



Appeal Decision

Site visit made on 21 November 2023

by J Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Appeal Ref: APP/M1005/W/23/3323199

68 Burley Lane, Quarndon, Derby DE22 5JR

- 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 Clive Radford against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2021/1252, dated 25 November 2021, was refused by notice dated 10 January 2023.
 - The development proposed is described on the application form as 'Demolition of the existing bungalow to be replaced with a 1.5 storey dwelling.'
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing bungalow to be replaced with a 1.5 storey dwelling at 68 Burley Lane, Quarndon, Derby DE22 5JR in accordance with the terms of the application, Ref AVA/2021/1252, dated 25 November 2021, subject to the conditions contained in the attached Schedule.

Main Issues

2. The main issues in this case are:
 - whether the proposal would be inappropriate development within the Green Belt;
 - the effect of the proposal on the openness of the Green Belt; and
 - if the proposal is inappropriate, whether the harm to the Green Belt by way of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

3. The appeal site is located at the end of a short row of detached dwellings, set within spacious plots. Detached dwellings, located on the opposite side of lane, provide an almost complete frontage to Burley Lane, to the south. The dwellings in the area have a wide range of designs and have evolved over a period of time resulting in a varied pattern of buildings in terms of location, scale, and design. They utilise a varied palette of materials.
4. The area around the appeal site is characterised by undulating ground with an appreciable rise in ground levels when approaching the appeal site from the east. Open agricultural land, which lies to the rear and side of the appeal site, allows extensive views over the rural valley to the north and east.

5. The appeal site comprises a regular shaped parcel of land and at the time of my site visit was occupied by a single storey property and a detached garage. Notwithstanding the presence of existing hedgerows on the northern and eastern boundaries of the appeal site, the existing property was clearly visible from Burley Lane and the surrounding countryside, including the public footpath that lay a short distance to the east.

Whether inappropriate development

6. Policy EN2 of the Amber Valley Borough Council Local Plan 2006 (the Local Plan) indicates that planning permission will only be granted for appropriate development, including at c) the limited extension, alteration or replacement of existing dwellings, providing that this would not result in a disproportionate increase over the size of the original dwelling. That said, the Council consider that the policies contained within the Local Plan, that were most important for determining the application, including those relating to Green Belt and housing matters, are out of date. Consequently, they judged the proposal against the policies contained within the National Planning Policy Framework (the Framework). I note that the appellant has raised no objection to the approach the Council adopted, and for my part I see no reason to disagree.
7. Paragraph 149 of the Framework establishes that new buildings in the Green Belt are inappropriate, subject to a number of exceptions. These exceptions include, at paragraph 149 d), the replacement of a building, provided the building is in the same use and not 'materially' larger than the one it replaces.
8. In this case the Council calculate the volume of the new dwelling to be approximately 1031 m³, compared with an existing amount of approximately 593 m³. This represents an increase of 73%. The appellant does not dispute these figures, albeit a lower figure of 1013 m³ for the volume of the proposed dwelling is mentioned in paragraph 5.17 of the Planning Statement that accompanied the planning application. They do however suggest that in considering whether or not the proposed dwelling would result in a 'disproportionate' increase in the size of the original dwelling, consideration must be had to the extent of any extension and alteration that would be permissible under 'permitted development.'
9. As to whether an unimplemented planning permission, which may include permitted development rights could, as a material fall-back, count as part of the baseline, the judge in *Athlone House*¹ concluded that it could not. That said, it is a relevant consideration when determining whether very special circumstances exist, and I will return to this matter in the 'other considerations' section of my decision.
10. Taking these matters into consideration I find that the increased floor area and height of the dwelling would result in a significant increase in the bulk and mass on the site, which would result in the proposed dwelling appearing materially larger than the one it is to replace. In this regard the appellant acknowledges, at paragraph 6.3 of the appeal statement, that the dwelling would be materially larger than the existing dwelling and therefore the proposal would represent inappropriate development in the Green Belt. This, by definition, is harmful to the Green Belt and that harm carries significant weight.

