

Appeal Decision

Site visit made on 3 September 2024

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2024

Appeal Ref: APP/D0121/W/24/3337219

133 Clevedon Road, Tickenham, North Somerset BS21 6RF

- 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 Andrew McComack, ETM Recycling against the decision of North Somerset Council.
 - The application Ref is 23/P/1805/FUL.
 - The development proposed is demolition of existing dwellinghouse and erection of replacement dwelling.
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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.
3. The appeal is accompanied by a Tree Survey and Tree Protection Plan from Aspect Tree Consultancy (5th June 2024). The report and plan relate to the second reason for refusal. I have been advised that this information was submitted with a more recent, and similar, planning application on the site¹ and, subject to conditions, addressed the Council's concerns regarding the effect on trees. Although the report and plan have not been subject to formal public consultation, the Council were given an opportunity to comment on them as part of this appeal. In light of this, and given my findings below, I am satisfied that no party would be prejudiced by my acceptance of the information. Therefore, having regard to the principles of Holborn², acceptance of the further information would not be procedurally unfair and as a result I have considered it in determining this appeal.

Main Issues

4. The main issues are:

¹ 24/P/1260/FUL

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

- whether the proposal would be inappropriate development in the Green Belt having regard to the development plan and the Framework;
- the effect of the proposal on the openness and purposes of the Green Belt;
- the effect of the proposal on trees within the site; and,
- if it 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 necessary to justify the development.

Reasons

Whether inappropriate development

5. The Framework identifies that the fundamental aim of 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.
6. Paragraph 154 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt but provides exceptions. These include at criterion d) of that paragraph, the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
7. Policies CS6 and CS33 of the North Somerset Core Strategy January 2017 (CS) support replacement dwellings in the Green Belt and in the countryside. Policy DM12 of the Development Management Policies Site and Policies Plan Part 1 (July 2016) (DMP) states that the replacement of an existing building is not regarded as inappropriate provided it is in the same use and is not materially larger than the one it replaces. Policy DM12 goes on to state that a replacement building will not normally be regarded as being materially larger provided it does not exceed 50% of the gross floor area of the original building subject to consideration being given to the impact on the openness of the Green Belt with regard to its design including bulk, height and scale. This is supported by DMP Policy DM44 that states that the replacement dwelling should be no more than a 50% increase in the size of the dwelling it replaces.
8. The appellant advises that the increase in floorspace as part of the appeal proposal is 137% over that of the existing dwelling. However, they advise that when deducting the floorspace of the single-storey outbuildings to be demolished, it reduces to 37%, considerably less than the 50% increase allowed by DMP Policy DM12. It is also noted that the ridge of the proposed dwelling would be lower than the existing by setting the proposed building at a lower level into the ground.
9. No.133 Clevedon Road is a detached dwelling in a good-sized enclosed plot that benefits from various single-storey projections and almost full-width dormer windows to front and rear providing accommodation at first floor within the roof. The proposed replacement dwelling would be in a similar position within the plot as the existing dwelling albeit slightly to the west. As

a result of being set into the ground, externally the rear of the dwelling would appear single storey. However, the building width would increase to approximately 21m from 11.2m with the frontage proposed to comprise a full two-storeys with roof above and incorporating full height gables that extend the full depth of the dwelling. Although the ridge height of the proposed dwelling would be lower than the height of the ridge to the existing dwelling, the building when measured from ground floor level to ridge would be greater by reason of the proposed dwelling being set considerably lower into the ground. It would also be wider and slightly deeper than the existing dwelling.

