



Appeal Decision

Site visit made on 28 June 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2024

Appeal Ref: APP/R1038/W/23/3336055

Barlow Croft, Barlow Lees Lane, Barlow, Derbyshire S18 7SZ

- 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 Mr Jonathan Reynolds against the decision of North East Derbyshire District Council.
 - The application Ref is 22/00317/FL.
 - The development proposed is demolition of existing dwelling and outbuildings and replacement with a two storey, 6 bed dwelling, double integral garage and associated landscaping (private drainage system).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application submission, the main parties agreed a revised description of development to reflect an amended design. The Council made its decision on this basis, although the description in the decision notice did not reflect this. I have used the revised description in the banner header above.

Main Issues

3. The main issues are:
 - Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (2023) (the Framework) and any relevant development plan policies;
 - The effect of the development on the character and appearance of the area; 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 necessary to justify the proposal.

Reasons

Inappropriate Development in the Green Belt

4. The appeal site is on land defined as Green Belt. It comprises a 2-storey detached dwelling and various single storey outbuildings, set within a large curtilage of gardens with terracing, fields, woodland, and a driveway and parking area. The proposal is to replace the dwelling and outbuildings with a 2.5-storey dwelling.

5. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
6. The Framework paragraph 154 identifies that the construction of new buildings is inappropriate in the Green Belt, subject to several exceptions. Policy SS10 of the North East Derbyshire Local Plan 2014-2034 (LP) (2021) takes a broadly similar approach to Green Belt as in the Framework.

Replacement Building

7. The first exception which could apply is under the Framework paragraph 154(d) and the LP Policy SS10(2)(d), comprising the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
8. In comparison to the existing dwelling and outbuildings, the new dwelling would result in a lower footprint overall, but an increased built development volume. The appellant suggests this would be approximately 26%, a calculation which the Council identifies that it has no reason to challenge. My site visit identified that one of the outbuildings shown on the existing site plan to the rear of the garage block is no longer present. Whether or not the 26% figure included that building within the baseline, for the avoidance of doubt I have assessed the proposal against a 26% volume increase as a 'best case scenario' for the appellant.
9. With a 26% volume increase, the proposal would result in a dwelling which would be considerably materially larger than the one it replaces. As such, the proposal would not fall under the Framework paragraph 154(d) and LP Policy SS10(2)(d) exceptions, and so would be inappropriate development.

Redevelopment of Previously Developed Land and Openness

10. The second exception which could apply is under the Framework paragraph 154(g) and the LP Policy SS10(2)(f), being the redevelopment of previously developed land (PDL), which would not have a greater impact on the openness of the Green Belt than the existing development. The site is PDL as it is a dwelling and residential garden outside of a built-up area. I have discounted the second part of paragraph 154(g) as the proposed dwelling has not been suggested to meet an identified affordable housing need.
11. Openness is an essential characteristic of the Green Belt with spatial and visual aspects, and is a matter of planning judgement. The Green Belt openness is clearly evident around the property and the wider area. The volume increase of approximately 26% would be additional massing, and so would result in a moderately harmful loss of openness in spatial terms. Visually, the dwelling would be clearly visible from various viewpoints along the adjacent roads and public right of way, despite the thick vegetation to the east.
12. The new dwelling would be a more compact compared to the existing dispersed layout incorporating the outbuildings. It would also include varying roof heights and articulation of its features, which would somewhat break up its scale and massing. However, at 2.5 storeys, its massing would be imposing overall, and noticeably higher than that existing within many views. The existing garage

and other outbuildings are only single storey and are set partly into the steep slope and woodland backdrop, such that they have little prominence at present. The removal of this volume and 'replacement' within the main dwelling at height and more in the middle of the site would therefore be more visually impactful.

13. The additional landscaping would not sufficiently mitigate the bulky visual impact of the additional built form. Altogether I find the more prominent massing and dominant form of the new dwelling would have a moderately harmful visual impact on openness.

