



Appeal Decision

Site visit made on 21 February 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Appeal A Ref: APP/V1505/W/22/3304862

6-7 The Cottage, Laindon Common Road, Billericay, Essex CM12 9SY

- 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 Banks against the decision of Basildon Borough Council.
 - The application Ref 22/00685/FULL, dated 11 May 2022, was refused by notice dated 4 July 2022.
 - The development proposed is described as "Replacement house and garage. Proposed demolition of existing house and outbuilding and erection of a new dwelling with garage".
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Appeal B Ref: APP/V1505/W/22/3311094

6-7 The Cottage, Laindon Common Road, Billericay, Essex CM12 9SY

- 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 Banks against the decision of Basildon Borough Council.
 - The application Ref 22/01195/FULL, dated 17 August 2022, was refused by notice dated 11 October 2022.
 - The development proposed is described as "Proposed demolition of existing house and some outbuildings and erection of a new dwelling (revised application)".
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Decision

1. Appeal A and Appeal B are both dismissed.

Procedural Matters

Appeal A

2. A Structural Inspection Report produced by AH Structural Design and a Condition Report produced by ChapterOne were submitted with the appeal when it was lodged. The Council and other interested parties have had the opportunity to comment on the additional information and therefore they would not be prejudiced by its inclusion in the appeal process. I have therefore determined the appeal on this basis.

Main Issues

3. With reference to both appeals, the main issues are:
 - whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (NPPF) and any relevant development plan policies;

- whether the existing building comprises a non-designated heritage asset (NDHA) and if so, whether in undertaking a balanced judgement, there is clear justification for its loss; and
- 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 Inappropriate Development – Appeal A and Appeal B

4. 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. One such exception is: (d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
5. Policy BAS GB3 of the Basildon District Local Plan Saved Policies, adopted 2007 (LP) refers to the replacement of dwellings within the Green Belt. It is more prescriptive and restrictive than the NPPF and uses a comparison of the proposed dwelling against the original dwelling. It is therefore 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 some of the specific criteria within LP Policy BAS GB3.
6. 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 size¹ and that the baseline is the extent of physical built development on the site for the purposes of the consideration². Furthermore, which physical dimension is most relevant for the purpose of assessing the relative size of the existing and replacement dwellinghouse, will depend on the circumstances of the particular case. It may be floorspace, footprint, volume, height, width et cetera.
7. The appeal site contains a detached dwelling with a narrow depth. It is two-storeys to the front elevation, while to the rear there is a catslide roof terminating at a low eaves height. Although not depicted on the submitted drawings, the front roof slope comprises a mansard roof, and there are half-hipped gables to either end. Accommodation is spread over three floors, including the roofspace. From the information before me, it is likely that the original dwelling as on 1 July 1948 comprised the existing dwelling.

¹ 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.

² Athlone House Ltd v SSCLG [2015] EWHC 3524 (Admin).

Whether Inappropriate Development – Appeal A

8. It is proposed to demolish the existing dwelling and, as described on the submitted drawings, an outhouse, a shed, a car port and a barn. A replacement two-storey dwelling and a single storey double garage with an attached car port would be constructed. An existing shed would be retained for cycle/bin storage.
9. The Council's figures comprise a comparison of the existing dwelling with the proposed dwelling and include the proposed garage/car port. The resulting gross floorspace of the proposal would be 246.4 square metres; a 115.7 square metre increase over the existing/original dwelling. The appellants have directed my attention to part (vii) of LP Policy BAS GB3 and suggest that the proposed garage/car port should be excluded from the Council's figures. Excluding the proposed garage/car port, the proposed dwelling would have a gross floorspace of 193 square metres; a 62 square metre increase over the existing/original dwelling. Using either party's figures, the proposal would be in excess of the maximum floorspace permitted by LP Policy BAS GB3.
10. There are a number of outbuildings sited within the appeal site. In close proximity to the rear of the existing dwelling is a single storey outhouse that has clearly been used for ancillary residential purposes. Due to the condition, use and proximity of the existing outhouse to the existing dwelling, it could be considered to form part of the existing dwelling. The other outbuildings are in a dilapidated state, some of which are unusable in their current condition and positioned further away from the dwelling. Therefore, the remainder of the outbuildings would not form part of the existing dwelling.
11. The inclusion of the outhouse's floorspace as part of the existing dwelling would result in a gross increase in the proposed dwelling's floorspace of 27.3 square metres (excluding the proposed garage/carport). This would comply with the maximum floorspace permitted by LP Policy BAS GB3. However, LP Policy BAS GB3 also requires a replacement dwelling to be assessed, amongst other things, in terms of its scale, form, design and height.
12. The replacement dwelling would be 1.3m higher than the existing dwelling. Volume would be the physical dimension most relevant for the purpose of assessing the relative size of the existing and replacement dwelling due to the existing dwelling's catslide roof and floorspace contained within its roof. However, neither party has provided comparison volume figures. Notwithstanding this, it is clear from the submitted drawings that the bulk and massing of the replacement dwelling would be significantly greater than the existing dwelling.
13. 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. I also find that the proposal would conflict with Policy BAS GB3 of the LP which sets out the circumstances whereby replacement dwellings in the Green Belt would be acceptable.