10. Accordingly, due to the combination of the two-storey height across the full depth and width of the building, in contrast to the existing dwelling, the proposed replacement would be a palpably larger and bulkier building.
11. There is no dispute between the main parties that the demolition of outbuildings can be used to offset the provision of new additional floorspace, and I have no reason to disagree. However, in the *Tandridge*³ case the judge stated that the inclusion of outbuildings is subject to consideration of the relationship of the buildings to each other, and to issues of openness, and should not be a simple arithmetical exercise and as such is a matter of planning judgement.
12. In this instance, one of the buildings to be demolished is a garage located in fairly close proximity to the rear of the existing dwelling and clearly viewed in relation with it. However, the other outbuildings are more dispersed being located a considerable distance from the dwelling, are not read as being used in association with the dwelling and are not clearly viewed in association with it. As a result, I find that these other outbuildings do not have a functional relationship with the existing dwelling and cannot be used to off-set the proposed increase in floorspace. When excluding these outbuildings, the proposal would be in excess of the 50% increase in floorspace allowed by DMP Policies DM12 and DM44. Accordingly, when considering the scale and overall massing of the proposed replacement dwelling, it would be materially larger than what it would replace.
13. Even if I were to conclude that the floorspace of all of the outbuildings could be included, the outbuildings to be demolished are single storey. By reason of the greater bulk, mass, scale and the additional volume of built form created by the upper floor and roof in comparison to the buildings being replaced, the appeal proposal would have a much greater effect on the area than the existing dwelling and single-storey outbuildings. Therefore, and despite representing less than a 50% increase in floorspace, taking into account its bulk, height and scale as required by DMP Policy DM12, as a matter of planning judgement, the proposal would be materially larger.
14. I therefore conclude that the appeal proposal would amount to inappropriate development in the Green Belt. Accordingly, the appeal proposal, would be contrary to CS Policy CS6 and DMP Policies DM12 and DM44 and the Framework which collectively seek to protect the Green Belt from inappropriate development.

³ *Tandridge DC v SSLCG & Syrett* [2015] EHC 2503

Effect on openness of the Green Belt

15. The appeal site comprises a large verdant plot, with mature trees, mature boundary planting and extensive grassed areas. The existing dwelling sits compactly towards the centre of the site, with various outbuildings and ancillary structures scattered in other parts of the site to the north. A tall boundary wall and planting separates the site from a public right of way to the north. The proposed dwelling would have a limited relationship to the nearest properties due to the distances involved and planted boundaries. Nonetheless, the appeal site is part of the wider open countryside in this part of the Green Belt.
16. As set out above, the scale, mass and form of the proposed dwelling, particularly the increased footprint and height in comparison to the existing dwelling, would tangibly reduce the spatial openness of the Green Belt at the appeal location. Although the degree of screening provided by the mature boundaries and planting restrict public views of the site, the appeal proposal, in contrast to the existing dwelling, would be experienced as intensification of development detrimentally encroaching into the countryside and harmfully impacting on spatial openness of the Green Belt. The Planning Practice Guidance⁴ clarifies that openness is capable of having both spatial (volume) and visual aspects.
17. Notwithstanding, the presence of the single-storey outbuildings at the site (none of which would need to be removed to accommodate the proposed replacement dwelling), on the basis that the proposal would be considerably larger than the existing dwelling, this would not sufficiently offset the net effect of the proposed replacement dwelling, which would be materially harmful on openness as a spatial quality at the appeal site and would fail to safeguard the countryside from encroachment.
18. I therefore conclude that the appeal proposal would result in a loss of Green Belt openness and would impact on the purposes of including the land in the Green Belt.

Effect on trees

19. The planning application the subject of this appeal was refused on the basis of insufficient information to allow a full assessment of the impact of the proposal on trees, particularly related to works from the removal of one of the outbuildings.
20. The appeal is accompanied by the further information mentioned above in the form of an Arboricultural Method Statement and Tree Protection Plan that also accompanied a subsequent planning application on the site. The Council accept the findings of the further information subject to the section on monitoring being amended (to require monthly monitoring, a watching brief when works take place in the RPA of retained trees, a report being sent into the LPA Tree Officer within 72 hours of each visit) and details of tree protection for trees in close proximity of the dwelling. The Council consider that such matters could be addressed by conditions. In light of this, given

⁴ Paragraph: 001 Reference ID: 64-001-2019072

the contents of the further information, and given the distance of the trees from the outbuilding to be removed ensuring that the trees can be retained, I have no reason to disagree.

21. Therefore, subject to appropriate conditions should I allow the appeal, the proposal would not harm trees within the site. As such, the proposal complies with CS Policies CS4, CS5, CS9 and CS12, DMP Policies DM8, DM9, DM10 and DM32 and the North Somerset Biodiversity and Trees Supplementary planning document for developments within North Somerset December 2005. Amongst other things, these encourage retention of trees, protection of trees and ensure that proposals protect the landscape and achieve high quality design and place-making.