Benchmarking

14. The appellant identifies 3 nearby sites which gained permission for replacement dwellings in the Green Belt¹ with over 26% volumetric increases. However, these either date from 2013, or were based on previous 2013 permissions. As such, they are not recent examples, and I agree with the Council that Green Belt policy interpretation and the concept of openness has gained more clarity through more recent caselaw and the Planning Practice Guidance.
15. I thus find that the Green Belt assessment approach in those officer reports does not fully reflect the most up to date practice. Indeed, I note that the 2 court judgements submitted in the appellant's evidence post-date 2013. Furthermore, Green Belt planning judgements are heavily dependent on site-specific evidence and context. I therefore disagree that a 26% volume increase has been set as a locally accepted principle.
16. The 2 further examples are from a different local planning authority area. They refer to a different development plan, including adopted guidance for specific acceptable size increase parameters within the Green Belt. Although serving to illustrate the different approach taken by that authority, and that the presence of such local guidance would likely be helpful to applicants, this does not suggest that I should follow suit in the absence of such.

Inappropriate Development - Conclusion

17. In drawing together my findings on spatial and visual impact, I therefore find that the proposal would have a greater impact on the openness of the Green Belt than the existing development. The appeal proposal would thus be inappropriate development in the Green Belt, which is, by definition, harmful. It would therefore conflict with the LP Policy SS10, and Section 13 of the Framework. The Council also cited the LP Policy SS1 within its reason for refusal, but I do not find this directly relevant, as it is not specific to the Green Belt but sets criteria for developments to contribute to sustainable development.

Character and Appearance

18. The LP Policy SDC3 identifies that development should contribute to the conservation and enhancement of distinctive local landscapes, including Areas of Multiple Environmental Sensitivity such as that within which the appeal site is located. The policy's supporting text identifies these areas as being the most sensitive areas of landscape, most likely to be negatively affected by change or development.

¹ 'Brooklands' 15/01065/FL and 21/00126/FL; 'Storth House Farm' 14/00633/FL; 'Wellspring Farm' 2013/00546/FL

19. The local area character types are identified in 'The Landscape Character of Derbyshire' (2014), with the officer report and the submitted mapping identifying the site as within the 'Wooded Slopes and Valleys' character type of the 'Derbyshire Peak Fringe and Lower Derwent' area. I have assessed the proposal on this basis, notwithstanding a different character area is referred to in the decision notice.
20. The appeal site and its surroundings align closely with some of the key characteristics of this area, incorporating steep wooded slopes and hedgerow trees, pasture fields bounded by dry stone walls, winding lanes, and dispersed farmsteads. The current large dwelling is relatively prominent within this vista, but its range of outbuildings blend into the hillside and the thick wooded backdrop. Although with little architectural merit as a 1960s design plus variously dated extensions, from the front it appears relatively cohesive in form and detailing. Its original relatively modest rectangular form remains evident in other viewpoints.
21. While the overall design of the proposed dwelling would be more coherent than at present, and would take inspiration from a more traditional character, its increased height and bulk would not assimilate as well within the landscape. This would result in undue prominence and dominance from multiple viewpoints, and detract from the overall landscape character. My site visit along the surrounding roads did identify several large and relatively prominent recent dwellings, but the presence of this existing built form does not indicate that all properties in this sensitive area should be developed similarly.
22. Overall therefore, the proposed development would be harmful to the character and appearance of the area, and would conflict with the LP Policy SDC3. This requires new development to conserve the character, quality, and distinctiveness of the local landscape, and be sympathetic to its distinctive character type. It would also conflict with the Framework paragraph 135, whereby developments should be sympathetic to local character, including the surrounding built environment and landscape.

Other Considerations

Benefits

23. The Council considers that little beneficial weight can be attributed to the proposed biodiversity net gain increase, because it is a policy requirement. However, the net gain which would be provided would be significantly in excess of the legislative requirements, and would also provide visual screening. I therefore give this moderate weight in favour.
24. The appellant suggests that the proposal would result in a lower energy demand and a reduced carbon footprint, albeit exemplary sustainability credentials are not identified. Notwithstanding that such is to be expected for the majority of new dwellings replacing older ones, I give this benefit limited weight in favour.

