



Appeal Decision

Site visit made on 12 December 2023

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal Ref: APP/N0410/W/23/3322077

52 Middle Road, Denham, Buckinghamshire UB9 5EQ

- 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 Zaman against the decision of Buckinghamshire Council.
 - The application Ref PL/23/0113/FA, dated 11 January 2023, was refused by notice dated 17 March 2023.
 - The development proposed is a new replacement detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2023, during the course of this appeal. However, other than paragraph and footnote numbering, the sections on proposals affecting the Green Belt and on habitats and biodiversity have not changed. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to provide observations upon the new Framework.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposal on the character and appearance of the surrounding area;
 - the effect of the proposed development on biodiversity, having regard to potential measures necessary to avoid, mitigate or compensate for any negative effects; and
 - whether any 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 inappropriate development

4. Paragraph 154 of the Framework states the construction of new buildings in the Green Belt is inappropriate subject to several exceptions. One of these, 154 d), allows replacement of a building provided the new building is in the same use and not materially larger than the one it replaces.
5. Saved Policies GB1 and GB11 of the South Bucks District Local Plan 1999 (LP) set out criteria for rebuilding existing habitable dwellings in the Green Belt. These include additional requirements to those in paragraph 154 d) of the Framework, such as consideration of scale in relation to the size of the residential curtilage, and the effect of layout, siting, form, design and materials on the Green Belt. I therefore find these Policies are not fully consistent with the Framework. Accordingly, I give full weight to the Framework as a material consideration and limited weight to Policies GB1 and GB11 of the LP.
6. The current building includes extensions to the dwelling as it was originally built. Taking account of these extensions to provide a baseline, according to the appellant's figures the floor area of the proposed replacement dwelling would be more than 60 per cent larger, the footprint more than 20 per cent larger and the volume more than 30 per cent greater than those of the existing house. The proposed two-storey dwelling would also be taller than the current one, which has one storey with rooms in the roof. Therefore, based on comparison of several physical dimensions, I find the new building would be materially larger than the one it would replace. Consequently, exception 154 d) is not satisfied.
7. I have considered the appellant's argument that paragraph 154 e) of the Framework should be applied in this instance, which allows limited infilling in villages. The term 'infilling' is not defined in the Framework. According to the Collins English Dictionary, it means the act of filling or closing gaps. Whilst I acknowledge the existing building would be demolished before a new dwelling could be built, the act of demolition is part of the development applied for. I am required to consider this appeal on the evidence before me. Even if I accept the site is within a village, and notwithstanding that the Framework does not specify the pre-existence of a gap, there is no gap to fill or close on the site at present. I therefore find the exception under paragraph 154 e) does not apply.
8. Previous appeal decisions and a legal judgement have been brought to my attention. In the case of Chapel Lawn¹, the Inspector was presented with various extant permissions/consents and found that other considerations outweighed the harm to the Green Belt, so the proposal was justified based on very special circumstances. In the appeal at land off Denham Way², the parties were agreed the proposal did not constitute inappropriate development in the Green Belt. At Bag End³, the appeal site formed part of the existing side garden to a dwelling under construction, and on that basis the Inspector concluded the proposal would constitute infilling. On the evidence before me about *Heath and Hampstead*⁴, that case from 2007 predates the current Framework's policies on inappropriate development in the Green Belt.

¹ Appeal ref APP/N0410/W/17/3173249

² Appeal ref APP/N0410/W/16/3157969

³ Appeal ref APP/A1910/W/17/3185846

⁴ *R (on the application of Heath and Hampstead Society) v The London Borough of Camden* (2007) EWHC 977 (Admin)

9. Therefore, in none of these cases are the circumstances sufficiently closely related to be directly comparable to those before me. In any event, I am required to determine this appeal on its own merits.
10. For the above reasons, I conclude the proposal would be inappropriate development in the Green Belt, contrary to paragraph 154 of the Framework and Policies GB1 and GB11 of the LP. Paragraphs 152 and 153 of the Framework state that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to any such harm.

Openness

11. A fundamental aim of Green Belt policy, as set out in the Framework, is to keep land permanently open. Given I have found the proposal to be inappropriate development in the Green Belt, it is also necessary for me to consider its effect on openness. This is consistent with the *Lee Valley* judgement referred to by the appellant⁵, which in any case dealt with the need to consider openness where development is found not to be inappropriate.
12. Openness can be perceived spatially and visually. I accept the appeal site lies within a built-up frontage, that there would continue to be a set-back from the highway and that the gaps on either side of the new dwelling would be similar to those currently present. Nevertheless, the additional footprint and volume of the replacement dwelling would have a greater spatial impact and the additional height would have a greater visual impact on openness than the current building. I therefore find the proposed development would result in moderate harm to the openness of the Green Belt, to which, as set out in the Framework, I give substantial weight.