Whether Inappropriate Development – Appeal B

14. It is proposed to demolish the existing dwelling and, as described on the submitted drawings, an outhouse, a shed and a barn. A replacement two-storey dwelling would be constructed. An existing shed for cycle/bin storage and a building annotated as 'existing garage' on the submitted drawings would be retained.
15. The Council's figures comprise a comparison of the existing dwelling with the proposed dwelling and include the retained garage/car port. The resulting gross floorspace of the proposal would be 221.2 square metres; a 90.5 square metre increase over the existing/original dwelling. The appellants have directed my attention to part (vii) of LP Policy BAS GB3 and suggests that the existing garage/car port should be excluded from the Council's figures. Excluding the existing garage/car port, the proposed dwelling would have a gross floorspace of 191.5 square metres; a 60.8 square metre increase over the existing/original dwelling. Using either party's figures, the proposal would be in excess of the maximum floorspace permitted by LP Policy BAS GB3.
16. As previously discussed, the existing outhouse could be considered to form part of the existing dwelling. The inclusion of the outhouse's floorspace as part of the existing dwelling would result in a gross increase in the proposed dwelling's floorspace of 25.8 square metres. This would comply with the maximum floorspace permitted by LP Policy BAS GB3. However, as previously discussed, LP Policy BAS GB3 also requires a replacement dwelling to be assessed, amongst other things, in terms of its scale, form, design and height.
17. The replacement dwelling would be 0.7m higher than the existing dwelling. As with Appeal A, neither party has provided comparison volume figures. Notwithstanding this, it is clear from the submitted drawings that the bulk and massing of the replacement dwelling would be greater than the existing dwelling due to the existing dwelling's catslide roof and floorspace contained within its roof.
18. 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. I also find that the proposal would conflict with Policy BAS GB3 of the LP which sets out the circumstances whereby replacement dwellings in the Green Belt would be acceptable.

Non-Designated Heritage Asset (NDHA) - Appeal A and Appeal B

19. The Council's Built Heritage Consultant considers there to be potential for the existing dwelling to be a NDHA. I have not been provided with evidence that the building is on a local list of NDHAs or that it is included in the local historic environment record. However, the Planning Practice Guide (PPG) states that there are a number of processes through which NDHAs may be identified, including as part of the decision-making process in planning applications. Irrespective of how NDHAs are identified, the PPG states that it is important that the decisions to identify them as NDHAs are based on sound evidence.
20. The Council state that the building is visible on mapping from at least 1838 (it is recorded on the Tithe Map); the existing building's significance is expressed through its evidential and historic value; and that the sensitivity of the heritage

asset could be considered to be heightened given it is in its original form, which is likely to be of some architectural, and potentially archaeological, interest. The Council's delegated report and reason for refusal reference the potential for the building to be a NDHA rather than concluding that it is a NDHA. The evidence advanced by the Council in respect of the building comprising a NDHA is therefore limited.

21. Paragraph 194 of the NPPF requires an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. A Heritage Statement has been submitted in respect of both appeals that contains historic map extracts of the appeal site and interior and exterior photographs of the dwelling. Although brief, I consider the level of detail to be sufficient to understand the potential impact of the proposal on the significance of the existing building.
22. The original building comprised two cottages. The 1874 Ordnance Survey indicates that there was an offshoot to the western side of the building which is absent on the 1919 Ordnance Survey, and that the 1919 Ordnance Survey shows offshoots to the rear of the two cottages. The existing dwelling now has a rectangular plan form. Therefore, contrary to the Council's conclusion, the dwelling is not in its original form.
23. The photographs of the dwelling indicate few original features while the exterior of the building has been covered in render. Furthermore, the Condition Report notes, amongst other things, that there are no proper foundations, that the property slopes forwards and bulges at the bottom, as well as down to the left where a large crack can be found, and that all beams and ceilings are bowing and bulging. This is evidenced in the submitted photographs.
24. Although obviously of some age, from the evidence before me, I do not agree with the Council that the building is of sufficient architectural or historic significance to be considered a NDHA. Furthermore, the condition of the existing building is such that it seems very unlikely that it could be re-used as a dwelling without substantial reconstruction and alteration, which would likely erode some of the limited remaining original features such as the staircases.
25. On this basis, paragraph 203 of the NPPF is not engaged and therefore I am not required to undertake a balanced judgement regarding the loss of the building.

