



Appeal Decision

Site visit made on 4 April 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Appeal Ref: APP/P4605/W/22/3311221

12 Duttons Lane, Sutton Coldfield, Birmingham B75 5RH

- 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 Alex Drew against the decision of Birmingham City Council.
 - The application Ref 2022/03988/PA, dated 16 May 2022, was refused by notice dated 22 August 2022.
 - The development proposed is the erection of a self build dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - if the proposal is inappropriate development, 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

Whether the proposal would be inappropriate development in the Green Belt

3. The Government attaches great importance to Green Belts. 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. Paragraph 147 of the National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
4. The Framework directs that development within the Green Belt is inappropriate, with the exception of the types of developments set out in paragraphs 149 and 150. The appellants refer to the exceptions listed in paragraphs 149 (e) limited infilling in villages; and (g) limited infilling or the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use (excluding temporary buildings), which would (i) not have a greater impact on the openness of the Green Belt than the

- existing development or (ii) not cause substantial harm to the openness of the Green Belt, where the development would re-use PDL and contribute to meeting an identified affordable housing need within the area of the local planning authority.
5. The appeal site is a broadly rectangular parcel of land located between 10 and 12 Duttons Lane and comprises a detached single storey double garage and access track. The site is within the Green Belt. Policy TP10 of the Birmingham Development Plan (adopted January 2017) (BDP) sets out a general presumption against inappropriate development within the Green Belt, and that such development will not be permitted unless very special circumstances exist. It also explains that development proposals will be assessed in relation to the relevant national planning policy. Therefore, although the BDP was adopted prior to the current Framework, the cross reference to what is currently the relevant national policy means that the policy in practice is consistent with the Framework.
 6. With regards to paragraph 149 (e), neither 'limited infilling' or 'villages' are defined in the Framework. I have also not been provided with any such definitions from the development plan. These are therefore matters of judgement for the decision maker depending upon the individual circumstances of the case and appeal site.
 7. In my view 'limited infilling' would be the filling of a small gap in an otherwise built-up frontage. Given that the appeal site is located between 10 and 12 Duttons Lane and that the proposal is for a single dwelling which would largely infill the gap between these properties, there is no doubt in my mind that the proposal would constitute limited infilling. The Council considers that the appeal site is not situated within a village as it is not within a designated village or settlement boundary as defined by the BDP. However, case law has established that whilst a village or settlement boundary as defined in a Local Plan is a relevant consideration, it is not necessarily determinative, particularly where the boundary as defined does not accord with the Inspector's assessment of the extent of the village on the ground.
 8. Whilst the appeal site is located in close proximity to higher density residential development to the south, the pattern of development along Duttons Lane is relatively sparse with a small number of dwellings in a row on the northern side of the road followed by expanses of open land. The road does not have a connecting footpath or street lighting and for much of its length is bordered on both sides by mature hedgerows. From what I saw on my site visit I do not consider that the group of dwellings which contains the appeal site could be reasonably considered to be within a village, rather it forms a small section of ribbon development which lies adjacent to the settlement. Overall, the site did not give the impression of being part of the village, but rather on a rural road in the countryside.
 9. I therefore conclude that the appeal site does not lie within the physical confines of a village. Accordingly, the proposals do not meet the exception under paragraph 149 (e) of the Framework.
 10. Turning to paragraph 149 (g), as the site currently forms part of the curtilage of No 12 and features an existing building and an area of hardstanding, the site would fall within the description of PDL as set out in Annex 2 of the Framework. In addition to being PDL, for exception (g) to be complied with the proposal

must also not have a greater impact on the openness of the Green Belt than the existing development.

11. The proposed dwelling would have an overall footprint of approximately 164m², compared to the footprint of the existing garage which is around 45m². The appellants also state that the proposed dwelling would have a volume of around 800 cubic metres, which would significantly exceed the volume of the existing garage. Additionally, the proposed dwelling would be noticeably taller than the existing garage. Therefore, the significant increase in footprint, volume, and height would have the unavoidable consequence of the proposal having a greater impact on openness than the existing development.
12. Whilst the existing garage is particularly modest in both size and design, the increase in footprint, volume, and height, its domesticated appearance, and its siting closer to the highway would result in the proposed dwelling having a far greater visual impact on the openness of the Green Belt than the existing garage. The proposed dwelling would be distinctly visible when viewed from Duttons Lane, which would only serve to exacerbate its impact. As a result, the proposed development would not be an exception under the first section of paragraph 149 (g) due to the schemes greater impact on the openness of the Green Belt.
13. Turning to the second section of paragraph 149 (g), the relevant definition of affordable housing is provided in Annex 2 of the Framework. The application indicates that the proposed dwelling would be self-build. Whilst a self-build dwelling would potentially be capable of providing affordable housing, there is little before me to demonstrate that the proposal would fall within the scope of that definition. Furthermore, there is no mechanism before me, such as a signed legal agreement, that would enable them to be secured as affordable units in any event. Therefore, the proposed development would also not fall under the second section of paragraph 149 (g).
14. For the reasons given above, I conclude that the proposal would not fall within the exceptions outlined in the Framework and would be in conflict with Policy TP10 of the BDP. Accordingly, the proposal is inappropriate development, which, by its very definition, is harmful to the Green Belt and should not be approved except in very special circumstances.
15. The Council also referred to Policy PG3 of the BDP in its decision notice, which relates to design quality and place making. However, in respect of this main issue I do not consider the provisions of this policy to be determinative.

Other Considerations

16. The appellants have put forward a fallback position in the form of an extant planning permission¹ on the site which could be implemented. The planning permission was granted on 7 October 2021 for the erection of a detached double garage and office building to side. I accept therefore that the fallback position is available and a material consideration in the assessment of the proposal. Furthermore, I accept that there is a real possibility that it would be implemented should planning permission for the appeal scheme be refused.
17. However, for significant weight to be afforded to a fallback position there needs not only to be a real possibility of it being carried out, but it would also need to

¹ Council Ref: 2021/03744/PA

be equally or more harmful than the appeal scheme. On this basis, whilst acknowledging that the proposed dwelling would be larger than the detached double garage and office building, the appellants consider that the dwelling would not be inappropriate.

18. The appellants state that the garage and office building subject of the extant planning permission would have a footprint of 70m² and a volume of 250 cubic metres. The proposed dwelling however would be significantly larger, with a footprint of around 164m² and a volume of 800 cubic metres. In addition, the proposed dwelling would also be markedly taller than the garage and office building. From this it follows that the appeal scheme would have a greater impact on the openness of the Green Belt than the extant planning permission. Consequently, I afford the fallback position limited weight in support of the proposal.
19. The Council have stated that they cannot currently demonstrate a five-year housing land supply. Paragraph 11 of the Framework informs that the presumption in favour of sustainable development is not engaged where the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Framework footnote 7 advises that these include such policies as Green Belt. Therefore, the provisions of Framework paragraph 11 d) are not engaged.
20. The proposal would, nevertheless, make a small contribution to the area's housing stock. It would also provide economic and social benefits through the construction of the development and the additional contributions of future occupiers to the local economy. Given the scale of the proposed development these contributions would be modest and in some cases time limited. As such, I ascribe these benefits limited weight.
21. The design of the building would be sympathetic to the character of the surrounding area, and its scale and mass would be comparable to the existing residential properties on Duttons Lane. In addition, the proposed dwelling would relate to the existing pattern of development along this part of Duttons Lane and would not encroach further northwards than the adjacent properties. Overall, I consider the proposal would not harm the character and appearance of the surrounding area. Nevertheless, an absence of harm in this regard is a neutral factor.

Planning Balance and Conclusion

22. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be supported except in very special circumstances. It goes on to advise 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, is clearly outweighed by other considerations.
23. The other considerations do not clearly outweigh the substantial weight that I have given to the harm that would be caused to the Green Belt, by reason of inappropriateness, including openness, that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

24. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

David Jones

INSPECTOR