belt, which paragraph 147 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework states that in considering a planning application substantial weight should be given to any harm to the Green Belt.

The effect of the proposal on the openness of the Green Belt

11. Paragraph 137 of the Framework states that the Government attaches great importance to Green Belts. The essential characteristics of Green Belts are their openness and their permanence. Openness can be defined as the absence of built form. In the case before me the built form and footprint of development would increase above that which currently exists on site. The development would therefore, in spatial terms, have a greater and harmful impact upon the openness of the Green Belt.
12. However, openness also has a visual aspect as well as a spatial one. The proposal would result in the removal of a number of smaller ancillary buildings which exist across the site which would result in a greater sense of openness towards the rear of the site. However, this would be offset by the siting of the proposed development which extends further towards the entrance onto the road.

13. In this instance the effect of the cumulative increased size of the built development would clearly be experienced both visually and spatially. For this reason, the proposed development would compromise and significantly harm the openness of the Green Belt, in that it would be reduced.

Other considerations

14. The appellant has indicated that there are material considerations such as the fallback positions, which comprise a number of lawful development certificates and prior approvals that have previously been granted by the Council. In addition, the appellant has also applied for further development under a lawful development certificate and prior notification during the consideration of the appeal.
15. I share the views expressed within the submitted legal opinion from Kings Chambers, that the weight to be given to a fallback position is a matter of planning judgement. However, I have considered the Court of Appeal decision¹ which concluded that the clear desire of the landowner to develop and maximise the value of the site was sufficient to demonstrate that there was a real prospect to a fallback position. As such, I have had regard to the clear desire on the appellants part to redevelop the site in considering the weight to be given to the schemes which have already been given consent.
16. The permitted proposals permit the extension of the dwelling and include the provision of a number of ancillary outbuildings, providing indoor swimming pool, offices, gym and garage/store. The permitted extensions to the dwelling would form part of a compact development which would comprise development predominately to the rear and side, with some elements of first floor accommodation.
17. Comparing the permitted schemes with the proposed development, the scheme before me does not include the same level of ancillary accommodation afforded by the permitted development proposals, in terms of swimming pool, gym and office. In addition, the appellant has indicated that they are willing to accept a condition removing permitted development rights for outbuildings and have also provided a unilateral undertaking which would extinguish the existing rights of the dwelling. This would limit their future ability to provide the same range of facilities and as a result it raises doubts as to whether it would be a probable alternative or represent a real prospect for development, as this would not be replicated within the proposal before me. Therefore, I have given the fallback position to provide ancillary outbuildings limited weight.
18. Considering the proposals to extend the existing dwelling, it has not been demonstrated in the evidence before me that it would be the clear intention of the appellant to extend the dwelling, in the manner proposed should a scheme for its replacement not be forthcoming. Even if I were to accept that it was a realistic alternative, the permitted extensions do not result in the same level of forward projection into an area that is currently largely undeveloped. The greater extent of encroachment towards the entrance to the site is more harmful than that of the permitted schemes. Therefore, I consider that the fallback position to extend the dwelling would not be significantly more harmful than the appeal scheme and therefore I have given it limited weight.

¹ Mansell v Tonbridge and Malling Borough Council 2017 EWCA Civ 1314

19. I have also taken into account the appellant's willingness to accept a condition which would restrict permitted development on the site, which would enable the Council to have control over future development on the site. However, the Planning Practice Guidance says that permitted development rights should only be withdrawn in exceptional circumstances and there is nothing within the Framework to indicate that these apply to development in the Green Belt. Therefore, I have given this consideration limited weight.
20. It has also been put to me that the proposed development would be more aesthetically pleasing than the dwelling which it replaces, or that which would result if the permitted development schemes were implemented. The Council also recognises that the dwelling would adhere to principles of sustainable design. The existing dwelling is unremarkable in its design and appearance and given its age is unlikely to adhere to the principles of sustainable development. The proposed dwelling is an improvement on that which currently exists in terms of design and will provide an improved standard of living in terms of sustainability for future occupiers. I have given considerable weight to this benefit, recognising the importance the Framework places on sustainable development.

Very Special Circumstances

21. In conclusion I have identified that the scheme would be inappropriate development in the Green Belt as defined by the Framework and result in harm to the openness of the area. It would, by definition, be harmful to the Green Belt, harm which the Framework indicates should be given substantial weight.
22. As explained above I have given considerable weight to the material consideration in respect of the improved sustainability of the replacement dwelling and limited weight to the other considerations cited in support of the proposal. However, I conclude these circumstances do not clearly outweigh the substantial weight I must give to the overall harm the scheme would cause.
23. Consequently, very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist. The proposal would fail to comply with policy LDP14 of the LDP and policy 3 of the Aligned Core Strategy 2014, which together direct development away from the Green Belt and requires development to minimise the potential detrimental impact on openness.

Other Matters

24. As part of my assessment of the appeal development, in order to discharge my statutory responsibilities, I have also made an assessment of the proposals' effect on the setting of Newstead Abbey Park, a Grade II* Registered Park and Garden and a number of listed buildings located within the park, including Grade I Listed Newstead Abbey.
25. In my view, the wider landscape which is formed in part from the appeal site, with its character largely that of a rolling landscape containing woodland, contributes to the significance of Newstead Abbey and the registered park and gardens.

26. I note the conclusion of the heritage report that the development results in less than substantial harm. However, in order to come to a conclusion as to whether there would be harm to the setting of these heritage assets, I would require further evidence from the appellant to assess the contribution that the appeal site makes to the setting. In particular, the impact of the development in terms of its encroachment into the wider landscape and any requirements for lowering of ground levels. It would also have been necessary for me to clarify whether the views of Historic England had been sought.
27. However, as I am dismissing on other grounds, it has not been necessary for me to reach a conclusion on this matter.

Conclusion

28. The proposal would therefore conflict with the development plan and there are no other considerations that outweigh this conflict. For the reasons given above I conclude that the appeal should be dismissed.

G. Pannell

INSPECTOR