



Appeal Decision

Site visit made on 31 May 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Appeal Ref: APP/X0415/W/23/3332240

The Homestead, Bottom Lane, Seer Green, Buckinghamshire HP9 2RH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs Whittaker against the decision of Buckinghamshire Council - East Area (Chiltern).
 - The application Ref is PL/23/2100/FA.
 - The development proposed is a replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling at The Homestead, Bottom Lane, Seer Green, Buckinghamshire HP9 2RH in accordance with the terms of the application, Ref PL/23/2100/FA, subject to the following conditions set out in the schedule below.

Preliminary Matter

2. An additional bat roost assessment has been submitted with the appeal, including details of further bat surveys. The Council consider an additional survey should be undertaken in the maternity season to establish whether the dwelling in question supports a day roost. Based on the evidence before me I have no reason to reach a different view. The main parties agree that in these circumstances this could adequately be dealt with by a condition if the appeal were to be allowed. As this is no longer a matter in dispute between the main parties I have not considered it as a main issue of the appeal.

Main Issue

3. The main issue is 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.

Reasons

4. The Framework at paragraph 142 identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework establishes, in paragraph 154 that the construction of new buildings should be regarded as inappropriate, but lists exceptions. This includes d) the replacement of a building, provided that the new building is in the same use and not materially larger than the one it replaces.

5. Policy GB2 of the LP¹ reiterates that there is a presumption against inappropriate development in the Green Belt and lists categories of development for which planning permission may be given. This includes the replacement of existing dwellings in accordance with Policy GB7. Policy GB7 of the LP states that the rebuilding or replacement of an existing habitable dwelling will be acceptable in principle providing the new dwelling is not materially larger than that to be demolished after taking into account any extension that could have been built under permitted development.
6. Using figures provided by the appellant, the existing house is 148m², with a volume of 800m³. The associated existing outbuildings have a floor area of 142m² and a volume of 372m³. The proposed dwelling would comprise 370m² (plus an additional 100m² in the basement level), with a volume of 1312m³. Consequently, the size of the resultant dwelling would be materially larger than the building, and associated buildings, which it would replace.
7. As above, however, Policy GB7 allows for consideration of extensions which could be constructed to the existing dwelling as permitted development. The supporting text at paragraph 4.41 of the LP states that where an extension could be built as permitted development, the additional floorspace can be taken into account and an increase in the size of the building will be accepted by the Council. The appellant asserts that extensions between 84m² and 188m², and with a volume of between 336m³ and 752m³, could theoretically be added to the property, where the larger figures would rely on a process of prior approval. While the submission lacks details of those extensions, I have not been provided with any evidence which would lead me to doubt those figures given.
8. Even if the lower figures for a scheme under permitted development were used, this could result in an existing building larger in floorspace and volume than the appeal development, excluding the basement level. While the basement level would account for an additional 100m² of floorspace, this would be contained entirely beneath the property with no physical manifestations at the ground level. However, even if the basement were included, the resultant size of the property would remain less than the floorspace and volume of the existing property plus its maximum permitted development provisions. In addition, the height of the proposal would be similar to the existing.
9. Overall, having regard to the provisions of Policy GB7, the proposal would not be inappropriate development in the Green Belt. It would comply with the provisions of Policies GB7 and GB2 of the LP and the Framework insofar as its exceptions to inappropriate development include the replacement of a building which is not materially larger than the one it replaces. It is not necessary therefore to go on to consider the effects of the proposal on the openness of the Green Belt² or whether very special circumstances exist.

Other Matters

10. While there are differences between the wording of the Framework para 154d) and LP Policy DM7, the development plan policy broadly follows the approach in the Framework, while expanding upon it. Based on the evidence before me,

¹ The Chiltern District Local Plan, adopted 1 September 1997 (including alterations adopted 29 May 2001) consolidated September 2007 and November 2011

² Lee Valley Regional Park Authority v Epping Forest District Council [2015] EWHC 1471 (Admin)

there is not substantive evidence which would lead me to a different conclusion and I have no reason to adjust the weight given to the development plan policy. The Council's pre application advice letter, provided by the appellant, states that other Inspectors have taken a different approach, however I have not been provided with details of those decisions or discussions on this matter, including the relevant dates at which those views may have been taken. As such I cannot be satisfied that this would justify a decision other than in accordance with the development plan.

