



Appeal Decision

Site visit made on 6 February 2024

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2024

Appeal Ref: APP/T3725/W/23/3326237

Claywood, Clattyland Lane, Beausale, Warwickshire CV35 7AF

- 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 and Mrs R J Slatem against the decision of Warwick District Council.
 - The application Ref W/22/1728, dated 31 October 2022, was refused by notice dated 24 May 2023.
 - The development proposed is Demolition of existing dwelling and outbuildings. Erection of replacement dwelling with all associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal a revised National Planning Policy Framework (the Framework) was published on 19 December 2023. Whilst paragraph numbers with regard to the Green Belt have altered, any policies that are material to this decision have not fundamentally changed. I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.

Main Issues

3. As the site lies within the Green Belt 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 development on the openness of the Green Belt; and
 - If the proposed development constitutes inappropriate development in the Green Belt, 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 the proposal is inappropriate development in the Green Belt

4. The Framework identifies that the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. It goes on to state that 'inappropriate development' in the Green

Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

5. The Framework regards the construction of new buildings as inappropriate development in the Green Belt, subject to a number of exceptions set out in paragraph 154 (formerly paragraph 149). This includes exception 154d) that allows for "the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces." Policy DS18 of the Warwick District Local Plan (the Local Plan) seeks to protect Green Belt broadly in line with the Framework.
6. The appeal site comprises a 3-bedroom dormer bungalow with attached garage, and a separate outbuilding. The proposal would involve the demolition of these buildings and their replacement with a two-storey plus basement 5-bedroom dwelling and a bungalow annexe (the 'replacement building') on the approximate location of the existing buildings. The two-storey dwelling and bungalow annexe elements of the replacement building would be sited at an angle to each other and attached by a small interconnecting single storey glazed link. The appeal site shares a drive with the adjacent family-run commercial business and its various commercial buildings.
7. The Council has no issue with the principle of a replacement dwelling in the Green Belt per se under exception 154d). The area of dispute is i) whether the demolition of the outbuilding should be included in any allowance when assessing the size of the replacement building, and ii) whether the replacement building would be 'materially larger' than the building(s) it would replace.

Whether to include the outbuilding in size calculations

8. The appellant has provided a table of comparative figures in their Appeal Statement, which the Council does not dispute. According to this the existing dormer bungalow has a total floor area of about 286m² (that includes ground and first floor accommodation) and the replacement building would have a floor area of about 450m² (excluding the basement). Based on volume, the existing dormer bungalow would be about 479m³ and the replacement building about 1,037m³ (excluding the basement). Hence the replacement building would have more than double the volume and a significant increase in floor area, which the Council calculates would be about a 56% increase.
9. If the outbuilding was included in the calculations, then the floor area of the existing dormer dwelling and outbuilding combined would be about 466m² and their combined volume would be about 1,019m³. Hence the replacement building would have a smaller floor area (excluding the basement) than the combined buildings, whilst the volume of the replacement building would be slightly bigger, which the appellant calculates as an increase of about 1.77%.
10. These are widely varying conclusions depending on whether the outbuilding should be included or not. In the *Tandridge*¹ case the Judge agreed with the Inspector that there was no reason in principle why the objectives of Green Belt policy could not be applied to more than one building when considering the relationship between those buildings by reference to Green Belt and openness. Indeed the concept can be broadly applied to Framework exception 154g) when dealing with the "...partial or complete redevelopment of previously developed

¹ *Tandridge DC v SSLCG & Syrett* [2015] EHW 2503

land..." where there may be a number of buildings that could be redeveloped or replaced. The judgment in *Seven Oaks and DAWE*², which pre-dates the first publication of the Framework, found in that instance that a detached garage could be considered part of the 'dwelling' and that whether something was a 'domestic adjunct' is a matter of fact and degree.