¹ *Athlone House Ltd v SSCLG* [2015] EWHC 3524 (Admin)

Openness

11. Paragraph 137 of the Framework indicates that openness is an essential characteristic of the Green Belt. It has been established that openness has both visual and spatial aspects. The latter can be taken to mean absence of built form.
12. The increase in the floor area and the height of the dwelling of the ridge would be modest when considered in the context of the neighbouring property at No 70, and other dwellings within the immediate locality. That said, the appeal proposal would represent a noticeable increase in the size and bulk of the dwelling, in a prominent position, on rising ground, which would contrast significantly with the modestly proportioned bungalow that currently occupies the site. Moreover, it would be clearly visible from Burley Road and the adjacent countryside with only limited opportunity to mitigate its impact due to the position of the site on the edge of the settlement and the topography of the surrounding land.
13. For the above reasons, the proposed development would harm the openness of the Green Belt, in both visual and spatial terms, by reducing it. This is contrary to one of the main aims of Green Belt policy at local and national levels, as I have explained above. This harm is as well as that caused by the development's inappropriateness.

Other considerations

14. The Framework makes it clear, at paragraph 148, that substantial weight is given to any harm to the Green Belt. It establishes 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.
15. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) entitles the owner of the property to carry out a variety of extensions to the dwelling. The consideration of a fall-back position, including what can be erected under permitted development rights (PD rights), is a well-established principal.
16. The appellant refers, at paragraph 5.15 of their Planning Statement, to the PD rights that are available making particular reference to Class AA of GPDO, which allows the addition of floors above existing dwellings, and provision of additions and extensions under other classes. To support his argument the appellant has provided illustrations indicating how a dwelling of approximately 1214 m³ could be provided, using PD rights.
17. The Council does not dispute that the property benefits from PD rights, and a fall-back scheme is possible. That said, they argue that the fall-back scheme is not likely to be implemented as it is not the appellants desired proposal. I am mindful of the Court of Appeal² decision as referred to me by the appellant. Paragraph 27 of that judgment confirms that there should be a "real prospect" of a fall-back development being implemented and that the decision-maker should exercise their planning judgment as to whether that would be the case depending on the particular circumstances. However, in a more recent case³

² Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

³ Schneck v SSHCLG & West Berkshire DC [2022] EWHC 3335 (Admin)

the Court held that “the prospect of the fall-back position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect. Although the possibility of the fall-back position happening may be very slight, this is sufficient to make the position a material consideration.

18. The planning history, as set out in the Council’s delegated report and updated in the appellant’s statement, indicates that three submissions of relevance to this appeal, were determined between 2019 and 2023. The first application⁴ was for a rear and side extension where the Council decided that prior approval was not required. The Council also decided prior approval was not required in respect of a second application⁵ for a proposed addition to a first floor to existing bungalow to provide a 2 storey dwelling – works to include extending external walls, addition of a floor, provision of a new roof and windows. Maximum height of 7.5m. The third application⁶ for a single storey rear extension was also approved.
19. Notwithstanding the above, no detailed plans of the works allowed as a consequence of the decisions outlined above have been provided. Consequently, I am unable to carry out a detailed comparison between them and the proposed scheme. That said, I have taken account of the 3 D visuals provided in Figure 3 of the appellant’s planning statement, which provides some indication of what might be achieved on the site. Based on this information, it is clear to me that substantial alterations could be carried out to the host property. Moreover, I find that the development that could be carried out using PD rights, due to their mass, scale, and design, would be substantially more imposing on the character and appearance of the area than the scheme before me.
20. The appellant has submitted a number of applications for prior approval. Given the expense of preparing the applications I am satisfied that were I to dismiss the appeal, further development using the prior approval procedure would be carried out at the property. Accordingly, I attach substantial weight to these decisions as a fall-back position.
21. The appellant has referred me to other cases where developments for replacement dwellings have been permitted, however in the absence of substantive details of the proposals, including plans, the context of the proposal, and the circumstances in which they were allowed, I give them only limited weight. In any event each application has to be considered on its own merits, having regard to its particular site circumstances, development plan policies that are in force at the time, and all other material considerations.
22. I note that the Council consider that the existing property is not of any architectural merit, and their view is that its loss would not be harmful. They also indicate that the proposal would not be out of character in the street, nor do they consider that it would adversely affect the amenities of neighbouring occupiers by reason of loss of light, overshadowing or privacy. From what I have seen and read I do not disagree with their conclusions with respect to these matters.

