



Appeal Decisions

Hearing held on 12 March 2024

Site visit made on 12 March 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2024

Appeal A Ref: APP/D2320/C/23/3329972

Appeal B Ref: APP/D2320/C/23/3329973

Springwood, 68A Blackburn Road, Whittle-Le-Woods PR6 8LH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Christian William Pearson and Appeal B by Mrs Lisa Anne Green against an enforcement notice issued by Chorley Borough Council.
 - The notice was issued on 22 August 2023.
 - The breach of planning control as alleged in the notice is a) the erection of one detached dwelling approved under 17/01124/FUL and 19/00445/FUL but not built in accordance with the approved plans. b) The property approved under 17/01124/FUL & 19/00445/FUL has not been built in accordance with the approved plans. c) Planning application 21/00896/FUL "Erection of one detached dwelling (retrospective)" was refused on 24/4/23.
 - The requirements of the notice are:
 - a) To return the dwelling to the size and scale as approved under 17/01124/FUL & 19/00445/FUL.
 - b) Remove second floor as shown on plan 302B (Project Ref 17042) drawn by 'Bluechip Architecture' submitted under 21/00896/FUL.
 - c) Remove side (west) elevation extensions to reflect plan 201A (Project Ref 17042) and plan 210A (Project Ref 17042) drawn by 'Bluechip Architecture' submitted under 19/00445/FUL.
 - The period for compliance with the requirements is: Six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. The appeals are allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development carried out, namely the erection of one dwelling at Springwood, 68A Blackburn Road, Whittle-Le-Woods PR6 8LH as shown on the plan attached to the notice and subject to the following condition:
 - 1) 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) the enlargement, improvement or other alteration of the dwellinghouse, or the provision within the curtilage of the dwellinghouse of any building or enclosure under Schedule 2, Part 1, Classes A, AA, B, C, D, and E shall not be undertaken without the prior written consent of the local planning authority.

Procedural Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. The main parties confirmed at the hearing that, given the parts of the Framework most relevant to the appeals have not substantively changed from the previous iteration, this revision has not had any relevant implications for the appeals. I have determined the appeals accordingly.

Ground (a) – the deemed planning application

Background and Main Issues

3. The appeal site is situated to the east of Blackburn Road, to the rear of a row of residential properties that front onto Blackburn Road. The site previously consisted of a stable and other smaller store buildings, along with a sand paddock.
4. In terms of relevant planning history at the appeal site, planning permission¹ was granted on the 17 January 2018 (“the 2018 permission”) for the *‘Demolition of existing stables and store buildings and erection of one detached dwelling with associated landscaping’*. On the 9 May 2019 permission² was granted (“the 2019 permission”) to *‘Vary condition 3 (approved plans) of planning permission ref: 17/01124/FUL (which was the demolition of existing stables and store buildings and erection of one detached dwelling with associated landscaping) involving the erection of a domestic ancillary outbuilding to be used for stabling’*.
5. It was subsequently brought to the Council’s attention that the development had not being built in accordance with the approved plans, with particular reference to the size of the detached dwelling. A retrospective planning application³ was subsequently submitted in July 2021 and refused on the 24 April 2023. Following the refusal of this application an enforcement notice was issued on the 22 August 2023, out of which the appeals arise.
6. There is no dispute that the appeal site lies within the Green Belt. The sole matter of dispute is whether the dwelling, as built, constitutes inappropriate development in the Green Belt. No other harm has been identified by the Council. Consequently, the main issues are:
 - Whether the development is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies, including an assessment of its effect on the openness of the Green Belt; and
 - If the development is inappropriate development, 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 required to justify the development.

Reasons

Whether the development is inappropriate development

¹ Council Ref: 17/01124/FUL

² Council Ref: 19/00445/FUL

³ Council Ref: 21/00896/FUL

7. The Government attaches great importance to Green Belts. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Chorley Local Plan 2012-2016 (adopted July 2015) contains no relevant Green Belt policies, and the Council refers solely to chapter 13 of the Framework.
8. The Framework directs that development within the Green Belt is inappropriate, with the exception of the types of developments set out in paragraphs 154 and 155. The parties agree that the appeal site constitutes previously developed land (PDL). Paragraph 154 (g) states that limited infilling or the partial or complete redevelopment of PDL, whether redundant or in continuing use (excluding temporary buildings) are not inappropriate development in the Green Belt, provided it would not have a greater impact on the openness of the Green Belt than the existing development.
9. In order to assess the impact of the development on openness under paragraph 154 (g), it is first necessary to establish what the '*existing*' development is. Although the 2018 and 2019 permissions permitted the erection of a dwelling on the site, it is apparent that the detached dwelling erected does not benefit from the necessary planning permission. The dwelling has also been constructed following the removal of the previous buildings on the site. Therefore, in my view, the pre-development situation remains relevant to this assessment as the '*existing*' situation, even though the previous stable and other buildings are now gone.
10. The parties agree that the previous buildings on the site had a combined volume of around 537m³ and a footprint of 137m². Although originally calculated as having a volume of 864m³, as part of their appeal submissions the appellants have provided a measured survey which states that the as-built dwelling has a volume of 857m³ and a footprint of 114m². The dwelling therefore represents an increase in volume of around 59.5% and a decrease in footprint of around 16.7% when compared to the '*existing*' situation. In addition, the dwelling is significantly taller than the previous single storey buildings that existed on the site.
11. Therefore, despite there being a relatively modest decrease in overall footprint, the significant increase in volume and height has the unavoidable consequence of the dwelling having a greater impact on the spatial openness of the Green Belt than the '*existing*' development.
12. Despite the spatial reduction, there would be a more limited visual reduction in openness. The dwelling is visible from the public footpath which runs along the southern boundary of the site, however longer distance views from the south and east are largely screened by the hill and wooded area to the rear of the dwelling.
13. The topography of the site is such that the land gradually slopes down away from the dwelling towards the north. Whilst views of the dwelling are possible in-between existing properties on Blackburn Road to the west and through trees from the highway to the north, these views are intermittent and, in some cases, substantively screened. It is likely that similar views of the previous buildings on the site were possible, however the increased height of the dwelling will have marginally increased its visual impact. It therefore follows

that the development has had a minor harmful impact on the visual aspect of openness.

14. The erection of the new detached dwelling has a greater impact on openness and cannot fall within the exception set out in paragraph 154(g) of the Framework. The development is therefore inappropriate development, which is by definition, harmful to the Green Belt.

Other Considerations

15. The appellants primary case relates to a fallback position regarding an extant planning permission for the erection of a dwelling, and the ability to exercise permitted development rights that would allow further additions to be made to that dwelling. The Council accepts that the 2019 planning permission is extant, and that the detached dwelling approved under that permission can lawfully be constructed on site. Indeed, the enforcement notice requires the dwelling to be altered so that it complies with the 2019 permission. At the hearing the Council accepted in general terms that, following compliance with the notice, the appellants would be able to utilise their permitted development rights to carry out various extensions and alterations to the dwelling.
16. It is clear therefore that the fallback position is available and is a material consideration. However, for significant weight to be afforded to the fallback position there also needs to be a reasonable prospect of it being carried out, and it would need to be equally or more harmful than the appeal scheme.
17. Compliance with the enforcement notice would result in the as-built dwelling being reduced in size. This would include the loss of the office, boot room, and utility at ground floor level, along with other accommodation at upper floor levels. The appellants contend that this lost space would need to be regained, which would be achieved through the utilisation of the available permitted development rights. Particularly given the presence of the stables and equestrian activity at the site, I accept that there would be a real possibility of such works being carried out.
18. There is some disagreement between the parties as to the volume of the dwelling approved under the 2019 permission. The appellants state that its volume would be 630m³ whereas the Council stated at the hearing that they considered that it would be 537m³. When viewing the approved plans and comparing them to the as-built dwelling, the appellants calculation appears more accurate. There is however agreement between the parties that the footprint of the dwelling approved under the 2019 permission was 79m².
19. The Council also referred to the stable building that was approved under the 2019 permission with a volume of around 205m³ and has been erected on site. This building however benefits from planning permission and irrespective of the outcome of these appeals will remain on site. Consequently, I do not consider it a relevant factor when assessing the impact of any future additions to the dwelling approved under the 2019 permission.
20. At the hearing the appellants produced indicative plans detailing two single storey side extensions that could be erected under permitted development rights. The parties agreed that the total volume of the proposed side extensions was around 183m³, which would result in the dwelling having a total volume of approximately 813m³. Although this is some 44m³ below the

volume of the as-built dwelling, it is apparent from the submitted drawings that the footprint of the dwelling would almost double to over 150m².

21. Despite the marginal reduction in volume and the single storey nature of the additions, due to the significant increase in footprint and spread of built development, I find that the proposed side extensions would have a more harmful impact on the openness of the Green Belt than the appeal scheme. It was also stressed that the proposed extensions shown on the submitted drawings were not the maximum that could be achieved under permitted development.
22. When combined with the potential for other alterations that could be undertaken, including a single storey rear extension, additions or alterations to the roof, and the erection of detached outbuildings, the overall impact would be much greater and would significantly increase the volume, spread and visibility of the built development beyond that of the existing development. Consequently, I afford the fallback scheme significant weight in support of the development.

Planning Balance and Conclusion

23. I have found the development to be harmful to the Green Belt by reason of inappropriateness and loss of openness. Paragraph 153 of the Framework states that substantial weight is to be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Apart from the Green Belt, no other harm arises in this case.
24. Against this harm, it is necessary to balance the other considerations. In this case, I give significant positive weight to the fallback position which would largely reintroduce the additional built volume created by the as-built dwelling as well as significantly increasing the footprint and spread of the built development. This would result in the fallback position having a more harmful effect on the Green Belt than the appeal scheme.
25. Accordingly, the substantial weight given to the Green Belt harm is clearly outweighed by other considerations and therefore the very special circumstances needed to justify the development do exist. Consequently, the development is in accordance with the relevant policies of the Framework and the appeals on ground (a) succeed.

Conditions

26. I have considered the imposition of appropriate planning conditions, having regard to the six tests set out in the Framework. The Council suggested a condition requiring the development to be carried out in accordance with the approved plans. However, given that the dwelling is complete such a condition is not necessary.
27. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Planning Practice Guidance also advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Nevertheless, in this instance there is good planning justification to control future alterations and extensions. The new

detached dwelling is larger than that previously approved, and extending and altering the dwelling under permitted development rights has the potential to further erode the openness of the Green Belt. I consider that, in this case, it would be reasonable and necessary to impose a condition restricting the enlargement, improvement or other alteration of the dwelling, as well as the provision within the curtilage of the dwellinghouse of any building or enclosure, without first obtaining planning permission.

Conclusion

28. For the reasons given above, I conclude that the appeals succeed on ground (a) and planning permission is granted in accordance with the application deemed to have been made under section 177(5) as amended. In these circumstances the appeals on ground (g) do not fall to be considered.

David Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Amanda Olley Summit Planning Associates

FOR THE LOCAL PLANNING AUTHORITY:

Jen Parker
Chris Smith

DOCUMENTS SUBMITTED AT THE HEARING

1. Drawing No 201A titled "PD Floor Plans"
2. Drawing No 210 titled "PD Elevations"