



Appeal Decision

Site visit made on 2 November 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2022

Appeal Ref: APP/R0335/W/21/3273677

Goaters Hill Cottage, 21 Asher Drive, Ascot SL5 8LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs Sohi against Bracknell Forest Borough Council.
 - The application Ref 20/00464/FUL, is dated 22 June 2020.
 - The development proposed is redevelopment of site to provide replacement dwelling.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Application for costs

2. An application for costs was made by Mr & Mrs Sohi against Bracknell Forest Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. Since the appeal responds to the Council not having determined the application, there is no decision notice. Nonetheless, they have stated it would have been refused. The reasons for which have informed the main issues of the appeal.

Main Issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposal on the protected trees on the site; and
 - if the proposal would be 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 necessary to justify it.

Reasons

Whether Inappropriate Development

5. The National Planning Policy Framework (the Framework) establishes that the construction of new buildings within the Green Belt is inappropriate. There is a closed list of exceptions to this in paragraph 149 of the Framework. One of

which relates to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces (paragraph 149 d)).

6. Whilst the Framework post-dates the Bracknell Forest Borough Local Plan (adopted 2002) (Local Plan) and provides a larger number of exceptions which are not considered inappropriate development in the Green Belt to that contained within Policy GB1 of the Local Plan, Policy GB1 does provide an exception for certain new buildings in the Green Belt in relation to the replacement of existing dwellings. Considering that the building proposed to be replaced is subject to a change of use to a dwelling¹ which has been part implemented, Policy GB1 is relevant to my assessment under this main issue.
7. The appellant has referred to the design of the proposed replacement building, its proposed position within the plot, and whether it would visually enhance the site. I acknowledge that it would be sited in a similar part of the site as the existing building, with the existing and proposed footprints overlapping. In this regard, whilst paragraph 4.35 of the supporting text to Policy GB1 refers to a range of factors including whether the proposal would enhance the visual character of the site, the assessment of the proposal against the building to be replaced for the purposes of the Framework is principally a question of actual physical size. Due to this inconsistency, I therefore attach greater weight to the Framework.
8. In this regard, neither the Framework nor the Local Plan provides a specific floor space or volumetric percentage figure as to what might constitute a 'materially larger' replacement building. Paragraph 4.38 of the supporting text to Policy GB1 relates to limited extensions and alterations to existing dwellings and therefore is not directly relevant to the proposal before me. I have therefore given this very limited weight in terms of guiding my assessment.
9. Reference has been made to text in the emerging Local Plan which provides that, amongst other things, as a general guide, a replacement building that would result in an increase in the volume of the existing building by more than 20% is very likely to be regarded as materially larger. The appellants have stated that the emerging Local Plan is at an early stage of preparation, and have provided a copy of appeal decision Ref APP/R0335/W/20/3259307 which states the same. This has not been disputed by the Council. Consequently, I have given this 20% guideline limited weight in guiding my assessment.
10. The Council have referred to Policy DM18 of the Elmbridge Local Plan (adopted 2015) and to appeal decisions Refs APP/H1840/W/17/3186355 and APP/C2741/W/19/3242886. However, as Policy DM18 and those appeal decisions do not relate to Bracknell Forest Borough Council I have treated them as being merely indicative of the apparent range of approaches that have been applied. These too, have been given limited weight in guiding my assessment.
11. As no clear steer exists in national or adopted planning policy for Bracknell Forest Borough Council, it is necessary to apply my planning judgement to the circumstances of specific appeal before me, which in any event must be determined on its own merits.

¹ 05/00025/FUL

12. It is common ground between the main parties that the proposed replacement building would involve an increase in gross floor area of approximately 40%, and an increase in volume of approximately 39%, over-and-above the existing building. According to figures provided by the Council, which have not been disputed by the appellants, the replacement building would also involve an approximately 18% increase in terms of the ridge height of the proposed replacement building, compared to the existing building.
13. Therefore, although the proposed single-storey replacement building would have a reduced width and depth, due to its (broadly) 'H' shape, and would have subservient 'wings' either side, when considered as a whole it would be considerably larger in terms of its bulk and massing when compared to the existing building. It follows that it would be materially larger in terms of both its size and scale, when compared to the existing building.
14. I have had regard to the Bodens Cottage, Ascot² planning permission, however in that case the Officer's Report made clear that the volumetric increase was only approximately 28.9%, with a reduction in height of approximately 1.8m, compared to the existing building. Hence, that scheme is not sufficiently comparable with the proposal before me. I acknowledge the similarities between the proposal and the planning permission for Orchard House, Ascot³ in terms of floorspace and volume increases but based on the evidence before me in my view that application did involve a materially larger building. Similarly, the Council acknowledges that the assessment for Orchard House may now be considered 'overly generous'. Accordingly, neither of those examples changes my findings.
15. I therefore find that the proposed replacement building would be materially larger than the existing building to be replaced, in conflict with paragraph 149 d) of the Framework. The proposal would therefore constitute inappropriate development in the Green Belt for the purposes of the Framework, Policy GB1 of the Local Plan, and Policy CS9 of the Bracknell Forest Borough Local Development Framework: Core Strategy Development Plan Document (adopted 2008) (Core Strategy) which seeks to protect the Green Belt from inappropriate development. Inappropriate development is, by definition, harmful to the Green Belt.