Character and appearance

13. The appeal site is in Higher Denham, which is a group of broadly parallel, mainly residential streets surrounded by woodlands and open spaces. The topography slopes down from higher woodland through Middle Road towards the river valley below. Dwellings are mainly detached bungalows or two-storey houses of differing but traditional appearance, arranged closely together in frontage plots. On the north side of Middle Road, front gardens are generally long and back gardens relatively short, with mostly consistent front and back building lines. Although roof forms in the street vary, hipped roofs prevail.
14. The Chiltern and South Bucks Townscape Character Study (TCS) characterises Middle Road as a Green Suburban Road. The planning and design principles it sets out for this type of street include maintaining existing building lines, setbacks, rhythm and spacing. Identified threats to character include two-storey houses that appear bulky compared to the existing character. The South Bucks Residential Design Guide (SBRDG) sets out design principles for new dwellings, including that they closely respect the existing building line.
15. The proposed house would be set forwards of the prevailing front and back building lines in this part of Middle Road. This would erode the distinctive rhythm of houses set behind long front gardens. The new house would also occupy a larger footprint and be considerably taller and bulkier than the current

⁵ *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1)* [2016] EWCA Civ 404

- one. As a result, it would dominate the more modest dwellings on either side, even if the size of the gaps separating it from them would be little changed.
16. I observed during my visit that the eaves height of the bungalow at No 50 appears lower than that of the current building at No 52 when viewed from both the front and rear, notwithstanding the appellant's drawings. Therefore, the appearance of the taller two-storey replacement dwelling next to that single-storey building would be particularly over-bearing. If there is a potential discrepancy between the plans and levels on site, a condition requiring verification of site levels would not be precise enough to address this.
17. The proposed dwelling's roof would be gabled, in contrast to the half-hipped roof of the existing house and the mainly hipped roofs of the dwellings on either side. The new roof form would therefore look incongruous in the street. It would also exacerbate the new house's appearance of bulk and height when compared to its neighbours, including those houses that already have two storeys. Overall, the replacement dwelling would jar with its context, rather than making a positive addition to the existing variety of houses. This would conflict with the planning and design principles in the TCS and SBRDG.
18. Complementary materials could be secured by condition were the appeal to be allowed, but this is a neutral factor. I accept there are few dormer windows like those that have been added to the existing house in the immediate vicinity of the appeal site. However, this existing design feature does not detract greatly from local character, so the benefit of removing it would not outweigh the harm to the character and appearance of the area I have identified.
19. For the above reasons, I conclude the proposal would have a harmful effect on the character and appearance of the surrounding area. This is contrary to Policy CP8 of the South Bucks Local Development Framework Core Strategy 2011 (CS) and Policies EP3 and H9 of the LP. Together, these policies require development to make a positive contribution to the character of the surrounding area and resist poor designs which are out of scale or character with their surroundings. It is also contrary to Policy DEN3 of the Denham Parish Neighbourhood Plan 2022 (DNP), which requires development proposals to demonstrate they have had full regard to the planning and design principles in the TCS. It is also contrary to the Framework, where it seeks good design and development that is sympathetic to local character.

Biodiversity

20. Paragraph 99 of Circular 06/2005 states "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."
21. The Ecology and Trees Checklist submitted with the planning application did not indicate the presence of ecological features or habitats on or near the appeal site. Nevertheless, on the evidence before me the proximity of woodlands, trees and a river, and the form and condition of the existing roof, indicate potential for biodiversity to be present. This includes potential for protected species such as roosting bats. This potential exists despite the presence of residential streets between the appeal site and nearby habitats. Whether or not they were requested by the local planning authority, ecological surveys are

therefore necessary. This is to ascertain whether and to what extent biodiversity, including protected species, might be affected by the proposed development.

22. No ecological survey was submitted with the planning application or this appeal. Consequently, there is insufficient evidence before me to be sure if protected species are present, which ones and the extent to which they may be affected by the proposal. Therefore, I cannot be sure what measures would be necessary to avoid, adequately mitigate or, as a last resort, compensate for any significant harm as required by paragraph 186 of the Framework; or whether such measures could be provided and secured.
23. For the above reasons, I conclude the proposed development does not adequately demonstrate the effect on biodiversity and the potential measures necessary to avoid, mitigate or compensate for any negative effects. It therefore has potential to result in significant harm to biodiversity, including protected species. This is contrary to Policy CP9 of the CS which seeks conservation, enhancement and net gain in local biodiversity resources as part of development proposals. It is also contrary to Circular 06/2005 and the Framework, as set out above.

Other considerations

24. The appellant points out that rear extensions could be erected without the need for planning permission under the Town and Country Planning (General Permitted Development) (England) Order 2015. A judgement about fall-back as a material consideration⁶ has also been brought to my attention. Even if the appellant could benefit from permitted development rights as suggested, bearing in mind the extent to which the existing house has already been extended, there is little evidence before me to suggest they would pursue these rights if the appeal failed. Even if a real prospect could be thought to exist, there is little before me to suggest that such a scheme would have comparable effects to, or be more harmful than, what is currently proposed. Accordingly, whilst I acknowledge the possibility of a fall-back position as a consideration in this appeal, I afford it negligible weight.
25. The scheme would increase available living space at the site and represent a small improvement to the local housing stock. However, such improvements would primarily cater for the private requirements of the appellant and carry limited weight in the scheme's favour.
26. The Council has raised no concern with living conditions for future occupiers of the replacement dwelling, or with its effect on the living conditions of neighbouring occupiers. On the evidence before me, I see no reason to disagree. However, an absence of harm in these regards is a neutral factor.

Green Belt Balance

27. According to paragraphs 152 and 153 of the Framework, inappropriate development in the Green Belt should not be approved except in very special circumstances. These will not exist unless the harm to the Green Belt, and any other harm resulting from the proposal, are clearly outweighed by other considerations.

⁶ *Formby Parish Council v Sefton Council* [2022] EWHC 73 (Admin)

28. I am required to give substantial weight to the harm the development would cause to the Green Belt by virtue of its inappropriateness and to openness. I also give significant weight to the harms I have found to the character and appearance of the surrounding area and to biodiversity. The weights I have attached to other considerations do not clearly outweigh these harms. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

29. I have found the proposal conflicts with the development plan, read as a whole. No other material considerations, including the Framework, have been shown to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

C Carpenter

INSPECTOR