Other Considerations - Appeal A and Appeal B

26. The removal of the existing outbuildings could improve the openness of the appeal site. However, they are of limited massing and height, some of which are in a dilapidated condition, and therefore their removal would not outweigh the harm I have identified in respect of the increased height, bulk and massing of the replacement dwelling.
27. The appellant has suggested that the existing dwelling could be extended under permitted development rights³ with single storey side and rear extensions and a rear dormer, and that the replacement dwelling would provide a higher quality design. Draft illustrations have been submitted to demonstrate such a permitted development scenario. However, they are not drawn to scale, and I have not been provided with floorspace or site plan drawings. Furthermore, I

³ Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015

have not been provided with a lawful development certificate to establish that such developments would comprise permitted development, particularly given the external changes that have taken place to the dwelling and the proximity of an existing outbuilding that was being converted⁴ at the time of my site visit.

28. Even if such a permitted development scheme could be built, the extensions would be single storey and would not increase the overall height of the existing dwelling. Therefore, even though the overall increase in floorspace may be greater than the appeal scheme, their impact would be limited and less harmful to the Green Belt. Furthermore, the Structural Survey and Condition Survey indicate that re-use of the existing building is unviable and therefore a scheme based on extensions to it would not be a realistic fallback position.
29. The appellant has directed me to a scenario involving the dwelling consisting of its original form of two cottages. However, to return the dwelling into two cottages would require planning permission and it does not form part of the appeal proposal.

Other Considerations - Appeal A

30. The appellant has directed me to the low floor-to-ceiling heights of the existing dwelling and suggests that an increase in the height of the proposed dwelling should be accepted to provide a ceiling height that accords with the nationally described space standards (NDSS)⁵. The NDSS for minimum floor-to-ceiling heights is 2.3m for at least 75% of the Gross Internal Area. However, no internal room sections have been provided of the existing or proposed dwellings to identify the heights of the rooms. Therefore, I am unable to corroborate whether the increase in the proposed dwelling's height is required to meet the NDSS.

Other Matters

Appeal A and Appeal B

31. Compliance with the latest building regulations and the Council not raising an objection in respect of the impact of the proposal on the living conditions of the occupiers of neighbouring properties, are both neutral matters. The opportunity to reclaim and/or recycle materials would help to reduce the impact of the proposed development and the provision of bird and bat boxes could result in a net gain in biodiversity. However, these would provide limited additional benefits.

Appeal A

32. The Council's delegated report references the positioning of two gables within the front elevation of the proposed dwelling as not characteristic of traditional buildings in the surrounding area. I have been directed to a planning application whereby the Council approved a replacement dwelling of a contemporary design⁶ to demonstrate that replacement dwellings do not have to follow the character of existing dwellings in the surrounding area. However, although critical of the design of the front elevation of the replacement

⁴ Lawful Development Certificate Reference 21/01608/LDCP

⁵ Technical housing standards – nationally described space standard, published 27 March 2015

⁶ Planning Reference 08/00903/FULL

dwelling, the design of the proposed dwelling was not advanced by the Council as a reason for refusal.

Appeal B

- 33. The use of high levels of insulation and renewable technology such as an air source heat pump would help to reduce the impact of the proposed development. However, this would provide limited additional benefits.
- 34. The Council's view that the proposed height of the dwelling would not result in an over-dominant addition to the rural appearance of the locality is based on its effect on the character and appearance/visual amenity of the surrounding area, rather than the harm to the Green Belt.

Conclusion

- 35. The existing dwelling does not comprise a NDHA and therefore its loss would not be harmful. However, the proposed development as detailed in Appeal A and Appeal B would be inappropriate development in the Green Belt. 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.
- 36. Given the substantial weight to be given to Green Belt harm, relative to the limited benefits of the proposed scheme, the harm is not clearly outweighed by other considerations. Therefore, the very special circumstances necessary to justify the proposal do not exist.
- 37. For the reasons set out above, having regard to the development plan as a whole and all other relevant material considerations, I conclude that Appeal A and Appeal B should be dismissed.

A Berry

INSPECTOR