The Fallback Position

25. The Council has confirmed through the issuing of a Certificate of Lawful Development² and granting of Prior Approval³, that the dwelling could be extended in various ways. These comprise a full width single storey rear extension, a part width 2 storey rear extension, a side extension linking the dwelling to the outbuilding and converting it into habitable rooms, and a new single storey outbuilding.
26. The Council does consider that the snooker/games room outbuilding no longer has Class E permitted development rights, because a snooker room is not proposed within the appeal scheme and so cannot be said to still be 'required' for an incidental purpose. However, Class E does not require occupants to demonstrate a detailed need for any building proposed, it is sufficient that the use proposed is a purpose incidental to the enjoyment of the dwellinghouse. Therefore, I find that in combination, the existing dwelling, outbuildings, and potential extensions create a fallback position ('the fallback') which I accept has a real prospect of occurring.
27. Firstly, I assess the appeal proposal against the fallback under the Framework paragraph 154(d) and the LP Policy SS10(2)(d) exception for the replacement of a building. The main parties agree the appeal proposal would result in a volume increase of 19m³ or 1.3%.
28. This would still be a volumetric increase larger than the one it replaces. The comparison exercise of whether something is 'materially larger' is primarily an objective one by reference to size, but some regard may also be had to other matters such as bulk, height, mass, and prominence⁴. As I find the volume increase would be relatively marginal, it is appropriate to have reference to these matters.
29. Although the 2-storey element of the fallback would be substantial, the fallback would be predominantly single storey, and dispersed around the main dwelling form and across the site. The appeal proposal would have a greater and more prominent impact in its height, bulk, and massing than that of the fallback massing, in a similar manner as that I identified above. Alongside the volumetric increase, I again therefore find that the proposal would result in a dwelling which would be materially larger than the fallback, and thus would be inappropriate development.
30. Secondly, I assess the appeal proposal against the fallback under the exception for the redevelopment of PDL in the Framework paragraph 154(g) and the LP Policy SS10(2)(f). The proposal would result in limited additional massing, and so a limited harmful loss of openness in spatial terms. Visually, the fallback would comprise somewhat 'disjointed' elements of the main dwelling, which would not be a strongly cohesive design. The 2-storey rear extension would be the most visually impactful to openness within this. However, as a whole, this would not be overwhelmingly so within the wider site context, including due to

² 21/00705/LDC - Certificate of Lawful Development (September 2021) for single storey side extension, 2 storey rear extension, detached outbuilding to rear of dwellinghouse, and conversion of outbuildings to ancillary uses.

³ 21/00564/FLHPD - Single storey rear extension confirmed as Permitted Development (May 2021) under Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended).

⁴ R (oao Heath and Hampstead Society) v Camden LBC [2007] EWHC 977 (Admin)

the articulation and lower scale of the single storey elements, and the topography and framing vegetation.

31. In comparison, the appeal proposal would still be higher, and bulkier and more imposing. Its visual impact on openness would be more limited compared to the fallback than compared to the existing dwelling, but this would still be harmful. I acknowledge the appeal proposal would provide additional screening compared to none under the fallback, but the level of such screening would not entirely mitigate its impact.
32. Overall therefore, even when taking the fallback into account, my finding remains that the proposal's spatial and visual impact would have a greater impact on the openness of the Green Belt, and so would be inappropriate development. For very similar reasons, it would also have a more harmful impact on the character and appearance of the area than the fallback.

Green Belt Balance

33. In summary, due to its effects on openness, the proposal would be inappropriate development in the Green Belt in the terms set out by the Framework. The proposal would also cause harm to the character and appearance of the area.
34. The Framework requires that substantial weight should be given to any harm to the Green Belt, and that inappropriate development should not be approved except in very special circumstances. It goes on to explain that very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
35. When taking into account these other considerations as outlined above, and particularly the comparison against the fallback in terms of size and impact, it is a relatively finely balanced judgement. However, I find that the other considerations would not individually or cumulatively clearly outweigh the harm to the Green Belt and any other harm. Therefore, the very special circumstances required to justify a grant of planning permission have not been demonstrated. The proposal would thus conflict with the Green Belt policies in the Framework and the LP.

Conclusion

36. For the reasons given above, the proposal would conflict with the development plan and the Framework taken as a whole. With no other material considerations indicating otherwise, I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR