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## Appeal Decision

Site visit made on 3 January 2023

**by A Berry MTCP (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 FEBRUARY 2023**

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**Appeal Ref: APP/N3020/W/22/3301330**

**10 Bank Hill, Woodborough NG14 6EF**

- 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 G Digva against the decision of Gedling Borough Council.
  - The application Ref 2021/1020, dated 20 August 2021, was refused by notice dated 1 March 2022.
  - The development proposed is the demolition of the existing dwelling and construction of a replacement dwelling (alterations to permission 2019/0790).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have taken the description of development from the appellant's appeal form and the Council's decision notice as this more accurately reflects the proposed development, and it does not include superfluous information contained within the description of development on the application form.
3. The postcode detailed in the banner heading above is taken from the appellant's appeal form, as this is the correct postcode for the property, rather than that contained within the application form.
4. The Council's reason for refusal states that the proposed replacement dwelling would comprise inappropriate development in the Green Belt due to the resultant floor area comprising "a disproportionate addition to the original dwelling". Paragraph 149 (c) of the National Planning Policy Framework (NPPF) refers to "the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original dwelling". The proposal is for a replacement building, not an extension or alteration to the original dwelling. I have therefore determined the appeal on this basis.
5. The Council's reason for refusal states that the proposed development would be contrary to Policy 3 of the Aligned Core Strategies Part 1 Local Plan adopted 2014<sup>1</sup> (CS). However, Policy 3 of the CS is a strategic policy regarding the review of Green Belt boundaries and is therefore not of relevance to the determination of this appeal. I have therefore determined the appeal on this basis.

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<sup>1</sup> Greater Nottingham Broxtowe Borough, Gedling Borough, Nottingham City Aligned Core Strategies Part 1 Local Plan

## Main Issues

6. The main issues are:

- whether the development would be inappropriate development in the Green Belt, having regard to the NPPF and any relevant development plan policies, including the effect upon the openness of the Green Belt; and
- if the development 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 necessary to justify the development.

## Reasons

### *Whether Inappropriate Development*

7. The NPPF identifies the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the NPPF explains that other than in connection with a closed list of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. Such exceptions of relevance to the appeal proposal include:

(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

(g) 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; or, not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

### *(d) Replacement of a Building*

8. Policy LPD14 of the Gedling Borough Local Planning Document Part 2 Local Plan, adopted 2018 (LP) refers to the replacement of buildings within the Green Belt. It is more prescriptive and restrictive than the NPPF. Amongst other matters, it includes a requirement to assess the replacement buildings against the original building or the building as existed on 1 July 1948; limits the scale of replacement buildings if they have been previously extended; and it requires the replacement buildings to not have a detrimental impact on the openness of the Green Belt or the reasons for including land within it. The policy is not wholly consistent with paragraph 149(d) of the NPPF. Annex 1 of the NPPF states that the weight afforded to policies in plans should accord with their degree of consistency with the NPPF. For this reason, I attribute limited weight to the specific criteria stated within LP Policy LPD14.

9. The existing and replacement buildings would both comprise a dwelling and therefore, the new building would be in the same use, compliant with the first strand of paragraph 149(d) of the NPPF. In respect of the second strand, the

NPPF does not provide a definition of 'materially larger'. However, the Courts have determined that it is primarily an objective exercise by reference to size<sup>2</sup> and that the baseline is the extent of physical built development on the site for the purposes of the consideration<sup>3</sup>. The appeal site comprises a large, detached dormer bungalow with a forward projecting triple garage. To the side/rear of the bungalow is a flat roofed building that contains various rooms including a swimming pool. This building was originally attached to the dwelling but has been severed with a small gap between the two and now comprises a detached outbuilding. However, given the use of this outbuilding and its proximity to the dwelling, in my opinion, it forms part of the existing dwelling.

10. Both parties have provided a floorspace figure for the proposed development, which are similar. The appellant has provided a floorspace figure for the existing dwelling (i.e. the dwelling plus the detached outbuilding) and this figure has not been disputed by the Council. Using either party's proposed floorspace figure, the proposed dwelling would be between 43-48% larger in floorspace than the building it would replace. The appellant has provided a volume figure for both the existing development and the proposed replacement dwelling, which has not been disputed by the Council. These figures would equate to a building almost 100% larger in volume than the building it would replace. On this basis, the proposed replacement dwelling would be materially larger than the one it would replace. It would comprise inappropriate development in the Green Belt when assessed against paragraph 149(d) of the NPPF.