⁴ PDR/2019/0058

⁵ PDR/2023/0009

⁶ PDR/2023/0008

23. I have taken into consideration the Parish Council's objection to the proposal, with particular regard to their concerns that the scheme would result in a considerable increase over the existing dwelling, and the absence of special circumstances to outweigh its inappropriateness. However, for the reasons set out above, I have concluded differently to them in this particular case.
24. I further note the objection, submitted on behalf of the Quarndon Neighbourhood Development Plan team. I accept that the proposal would represent the demolition of a two bed bungalow and its replacement with a significantly larger dwelling with four bedrooms. However, even if I was to dismiss the appeal that outcome could be achieved by using PD rights for the reasons set out above. I am also conscious that the Council did not refuse the application on the basis that it would result in the loss of two bedroom accommodation, and no substantive evidence has been submitted by any party to support this argument. Consequently, I give this matter only limited weight.

Summary

25. The appeal scheme has harmful implications for the Green Belt in terms of inappropriate development and the erosion of the openness of the Green Belt. In accordance with national policy, such harm carries substantial weight. However, I have found that the fall-back position weighs substantially in favour of the proposal, to the extent that it clearly outweighs all other harm and any conflict with the Framework and, insofar as it is relevant, Policy EN2 of the Local Plan. Having so found I further conclude that there are very special circumstances in this case that justify the granting of planning permission.

Conditions

26. In the absence of suggested conditions being submitted by the Council I have taken into consideration those proposed by the appellant. I have considered them against the six tests set out in paragraph 56 of the Framework.
27. For the avoidance of doubt, it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
28. In the interests of the character and appearance of the area a condition is necessary regarding materials.
29. Conditions are necessary for the protection of existing landscape features and the provision of additional landscaping in accordance with details to be agreed with the local planning authority.
30. As the road is steep and narrow with multiple properties taking access from it, a condition requiring a construction traffic management plan is necessary to ensure that parking and storage of materials associated with the construction of the proposed development does not cause interference to neighbouring properties, or other road users.
31. Given current traffic conditions and the narrowness of the road adjacent to the site a condition is necessary to ensure that provision is made for on-site parking, prior to occupation of the dwelling, with such facilities retained for the lifetime of the development.

32. As the fall-back position I have referred to above justifies the hereby approved development, in the interests of safeguarding the openness of the Green Belt, a condition is necessary removing permitted development rights.

Conclusion

33. There are no relevant material considerations to indicate the application should be determined otherwise than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed subject to the conditions set out below.

J Gunn

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan A19-034 100, Proposed Site Plan A19-034 102A, Proposed Ground Floor Plan A19-034 105B, Proposed First Floor Plan A19-034 106B, Proposed Roof Plan A19-034 107B and Proposed Elevations A19-034 110A.
- 3) No construction work above existing ground level shall be carried out until full details of the materials and finishes to be used on the external surfaces of the development have been submitted to the local planning authority and approved in writing. Thereafter, the development shall be carried out in accordance with the approved details.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Prior to the commencement of any works on the site, a Construction Traffic Management Plan detailing the management of construction traffic (including vehicle types, frequency of visits, expected daily time frames, use of a banksman, on-site loading/unloading arrangements and parking of site operatives vehicles) shall be submitted and approved in writing by the Planning Authority in consultation with the Highway Authority. Thereafter, the development shall be carried out in accordance with such approved management plan.
- 7) The scheme for parking and manoeuvring indicated on the submitted plans shall be laid out prior to the initial occupation of the development hereby permitted and that area shall not thereafter be used for any other purpose.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Classes A, AA, B, C, D, E and F of Part 1 of Schedule 2, and by virtue of Classes A and B of Part 2 of Schedule 2, shall be carried out.

[END OF SCHEDULE]