



Appeal Decision

Site visit made on 11 July 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2022

Appeal Ref: APP/T4210/W/22/3290022

Kirklees Valley Farm, Lower Kirklees Street, Tottington, Bury BL8 3NY

- 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 Jason Briggs against the decision of Bury Metropolitan Borough Council.
 - The application Ref 67532, dated 12 September 2021, was refused by notice dated 21 December 2021.
 - The development proposed is a replacement dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I noted on my site visit that the dwelling had been erected. For the avoidance of doubt, I have assessed the appeal proposal and based my decision on the plans before me.

Main Issues

3. The main issues are:
 - Whether or not the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy, including an assessment of the effect of the proposal on the openness of the Green Belt;
 - The effect of the proposed development on the character and appearance of the surrounding area; and
 - If the development is inappropriate, whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

4. The appeal site is accessed off Kirklees Street. In 2021, the Council issued a Certificate of Lawfulness for a dwelling at the appeal site. The appeal seeks to replace that with a single storey dwelling.

5. Paragraph 149 of the Framework states that new buildings are inappropriate in the Green Belt unless they fall within the given list of exceptions. One such exception is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Policy OL1/2 of the Bury Unitary Development Plan (1997) (UDP) is broadly consistent with the Framework in terms of replacement dwellings.
6. The Council's New Buildings and Associated Development in the Green Belt- Development Control Policy Guidance Note 8 (2007) (SPD8) provides further guidance regarding replacement dwellings in the Green Belt. This states where a replacement dwelling is proposed, the new dwelling should reflect the original dwelling in terms of massing, siting and area of footprint, height and should not be materially larger than the one it replaces. Any significant deviation from this would need to be justified as 'very special circumstances'... In general terms, the Council may allow the original volume to be increased by up to a third as part of a proposal for a replacement dwelling.
7. In order to comply with both national and local planning policy an assessment is required to establish whether the replacement dwelling would be larger than the one it replaces. An assessment of whether a building is materially larger can include matters of footprint, volume, width, height and visual perception.
8. The replacement dwelling would not be substantially taller and would be situated within the existing curtilage. Nonetheless, the Council highlight that the replacement building would result in approximately a 220% increase in volume and 158% increase in area comparative to the existing. These are significant increases. The massing of the replacement dwelling would be substantially more than the original dwelling which is essentially a caravan. Thus, the new dwelling would be materially larger than the one it replaces because of the increase in volume, footprint and massing.
9. Whilst not considered by the Council, the appellant also considers that the proposal would represent the redevelopment of previously developed land and comply with paragraph 149 g). This exception allows for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
10. Even if the appeal site represents previously developed land, any exception under paragraph 149 g) only applies subject to the proviso that the proposal would not have a greater impact on openness than the existing development. Paragraph 137 of the Framework confirms that 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 their permanence. My attention has been drawn to a legal judgement¹ in this regard.
11. The existing use of the site already has an impact on the openness of the Green Belt. The proposed development would be located in a similar, central part of the wider landholding to the existing dwelling, and associated curtilage with domestic paraphernalia.

¹ Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

12. Having said that, the proposal would have a greater impact on the openness of the Green Belt than the existing development. This is because the new dwelling would numerically and visually be materially larger than the one it replaces due to the increase in volume, footprint and massing. Views of the proposed development would be extremely limited from public vantage points. This is because of the surrounding vegetation, trees and entrance gates. Therefore, the scheme's visual impact would be limited. For these reasons, even if the proposal amounted to development on previously developed land, the scheme would not meet the exception of paragraph 149 g) on account of the effect on openness.
13. Consequently, considering that the scheme would result in a significantly larger dwelling, the development would have an adverse impact on both the spatial and visual openness of the Green Belt, albeit to a moderate degree due to the existing built development within the site and limited public views. As such, the scheme would conflict with the purposes of Green Belt policy, as stated in the Framework, to keep land permanently open.
14. Accordingly, based on the evidence presented, the proposal would not fall under any of the exceptions listed in the Framework and would be inappropriate development in the Green Belt having regard to Policies OL1/2 and OL5/2 of the UDP, SPD8 and the Framework.