*(g) Limited Infilling or the Partial or Complete Redevelopment of Previously Developed Land*

11. Annex 2: Glossary of the NPPF defines 'previously developed land'. The appellant considers the appeal site to comply with the definition and this has not been disputed by the Council. The consideration is therefore if the proposed development would not have a greater impact on the openness of the Green Belt than the existing development. There is no evidence before me that the proposal would contribute to meeting an identified affordable housing need within the area of the local planning authority and therefore the second indent of paragraph 149(g) of the NPPF is not applicable.
12. As indicated above, the proposed replacement dwelling would have a greater overall floorspace and volume when compared to the existing buildings on site. Although the siting and footprint of the proposed dwelling would be similar to the existing dwelling, it would comprise a two-storey dwelling, rather than a dormer bungalow and therefore the eaves and ridge height of the proposal would be greater than the dwelling it would replace. The overall bulk and massing of the proposed dwelling would therefore be significantly increased.
13. The existing dwelling is set back from Bank Hill by a tree and hedge lined grass verge, a private access road and a deep front garden, however, glimpses of the dwelling are visible from Bank Hill, particularly during the colder months when the leaves have fallen. The prominence of the proposed dwelling from the

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<sup>2</sup> See *R (oao Heath and Hampstead Society) v Camden LBC* [2007] subsequently supported in CoA as *R (oao Heath and Hampstead Society), Camden LBC and Vlachos*.

<sup>3</sup> *Athlone House Ltd v SSCLG* [2015] EWHC 3524 (Admin).

surrounding area would therefore significantly increase due to the increase in its scale and massing.

14. For these reasons, the proposed development would have a greater impact on the openness of the Green Belt in both visual and spatial terms than the existing buildings and therefore it would comprise inappropriate development in the Green Belt.

#### *Conclusion on Whether Inappropriate Development*

15. As detailed above, the proposed development would comprise inappropriate development when considered against exceptions 149 (d) and (g) of the NPPF. It would conflict with LP Policy LPD14 which seeks to control the size of replacement buildings within the Green Belt. There is no requirement within exceptions (d) and (g) of paragraph 149 of the NPPF for the development to not conflict with the purposes of including land within it. Therefore, there is no obligation to consider whether the proposal would comply or otherwise with paragraph 138(c) of the NPPF, that seeks to safeguard the countryside from encroachment.

#### *Any Other Harm?*

16. No other harm has been identified against the proposal that needs to be taken into consideration, and on the basis of the evidence before me, I have no substantive reason to conclude otherwise.

#### *Other Considerations*

17. The Council granted planning permission for a replacement dwelling at the appeal site<sup>4</sup> on 30 March 2021 with a timeframe for commencement of three years ('the extant scheme'). The extant scheme proposed a dwelling of a similar design and materials to the appeal scheme and included a similar amount of accommodation. Therefore, the extant scheme is a fallback should this appeal not succeed.
18. The appellant has provided floorspace and volume figures for the extant scheme. The Council concur with the floorspace figure and has not disputed the volume figure. Both these figures indicate that the extant scheme is smaller than the appeal scheme. The appellant suggests that the appeal scheme would result in an increase in floorspace of 3% above the extant scheme. I concur with this view. However, from the information before me, the appeal scheme would also result in an increase of over 45% in volume when compared to the extant scheme. Furthermore, a comparison of the drawings for both the extant scheme and the appeal scheme indicates that the scale and massing of the appeal scheme would be greater. The appeal scheme would therefore result in a significantly larger building than the extant scheme and would be more harmful to the openness of the Green Belt.
19. The Council has recently approved a Section 73 application<sup>5</sup> to vary Condition 2 of planning approval 2019/0790 to substitute the approved plans to amend the approved dwelling ('the s73 dwelling'). The Section 73 approval is extant and is therefore a fallback should this appeal not succeed. The submitted drawings and the associated Officer Report state that the floorspace of the s73 dwelling

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<sup>4</sup> Planning Ref: 2019/0790

<sup>5</sup> Planning Ref: 2022/0530

is identical to the extant scheme. This differs from the appeal proposal whereby the floorspace would be greater. I have not been provided with volume figures to undertake a comparison of the different schemes in this regard. The appeal scheme would therefore result in a significantly larger building than the s73 dwelling and would be more harmful to the openness of the Green Belt.

20. The appellant has suggested that the existing dwelling could be extended under permitted development rights<sup>6</sup> with a single storey rear extension and a large, detached outbuilding. Floorspace and volume figures have been provided for such a scenario. However, I have not been provided with drawings to illustrate such proposals, nor have I been provided with a lawful development certificate to establish that such developments would comprise permitted development. I am therefore unable to fully compare the potential permitted development scheme to the appeal scheme. Even if such a permitted development scheme could be built, the appellant's figures suggest that it would have a smaller floorspace and volume than the appeal scheme. Furthermore, they would be single storey and therefore their impact on the openness of the Green Belt would be more limited than the appeal scheme and less harmful.

### **Other Matters**

21. According to the map of the Woodborough Conservation Area (WCA) boundary submitted by the Council, the appeal site is located adjacent to the WCA. Therefore, I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Due to the distance between the appeal site and the WCA boundary, the intervening vegetation, the mix of properties in the vicinity, and the similar design and materials of the extant scheme, I do not find harm to the setting of the WCA.

### **Conclusion**

22. The proposed development would be inappropriate development in the Green Belt and would harm openness. As such, the NPPF establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
23. Given the substantial weight to be given to Green Belt harm, the harm is not clearly outweighed by other considerations. Therefore, the very special circumstances necessary to justify the proposal do not exist.
24. For the reasons set out above, having regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal is dismissed.

*A Berry*

INSPECTOR

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<sup>6</sup> Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015