11. I note the Council's comments in respect of the use of permitted development rights as a fall back scheme and the differences in the effects compared to the appeal scheme. However, the policy does not specifically require consideration of these effects and, as the proposal is not reliant on a case of very special circumstances, this is not a matter that needs to be considered further.

Conditions

12. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
13. In addition to the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans to provide certainty. Despite the presumption against such a condition in the PPG, for green belt reasons and as it is explicitly mentioned in Policy GB7 as part of the consideration of the proposal not being inappropriate, it is necessary to remove permitted development rights for Classes A and B of Schedule 2, Part 1. In the absence of justification, the removal of rights under other Classes would not meet the test of necessity.
14. Given the likelihood of bats being present on the site, conditions are necessary to secure the additional survey, details of a relevant license, if necessary, as well as associated biodiversity enhancements. Given the evidence of potential land contamination issues on the site and for the safety of future occupiers, conditions are necessary to secure associated site investigations and remediation. These need to be satisfied prior to commencement to ensure they are addressed at an early stage and as a later trigger could limit the scope and effectiveness of the measures.
15. For visual reasons, details of external materials and finishes are necessary, and for environmental reasons specific to the area, it is necessary to condition water standards.

Conclusion

16. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is allowed.

C Shearing

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 drawings:
Unumbered Existing House North Elevation, South Elevation, West Elevation, East Elevation, Floor Plan, 'Exhibit 1', 100_01, 100_02, 100_03, 100_04.
- 3) Prior to the commencement of development, the following shall be submitted to and approved in writing by the local planning authority:
 - (i) Details of a site investigation, based on the Phase 1 Desk Study Report by Demeter Environmental Ltd (ref 23-04-03), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - (ii) Site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
 - (iii) A verification plan, providing details of the data that will be collected in order to demonstrate that the works set out above are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The development shall be implemented and carried out in accordance with the approved details.
- 4) Following completion of measures identified in the approved remediation scheme, and prior to first occupation of the development, a verification report shall be submitted to and approved in writing by the local planning authority. This shall demonstrate the effectiveness of the remediation carried out, together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to the exported and imported soils. The approved monitoring and maintenance programme shall be implemented as approved.
- 5) In the event that contamination is found at any time when carrying out the development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be submitted to and approved in writing by the local planning authority. Following completion of measures identified in the approved remediation scheme, a verification report shall be prepared, which shall be submitted to and approved in writing by the local planning authority.
- 6) The development hereby permitted shall not commence until one of the following has been submitted to and approved in writing by the local planning authority:

- a) a licence issued by Natural England pursuant to Regulation 53 of The Conservation of Habitat and Species Regulations 2017 (as amended) authorising the specified activity/development to go ahead; or
 - b) a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.
- 7) Prior to commencement of development, an updated bat activity survey report, to detail the results of a third activity survey of the dwelling (within May to August) and further surveys of any trees to be affected, shall be submitted to, and approved in writing by the local planning authority. Any subsequent recommendations or remedial works will be implemented within the timescales agreed between the bat worker and the local planning authority.
 - 8) Prior to commencement of the development above the ground level (and excluding demolition works) an ecological enhancements scheme shall be submitted to, and approved in writing by the local planning authority. This shall include bat roosting features, two integrated bat boxes, one integrated swift box, one sparrow terrace box, and bat and bird boxes on mature trees. The development shall be carried out in accordance with the approved details and the approved features shall be installed prior to the first occupation of the development.
 - 6) The external surfaces of the development shall only be constructed using materials which have been submitted to, and approved in writing by, the local planning authority.
 - 7) The dwelling hereby approved shall be constructed to meet, as a minimum, the higher standard of 110 litres per person per day using the fittings approach as set out in the 'Housing: optional technical standards' guidance and prescribed regulation 36(2)(b) of the Building Regulations 2010.
 - 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 permitted by virtue of Classes A and B of Part 1 of Schedule 2 to the Order shall be undertaken.

End of Schedule