11. I saw that the dormer bungalow and outbuilding were both sited within the same plot enclosed by the same garden fence and gates and were within the same planning unit. The outbuilding was sited about 6.8m away and hence relatively close to the dormer bungalow, and not widely dispersed across the site. Indeed the outbuilding appears to be closer to the dormer bungalow than some of the examples I have been provided with, such as in the *Tandridge* judgment and *Keepers Cottage*³.
12. There were cars parked on the gated driveway between the outbuilding and the dormer bungalow suggesting an association. At the time of my visit the outbuilding was used to store two touring caravans, a car, bicycles, tools and some home gym equipment. I am satisfied its use is ancillary to the dormer bungalow and thus domestic. Hence the replacement building would be in the same use as the existing buildings.
13. Notwithstanding that groups of buildings may be replaced under Framework 154d) or that there is a functional relationship between the outbuilding and existing dwelling, the Council further contends that the outbuilding is 60% the size of the dormer bungalow and is visually distinct in both form and design such that the buildings should not be considered together.
14. The Council granted a Lawful Development Certificate for a proposed building in the grounds of the existing dwelling under Class E of the GPDO⁴ for use as a garage, workshop and tool shed. The building would be large measuring about 13.4m long x 8.35m wide x 3.95m high to ridge and of a simple and utilitarian design with a shallow dual pitched roof.
15. The GPDO includes a number of different classes of permitted development expressly to be "*within the curtilage of a dwellinghouse*", as set out in Part 1. Within Part 1, Class E development is exclusively for "*buildings etc incidental to the enjoyment of a dwellinghouse*". The only limitation on the size of Class E buildings is their height and that the total area of ground covered by such building(s) should not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse). Thus the GPDO potentially allows for the erection of large buildings that are, by definition, considered appropriate for being located within the curtilage of a dwelling and hence in a domestic setting, subject to some size limitations.
16. However, for the purposes of Class E there is no requirement in the GPDO to consider the visual appearance of the building(s) in relation to the host dwelling. Furthermore, there is no requirement in Framework exception 154d) for existing and replacement buildings to be similar in form and design – they need only be in the same use.

² *Seven Oaks District Council v SOS and DAWE* [1997] EWHC 1012 (Admin)

³ Local Planning Authority ref: W21/2267 approved 28 April 2022

⁴ Class E of Schedule 2, Part 1 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

17. The outbuilding has not been built in accordance with the approved plans and is now, by the appellants' own admission, slightly larger and set slightly further away from the dormer bungalow. Its walls and roof are now profiled metal cladding giving the building a more agricultural/industrial appearance, not dissimilar to some of the buildings on the adjacent business site. Even if the existing outbuilding has not been built in accordance with the proposed Lawful Development Certificate, there is no evidence before me to suggest what has been built exceeds permitted development allowances.
18. Taking all these various factors into account, I am satisfied that the existing outbuilding is a domestic adjunct and forms part of a group of buildings with the existing dormer bungalow that can be considered together for the purposes of calculating the size of the building to be replaced under Framework exception 154d). This would not be at odds with the fundamental aims of Green Belt policy. The proposed replacement building would be in the same use as the existing buildings.

Whether the replacement building would be materially larger

19. The term "materially larger" is not defined in the Framework or Local Plan Policy DS18. It is a comparative exercise and the courts have found the exercise is primarily an objective one by reference to size, such as consideration of floor area, volume and dimensions.
20. However, floor area and volume are not the only elements of size. In *Tandridge* the Judge found, after considering the *Heath and Hampstead*⁵ case which in turn referred to the *Surrey Homes*⁶ case, that considering actual physical factors such as bulk, massing, scale and form could be used to indicate relative size for the purposes of determining whether a replacement building was 'materially larger' than the building(s) it would replace. Indeed the Deputy Judge in the *Surrey Homes* case, and which was reproduced in *Tandridge*, thought such "*material considerations relevant to deciding the meaning of the term [materially larger] in the context of which it arises, namely Green Belt policy. Indeed were it otherwise, absurd results could arise. One could have equivalent or possibly even reduced floor space, but disposed within a tower-like structure, having far more impact on the Green Belt.*"
21. The replacement building would see the existing dormer bungalow replaced with the simpler and smaller scale bungalow annexe element of the replacement building. However the existing dormer bungalow and outbuilding are both low lying structures, particularly the outbuilding with its shallow dual pitched roof. The plans show the existing dormer bungalow to be about 5.78m high to ridge. The outbuilding would have to be less than 4m in height in order to benefit from permitted development under Class E.
22. However, it is clear from looking at the plans that the proposed two-storey dwelling element of the replacement building would be much taller than either of the existing buildings. The two-storey dwelling element would also have a much steeper roof pitch than either building. Thus it would extend upwards more than either of the existing buildings and tower above the site and new bungalow annexe, not dissimilar to the aforementioned 'tower-like' example.

⁵ *R (Heath and Hampstead Society) v Camden LBC* [2008] 2 P&CR 13

⁶ *Surrey Homes Ltd v SSETR* CO/1273/2000

This would affect the scale of the proposal, especially when read next to the proposed low-lying bungalow annexe.

23. The two-storey element would also be a double-height pitched roof bay above the entrance that would project out 90-degrees from the elevation. This would increase the bulk and massing of the building and change the simple rectangular floor plan when compared to the two existing buildings. There would be a similar double-height feature on the end elevation enclosing a recessed first floor balcony, again increasing the scale of the proposal.
24. A lightwell and excavated area around it to the rear of the two-storey element would provide light to the basement. This, together with the basement itself, would increase the floor area of the replacement building.
25. Combining these factors, the two-storey element of the replacement building in particular would have far greater scale, bulk and massing than the buildings it would replace. Despite the above-ground floor area being smaller and the volume a little bigger, the replacement building with its increased bulk, scale and massing would be 'materially larger' than the buildings it would replace.
26. To conclude, as the proposed replacement building would be overall materially larger than the buildings it would replace, the proposal would not fall within exception 154d) of the Framework and would therefore constitute inappropriate development in the Green Belt for the purposes of Local Plan Policy DS18 and the Framework.

Effect on openness of the Green Belt

27. The site benefits from woodland surroundings and the two-storey element would be partly obscured from view from the road to some extent as it would be set behind the proposed bungalow annexe. Nonetheless, regardless of visibility development is still capable of affecting openness because openness requires consideration of both spatial and visual aspects as a concept.
28. The proposed replacement building would be materially larger than the buildings, with its scale, bulk and massing increasing the amount of development on the site, thereby reducing spatial and visual openness. Furthermore, it would not assist in keeping land permanently open, which is a fundamental aim of the Green Belt. In addition, the subterranean basement floor area and excavated lightwell would further reduce spatial openness. Light from the lightwell dwelling would also emanate up from the ground, particularly at night, and this would adversely affect visual openness.
29. However, as the two-storey element would be set back from the road, set behind the proposed bungalow annexe to some extent and set in a secluded wooded plot, the proposal would cause moderate harm to the openness of the Green Belt.

Other Matters

30. The appellant also refers to Framework exception 154g) regarding the partial or complete redevelopment of previously developed land. The proposal is described as a replacement dwelling and hence falls to be determined against 154d) for a replacement building. There is no need to consider it against any of the other exceptions, even if they are applicable.

Other Considerations

31. The appellant advances a number of other considerations to support their appeal. The existing dwelling was built in the 1960s with an occupancy restriction for persons engaged in forestry at Clattylands Wood. The appellants have largely retired from the family business, which is now managed by their son and three members of the family. The appellants are aging and no longer able to maintain Clattylands Wood. However, they want to remain living on the site, but the existing bungalow does not meet their future needs. The proposed bungalow annexe is designed to meet their needs, including having wheelchair-friendly dimensions. Family members would live adjacent in the linked two-storey dwelling to provide care if necessary. The proposal would also allow the extended family to be on site to manage the successful rural business, particularly from a security perspective, and reduce their need to travel.
32. The existing dwelling is of poor quality with poor energy efficiency. The proposal would provide an opportunity for a more efficient dwelling in the interests of climate change. The biomass from the woodlands would be used to heat the house and the business. The existing dormer bungalow is of little architectural merit, whereas the proposed replacement building would be modern and sustainable. As the wider site includes a number of commercial buildings, the building has been designed to reflect this.

Green Belt Balance and Conclusion

33. The development represents inappropriate development in the Green Belt as the replacement building would be materially larger than the buildings it would replace. I have found openness would be reduced and there would be conflict with one of the fundamental aims of Green Belt policy. Whilst the adverse effect on openness would be moderate, inappropriate development is, by definition, harmful to the Green Belt. Paragraph 153 of the Framework requires that substantial weight must be given to any harm. Therefore, inappropriate development should not be approved except in very special circumstances, which will not exist unless the harm to the Green Belt, by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
34. On the other side of the balance are the appellants' personal circumstances. I am sympathetic to these and to the fact that the extended family can help continue to care for their ageing relatives. However, there is no substantive evidence to demonstrate why the replacement building needs to be designed as it has been, or that this is the only design configuration. Whilst there may be benefits for family members to live on the site, I have not been presented with any substantial evidence to justify that this is necessary for the continued successful management of the business and that the current arrangement is hampering the business or affecting security. For these reasons I give moderate weight to the appellants' personal circumstances and those of the business. Improved energy efficiency in the interests of climate change is laudable, but this can apply to any replacement building. I acknowledge the existing dormer bungalow is of little architectural merit. However, to my mind none of the above factors correlate with the need to have a building that would be materially larger than the ones it replaces. I give these considerations limited weight.

35. I therefore conclude that the 'other considerations' together do not clearly outweigh the totality of the harm to the Green Belt or outweigh the conflict with planning policies designed to protect the Green Belt. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. The proposal would conflict with the Green Belt aims of Local Plan Policy DS18 and the Framework. Accordingly, the appeal should be dismissed.

K. Stephens
INSPECTOR