Openness

16. The Framework denotes openness as an essential characteristic of the Green Belt. Taking account of relevant case law⁴, the openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
17. The site is set well-back from public vantage points, including Sandy Lane, and a significant amount of screening, including trees and mature landscaping, is present around the wider site. As such, the proposal's impact on the openness of the Green Belt would be limited in visual terms.
18. Nevertheless, although the proposed replacement building would be sited in a similar part of the site as the existing building and its eaves and ridge height

² 17/01157/FUL

³ 16/01285/FUL

⁴ Including *R (oao Samuel Smith Old Brewery (Tadcaster) & Ors) v North Yorkshire CC* [2020] UKSC 3

would not be vastly different to the existing building (with subservient 'wings' on either side), the proposal would result in a replacement building which would be physically larger than the existing building. Consequently, the proposal would reduce the openness of the Green Belt in spatial terms, albeit to a limited degree, which would cause harm to the Green Belt.

Protected Trees

19. I observed 2 trees which are near to the existing building. These are a willow and a chestnut. These trees are protected by a Tree Preservation Order (TPO 776). I observed that, partly due to their heights, these trees are particularly prominent in some views from Sandy Lane, and that they provide an important visual contribution to the character and appearance of the local area.
20. No arboricultural assessment or other technical information has been provided, in relation to the effect of the proposal on these trees. Based on the limited information before me, and my own observations, I consider that the proposal would be unlikely to have an adverse effect on the willow tree, as the proposed replacement building would be located sufficiently far away from that tree for disturbance to its roots to occur.
21. However, although the appellants have asserted that the trees are sufficiently distant to avoid future pressure for tree/branch removal, the proposed replacement building would be located particularly close to the chestnut tree. In the absence of an arboricultural assessment it has not been made clear what the extent of the construction works would be, either around or within, the root protection area of the chestnut tree, nor what measures would be taken to protect the tree during the construction of the proposed replacement building.
22. As such, there is no certainty that construction works would not adversely impact on the health and safety of this important tree. As harm to the tree could harm the character and appearance of the area, a precautionary approach is necessary. Given the importance of the tree it would not be appropriate for planning permission to be granted in these circumstances and the use of planning conditions relating to the required information would not be reasonable.
23. With respect to another tree that has previously been felled on site, the appellants have suggested that a planning condition could be imposed for a replacement tree. However, this would not resolve the potential adverse effect on the chestnut tree, identified above.
24. I therefore conclude that I have insufficient information before me to demonstrate that the proposal would not have an adverse effect upon the protected chestnut tree. Therefore, the proposal would conflict with Policies EN1 and EN20 of the Local Plan, and Policy CS7 of the Core Strategy, which collectively provide that, amongst other things, planning permission will not be granted for development which would result in the destruction of trees and hedgerows which are important to the retention, where applicable, of the character and appearance of the landscape or townscape.

Other Considerations

25. The Framework makes it clear at paragraph 148 that substantial weight is given to any harm to the Green Belt. It establishes that 'very special circumstances' will not exist unless the potential harm to the Green Belt by

reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

26. No concerns have been raised by the Council with respect to matters relating to access, parking, highways, road safety, traffic, flood risk, drainage, private amenity space, layout, construction methodologies, energy efficiency, water resource management, waste recycling, landscaping and biodiversity and ecology (apart from the potential consequences of any adverse effect on trees, considered above), nor the living conditions of the occupiers of nearby dwellings. Apart from with respect to trees, no concerns have been raised in relation to the detailed design considerations set out in Policy EN20 of the Local Plan. However, even if I were to likewise reason that the proposal would be acceptable in these respects, these would be neutral factors rather than ones which weigh positively in favour of the proposal.
27. The existing building has the appearance of former stable block with a rather attractive rustic quality. The proposed single-storey replacement dwelling would incorporate an aesthetically-pleasing front elevation with appropriate materials. Nevertheless, considering that it would be set well-back from public vantage points and taking account of the considerable levels of screening around the wider site, in my view the proposal would have a neutral effect on the character and appearance of the local area. Thus, this is a factor which does not weigh in favour of the proposal.
28. A fall-back position exists, in the form of a part implemented planning permission for the change of use of the existing building, with alterations, to form a 3 bedroom dwelling⁵, and an extant planning permission for the change of use of the existing building to form a 3 bedroom dwelling⁶. Taking account of *Mansell*⁷ and the copy of the letter provided relating to a planning obligation, I consider that there is a real prospect that either one of these permissions may be implemented in full. However, those permissions primarily relate to changes of use, rather than a replacement building, meaning that the fall-back position would be unlikely to be more harmful to the openness of the Green Belt than the appeal proposal. Hence, I have given the fall-back position limited weight.

Balancing of Considerations

29. The proposal would be inappropriate development in the Green Belt and would result in a reduction in its openness. These matters carry substantial weight. Additionally, the proposal has the potential to adversely affect a protected tree. Taken together, 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 proposal do not exist.
30. Therefore, the proposal would not comply with the Green Belt aims of Policy GB1 of the Local Plan or Policy CS9 of the Core Strategy, or the Framework. The proposal would also conflict with Policy H5 of the Local Plan which provides that, amongst other things, outside the defined settlement boundaries the erection of a new dwelling will not be permitted unless there is a need for it in connection with an acceptable use listed in Policy EN8 and GB1 and which

⁵ 05/00025/FUL

⁶ 19/00428/FUL

⁷ *Mansell v Tonbridge and Malling BC & Ors* [2017] EWCA Civ 1314

cannot be met within the settlement. Consequently, the proposal would be unacceptable.

Conclusion

31. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

Alexander O'Doherty

INSPECTOR