Character and appearance

15. The replacement dwelling is a single storey, modular building of simple design. As stated above, it would be situated in a similar location to the existing dwelling, and associated curtilage, and views of the proposed development would be extremely limited from public vantage points. Although the dwelling would be materially larger than the one it replaces, it would be a modest dwelling and single storey. A planning condition could be attached relating to external materials to ensure that the dwelling blends in with the surroundings.
16. Accordingly, I am satisfied that the proposed development, including hardstanding and domestic paraphernalia, would not cause harm to the character and appearance of the surrounding area, including the character of the Green Belt. Therefore, it would not conflict with Policy EN1/1 of the UDP which states that development will not be permitted where proposals would have a detrimental effect on the visual amenity both within, or viewed from, areas of environmental interest such as the Green Belt or the river valleys. In this regard, it would also not conflict with SPD8 which provides advice on how the character of the Green Belt is maintained and where possible, improved.

Other considerations

17. A number of other considerations have been drawn to my attention. Three people currently live at the appeal site. The appellant highlights that policy JP-H3 of the Joint Development plan for Greater Manchester states that all new dwellings must comply with the nationally described space standards. However, this is not currently an adopted policy. The replacement dwelling would comply with the space standards and building regulations requirements.
18. The appellant states that if the appeal was dismissed, it would amount to a breach of the Human Rights Act, Protocol 1, Article 1 (protection of property) and Article 8 (right for respect for private and family life). These are qualified

rights and I acknowledge that if the appeal is not allowed then the appellant and their family, including their child, would have to revert to living in the original dwelling which fails to meet space standards and is poorly insulated.

19. Whilst I sympathise with the appellant's situation that must be weighed against other factors including the wider public interest. Their circumstances could change, whereas the dwelling would remain on the site and continue to harm the Green Belt in posterity. Dismissing the appeal would not make the appellant, and their family, homeless as the original dwelling remains on site. The appellant chose to live in the caravan for a number of years and a lawful development certificate does not consider matters such as impact on the Green Belt. Furthermore, they have at their own risk erected a dwelling without planning permission. The appellant outlines reasons why the alternative solution suggested by the Council would not be suitable. However, it is not clear why these structures are needed, and I do not consider that alternative options have been adequately explored considering the Green Belt location of the site.
20. I have found that the proposal would be inappropriate development in the Green Belt, and I am satisfied that the legitimate planning policy aims, to protect the Green Belt, can only be adequately safeguarded by a refusal of permission. On balance, this course of action would be proportional in the circumstances. I consider that the dismissal of the appeal would not have a disproportionate effect on the appellant, and their family including the best interests of the child, and would not lead to an unacceptable violation of their rights. I give moderate weight to the above considerations given the quality of the living conditions of the original dwelling which remains on site.
21. The appellant states that they would agree to a condition for the removal of two caravans and other structures on the landholding, in addition to a general tidying up of the site. The Council state that this would result in a different scheme to the one which was submitted with the application and one which would need a separate consideration. Nonetheless, the appellant highlights that these structures have already been removed since the appeal was submitted. The removal of these structures is a benefit to the openness of the Green Belt. I give limited weight to this consideration because they have already been removed and it is not clear whether these were permanent and lawful structures.

Whether very special circumstances exist

22. The proposal would be inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt. In addition, I have found a moderate loss to the openness of the Green Belt. Paragraph 148 of the Framework is clear that substantial weight should be given to any harm to the Green Belt and 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.
23. The other considerations relating to quality of the living conditions of the original and replacement dwellings are given moderate weight. Limited weight is given to the removal of structures on the landholding.
24. When drawing this together, the other considerations advanced results in a finely balanced decision. However, the other considerations would need to

clearly outweigh the substantial harm to the Green Belt. Accordingly, the advanced considerations in support of the appeal whether taken individually or cumulatively, do not, on balance clearly outweigh the totality of the harm that I have found. Therefore, the very special circumstances necessary to justify the development do not exist.

Conclusion

25. I conclude that the proposal would amount to 'inappropriate development'. In addition, I have found a moderate loss to the openness of the Green Belt. Despite the merits of the proposal, there are no very special circumstances to outweigh this harm. Consequently, the scheme would conflict with Policies OL1/2 and OL5/2 of the UDP, SPD8 and the Framework which seek to protect the Green Belt.
26. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal is dismissed.

L M Wilson

INSPECTOR