



Appeal Decision

Site visit made on 15 November 2022

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2023

Appeal Ref: APP/J0405/W/22/3296062

Tats Wood, Chivery, Aston Clinton HP23 6LD

- 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 John Caulfield against Buckinghamshire Council.
 - The application, Ref 21/00844/APP, is dated 1 March 2021.
 - The development proposed is a replacement dwelling following demolition of existing dwelling, garage and outbuildings.
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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 John Caulfield against Buckinghamshire Council. This application is the subject of a separate decision.

Preliminary Matters

3. I understand that an appeal has been made against a later decision of the Council to refuse permission for a similar proposal at this site¹. However, I have reached my decision only on the information submitted in respect of the appeal before me.
4. During the appeal, additional information in respect of a reptile survey, and preliminary ecological appraisal and roost assessment were submitted. The Council has confirmed that, subject to conditions, this information would overcome its ecology concerns. As such, there is no need for me to consider the Council's putative third and fourth reasons for refusal relating to these matters.
5. The appeal results from the failure of the District Council to determine the application within the prescribed period. Therefore, there is no formal decision notice. However, the Council's statement of case sets out the reasons why planning permission would have been refused had it been empowered to do so.

Main Issues

6. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the

¹ PINS reference APP/J0405/W/22/3308513

Framework) and any relevant development plan policies, including the effect of the proposal on the openness of the Green Belt,

- the effect of the proposal on the character and appearance of the area, including the Chilterns Area of Outstanding Natural Beauty (AONB) within which it would sit, and
- if the proposal is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate Development

7. Paragraph 149 of the Framework makes clear that the construction of new buildings is inappropriate in the Green Belt. Exceptions to this include 149(d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; and 149(g) the redevelopment of previously developed land, excluding temporary buildings, which would not have a greater impact on the openness of the Green Belt than the existing development.
8. Policy S4 of the Vale of Aylesbury Local Plan, adopted September 2021 (VALP), permits small-scale development in certain circumstances that preserves the openness of the Green Belt and does not conflict with its purposes. Relevant to this appeal, these include under criteria S4(d) the replacement of existing buildings that are not significantly larger in volume, normally by no more than 25-30% of the original building.
9. A further exception S4(f) refers to the redevelopment of previously developed sites where the gross floorspace of the new building is not out of proportion with the original, normally a 25-30% increase in size. As such, Policy S4 is broadly consistent with the Framework. The appellant's assertion that the site constitutes previously developed land as required by VALP Policy S4(f) is contested by the Council. However, even if I was to accept the appellant's position that the appeal site is previously developed, there is a further requirement to assess any volumetric increase in comparison with the original.
10. In this regard, the supporting text to VALP Policy S4 makes clear that, when calculating the increase, the original building is the house when first built, excluding sheds and outbuildings. This refers to increases in volume, as does criteria (d) of the policy itself, whereas criteria (f) specifies floorspace. Even so, the baseline of both criteria is what was there originally, defined as was first built or stood on 1 July 1948. Three outbuildings are included in the appellant's calculations² in addition to the garage and store, but two are shown to be outside of the application site, so it is not clear which should be included.
11. The appellant's figures exclude a rear extension in respect of the dwelling's original size. However, the site has a history of Certificate of Lawfulness applications and I have little evidence as to the evolution of the dwelling or the other buildings at the site. As such, I cannot conclude that they should all form part of the baseline of what is 'original', or whether in whole or in part, given

² Within the Planning Statement

- (for instance) the different constituent parts of the westernmost building(s) within the site, which may have been built at different times.
12. Furthermore, VALP Policy H4 permits replacement dwellings in the countryside, as here, but clarifies that in this context the term 'dwelling' does not include any detached garaging or domestic outbuilding. This definition therefore excludes at least some of the buildings within the appellant's calculations from forming part of the baseline.
 13. Therefore, for the reasons given above, I consider that only the original dwelling itself, excluding the other buildings, can be clearly treated as forming the baseline when calculating the increase in size of the replacement dwelling. On this basis, using the appellant's figures and whether measured by volume or floorspace, the proposal would result in an increase that would significantly exceed the 25-30% restriction of VALP Policy S4(d) and (f). As such, it would be materially larger than the dwelling it replaces, conflicting with Framework criteria 149(d). On the same basis, it would also be significantly greater in size than the existing dwelling and so would conflict with VALP Policy H4.
 14. Framework criteria 149(g) permits the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. Openness has both spatial and visual elements. Visually, I saw that the site is well screened from the road by existing dense trees and hedgerows, but that within the site it is relatively open. Spatially, the existing dwelling and the outbuildings have low profiles and relatively narrow widths and are discrete in their location. The proposal would be sited on a lower terrace level but would still have a taller overall height than the existing dwelling.
 15. I have identified that the increase in volume would exceed the original and in addition, the spatial distribution of the increase in volume would be concentrated into a single building of appreciable mass and bulk. Despite its position on a lower level and consolidation of existing outbuildings into a single building as proposed, it would be notably taller than the existing dwelling. As such, it would diminish the openness of the Green Belt
 16. The Framework requires that substantial weight should be given to any harm to the Green Belt. Therefore, it would not meet Framework exception 149(g) due to the greater effect on openness and would conflict with VALP Policy S4 for this reason too. For the reasons given above, I therefore conclude that the proposal would be inappropriate development in the Green Belt having regard to the Framework and the relevant development plan policies. It would also have a harmful effect on the openness of the Green Belt. As such, it would conflict with VALP Policies S4 and H4, and with Framework paragraphs 149(d) and (g).