Other considerations

22. Paragraph 152 of the Framework states 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.
23. In this case, the potential to erect additional extensions to the existing dwelling utilising permitted development rights that are afforded to the property has been put forward as a fallback position (the fallback position) by the appellant. Whilst no lawful development certificate is before me in relation to the extensions, this is not necessary given that the configuration of this fallback position is illustrated in plan and elevational form upon submitted layout and elevation plans.
24. In my view, and taking a common-sense approach, the intention of DMP Policy DM12 is to allow for consideration of existing or previous buildings on the site in determining whether a redevelopment would have a greater impact on Green Belt openness, rather than buildings that may or may not be constructed in the future. This is reflected in the wording of the policy relating to 'the size of the original building' and 'the one it replaces'. Therefore, whilst permitted development extensions could be carried out lawfully, the comparison of the proposed replacement dwelling must be with the existing development, as it stands, rather than with the building as it may theoretically exist at some point in the future.
25. Furthermore, for significant weight to be afforded to the fallback position, there needs not only to be a real prospect of it being carried out, but it would also need to be more harmful than the scheme for which permission is sought. In light of the absence of a swimming pool from the appeal proposal, I am not convinced that there is a greater than theoretical possibility of the swimming pool being carried out in isolation of the proposal. As such, I do not find there to be a real prospect of the full fallback position being implemented.
26. Even if it were to represent a real prospect, and despite the fallback position providing development of increased footprint coverage when compared to the proposed dwelling, a considerable extent of the works that comprise the fallback position would be made up of single-storey additions to the existing dwelling and a detached swimming pool with associated single-storey cover. The replacement dwelling's height and bulk are important factors. Indeed, the replacement dwelling, when compared to the fallback position, would

appear bulkier and more voluminous by virtue of its full two-storey height, design and the generous extent of upper floor living space. Therefore, when considering the fallback position in the round, I consider that it would result in slightly less harm to the Green Belt than the appeal proposal. As such it would not result in an improvement in openness terms. I would therefore afford only limited weight to the fallback position even if there were a real prospect of it being implemented.

27. While the proposal would provide increased accommodation for the appellant's family in a new modern dwelling, in light of the permitted development rights available to the existing dwelling, I see no reason why the existing dwelling could not also provide increased accommodation. I therefore attach limited weight to this suggestion.
28. The Council is unable to demonstrate a five-year supply of deliverable housing sites but as the proposal is for a replacement dwelling, there would be no contribution to the housing supply. There would also be social and economic benefits associated with the proposal, however, given the quantum of development these would be limited.
29. My attention has been drawn to another decision by the Council⁵ where a larger dwelling was granted partly on the basis of the footprint being off-set by the removal of other buildings and I visited this site at the time of my site visit. However, the Council advise that these buildings were closer to the main dwelling and in the absence of full details of the proposal comprising plans and reports, I cannot be sure it is directly comparable to the appeal proposal, and as such carries limited weight. Furthermore, I am required to consider the current appeal on its merits.
30. The appellant raises concerns regarding the conduct of the Council during its consideration of the planning application. However, these are not matters which are for consideration in this appeal.

Green Belt Balance and Conclusion

31. The Framework is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
32. I have found that the proposal would be inappropriate development in the Green Belt. In addition, it would result in a loss of openness to the Green Belt and would impact on the purposes of including the land in the Green Belt. Substantial weight is given to the harm to the Green Belt in accordance with paragraph 153 of the Framework.
33. Overall, I give minor weight to the factors in favour of the proposal, and conclude that, taken together, they do not clearly outweigh the harm arising from the proposal. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist.

⁵ 21/P/1357/FUL

34. Given the Council's housing land supply position, paragraph 11 d) of the Framework, and footnote 8, sets out that the policies that are most important for determining the application are deemed to be out of date and planning permission should therefore be granted unless one of two circumstances apply. The first of these, 11 d) i., says unless *"the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed."*
35. Footnote 7 of paragraph 11 d) i. confirms that land designated as Green Belt is one of the areas/assets of particular importance. As such, a proposal that does not accord with Green Belt policies in the Framework provides a clear reason for refusal. As a result, I do not need to go on to consider the proposal against paragraph 11 d) ii.
36. The proposed development would not accord with the development plan or national policy in relation to Green Belt. There are no other considerations which outweigh these findings. For the reasons given above, I conclude that the appeal should be dismissed.

C Rose

INSPECTOR