Character and appearance of the area

17. The Framework requires that great weight is given to conserving and enhancing the landscape and scenic beauty of AONBs, which have the highest status of protection in relation to these issues. The proposed dwelling would be considerably sited on a lower level with use of appropriate external materials and a limited increase in vehicular movements to and from the site.

18. However, the proposal would nevertheless have a greater height and overall mass than the existing built form and as such is likely to have an impact on the landscape of the AONB. VALP Policy NE3 therefore requires that a Landscape and Visual Impact Assessment (LVIA) in line with version 3 of the relevant guidelines³ should be provided.
19. A Visual Assessment was submitted by the appellant during the appeal process, but this consists only of a series of photographs taken around the site. This shows that the site has mature trees and hedgerows on its boundaries, but there is little analysis of the landscape character of the site's surroundings, or of the visual effect of the proposal from, for example, public viewpoints.
20. I have little substantive evidence to show that the design of the proposed dwelling would not reflect others locally or would appear out of place. However, in the absence of an LVIA, and based on the limited evidence available to me, I do not have sufficient information to demonstrate whether (and to what extent) the proposal and its increased height and mass would affect the landscape and scenic beauty of the AONB. For this reason, I cannot conclude that the proposal would not have a harmful effect on the character and appearance of the area, including on the AONB.
21. For these reasons, it would conflict with VALP Policies BE2 and NE2, which require development to conserve and enhance the distinctive character of the AONB and respect and complement the physical characteristics of the site and its surroundings. For the reasons given above it would similarly conflict with the requirement in the Framework.

Other Considerations

22. The proposal seeks to improve the poor insulative qualities and energy rating of the existing dwelling. It would use structurally insulated panels and energy saving technologies such as air source heat pumps. As a result, it would exceed the energy requirements of the Building Regulations and any measures that could be undertaken to the existing dwelling. It would also result in modest economic benefits locally during its construction.
23. However, in light of the emphasis of the Framework on using natural resources prudently, minimising waste and pollution, and moving to a low carbon economy, it is not unusual for proposals to be designed to high environmental standards. In relating to just a single dwelling, the extent of these benefits is necessarily limited. Furthermore, redevelopment of the site may itself have energy and carbon costs. As such, I give only moderate weight to these benefits.
24. The existing dwelling may well have permitted development rights for both extensions and outbuildings to be erected. However, no specific scheme is before me to demonstrate that such a fallback would be realistic, or more harmful to its surroundings than what exists now or is proposed. As such I give this fallback only limited weight. Any condition to remove such permitted development rights for the proposal would be necessary to prevent further harm and so is not a positive benefit of it.

³ published by the Landscape Institute and the Institute of Environmental Management and Assessment

25. Outline planning consent for a replacement dwelling following demolition of the existing dwelling was granted in October 2020⁴. However, this permission has now lapsed and as such carries limited weight. In any event, the permission required that the replacement dwelling should be single storey. The appellant has referred to permission⁵ for a dwelling to be replaced at Langlands, nearby. I am told that demolition of the existing single storey dwelling and outbuildings and their replacement with a two-storey dwelling with a smaller overall volume amounted to very special circumstances.
26. However, I have few details of this proposal, the size of the buildings involved, or its effect on the openness of the Green Belt. The need for consistency in decision-making is important but must be set against the need to properly apply the policies of the Development Plan, together with any material considerations, and I have found that the proposal conflicts with this. As such, I can give the decision at Langlands little weight, and it does not change my overall conclusions.
27. The site lies within the zone of influence of the Chiltern Beechwoods Special Area of Conservation (SAC), protected pursuant to the Conservation of Habitats Regulations 2017 as amended. Although for a replacement dwelling, had I found no harm in respect of the main issues, I would as competent authority have carried out a Habitat Regulations Assessment in respect of the potential effects of the proposal on the SAC. However, as I have found against the appellant on other substantive grounds, this matter need not be considered any further in this case.

Planning Balance and Conclusion

28. The proposal would cause harm to the Green Belt by reason of inappropriateness and to its openness. These both separately attract substantial negative weight. I have also attached moderate negative weight to my findings regarding the character and appearance of the area. Against that I have given moderate positive weight to the benefits including from energy and carbon saving.
29. In weighing up the harms with the benefits, 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. My findings on character and appearance and the AONB are largely based on a lack of information. However, even if I were to assume no harmful effects in this respect, this would not alter the harmful effect of the proposal on the Green Belt or my overall conclusions.
30. For the reasons given, I have found conflict with the Development Plan as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR

⁴ LPA Reference 20/01829/AOP

⁵ LPA Reference 19/00842/APP