



Appeal Decision

Site visit made on 4 February 2025

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Appeal Ref: APP/H1515/W/24/3354011

Fallow Barn, The Cabin, Ashwells Road, Pilgrims Hatch, Essex CM15 9SE

- 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 Joseph Laws For and on behalf of Trustees and beneficiaries against the decision of Brentwood Borough Council.
 - The application Ref is 24/00522/FUL.
 - The development proposed is construction of replacement dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following submission of the appeal, the revised National Planning Policy Framework (the Framework) was published on 12 December 2024 and updated on 7 February 2025. The parts of the Framework most relevant to the appeal have not substantively changed from the previous version. As a result, I consider that there is no requirement for me to seek further submissions in respect of these matters, and I am satisfied that no party's interests would be prejudiced by my taking this approach.

Main Issues

3. The main issues are:
 - i) whether the proposal represents inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies;
 - ii) the effect of the proposal on the openness of the Green Belt; and
 - iii) would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate development

4. Paragraph 154 of the Framework states that the construction of new buildings in the Green Belt is inappropriate subject to a number of exceptions. One of which is the replacement of a building providing the new building is in the same use and not materially larger than the one it replaces. Policy MG02 of the Brentwood Local Plan 2016-2033 (Local Plan) states that development proposals within the Green Belt

will be considered and assessed in accordance with the provisions of national policy.

5. The appeal site comprises an irregular shaped parcel of land, which contains a single storey building which has an established residential use¹ and a number of ancillary outbuildings/structures. The proposal seeks the replacement of the existing dwelling and for the construction of a replacement dwelling.
6. The replacement building would be in the same use as the existing and thus the proposal would satisfy the first part of criterion d) of Paragraph 154. However, as materially larger is not defined within the Framework or the development plan whether the proposal would be materially larger is a matter of judgment.
7. The evidence before me indicates that only the dwelling known as The Cabin, is lawful with no such confirmation for the containers, log store or kennel. Nevertheless, the existing structure proximate to the western boundary appears to remain in the position shown on the existing block plan.
8. The appellant has drawn my attention to a number of Judgements to provide support for their case. The judgement of *R (Heath and Hampstead Society) v Camden LBC* [2008] EWCA Civ 193 held that the words 'replacement' and 'not materially larger' must be read together and in the same context, with 'size' being the primary test. The general intention is that the new building should be similar in scale to that which it replaces. In terms of 'larger' *Carnwath LJ* commented: "*A small increase may be significant or insignificant in planning terms, depending on such matters as design, massing and disposition on the site. The qualification provides the necessary flexibility to allow planning judgement and common sense to play a part, and is not a precise formula. However, that flexibility does not justify stretching the word "materially" to produce a different, much broader test.*" The judge also mentioned that the perception of the size of the new building could be relevant to the materiality of a measured increase in size.
9. In this particular instance the proposed building would have a larger footprint, volume and height than the building it would replace. The evidence before me indicates that there would be an 87.5% increase in floor space and 83% increase in footprint. Notwithstanding that the proposal would remain single storey in height, this would be materially larger than the building it would replace. As such the development would fail to accord with Policy MG02 and the Framework. It is therefore inappropriate development.
10. In their statement of case the appellant does not dispute that the proposed replacement dwelling constitutes inappropriate development when considered against the Framework.

Openness

11. The Framework defines one of the essential characteristics of the Green Belt to be its openness. There is no formal definition of openness but, in the context of the Green Belt, it is generally held to refer to an absence of development. Openness has both a spatial dimension, and a visual aspect.
12. The proposal would be positioned on a similar footprint to the existing dwelling. Nevertheless, it would represent a material increase in built form, including an

¹ Certificate of Lawfulness as a residential dwelling under office reference 19/00322/S192

increase in height and, in spatial terms, the development would lead to a loss of openness.

13. I appreciate that available views of the development would be localised and limited due to the presence of existing built form and boundary treatments, including landscaping. Nevertheless, whilst the reduction in openness would be limited and localised, it would result in harm to the Green Belt.

Other Considerations

14. The Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight must be given to any harm to the Green Belt and 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.
15. In this regard the appellant has referred to their permitted development rights as a potential fall-back position, including an increase in height of the roof. However, I have seen nothing to suggest they would genuinely pursue this option if the appeal failed or that such a scheme would be similar to, or worse than, what is currently proposed. Therefore, in the absence of substantive evidence, such as a lawful development certificate, I am not persuaded that there is a realistic fall-back position in terms of development under permitted development that merits positive weight towards granting the appeal proposal.
16. The appellant would be agreeable to the removal of permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) should the appeal be allowed as an opportunity to maintain control over future development at the appeal site. Paragraph 55 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. Furthermore, the Planning Practice Guidance also advises that conditions of this nature will rarely pass the test of necessity and should only be used in exceptional circumstances. Moreover, removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness or necessity².

Other Matters

17. The height of the proposed dwelling would be increased from the existing profile and would include a gable feature and a pitched roof porch canopy. Nevertheless, in the immediate vicinity of the site, I observed an eclectic mix to the appearance of properties and accordingly, there are no concerns regarding the design and external appearance of the proposal. It is not disputed that the proposal would safeguard the living condition of existing occupiers adjacent to the site. However, these are neutral matters.
18. Any social or economic benefits associated with the erection of a dwelling would be limited. Such benefits would not be significant enough to alter or outweigh my conclusion on the main issue.

² Paragraph:01 Reference ID: 21a-017-20190723

19. The appeal scheme before me is a resubmission of a preceding application refused by the Council. I appreciate that the appellant has attempted to overcome the concerns previously raised.

Green Belt Balance and Conclusion

20. Having regard to the development plan and national planning policy, the proposal comprises inappropriate development in the Green Belt. There would also be harm arising from the proposal to the openness of the Green Belt.
21. I have examined all the benefits and arguments in favour of the appeal proposal advanced by the appellant. However, individually and cumulatively these other considerations do not clearly outweigh the totality of harm by reason of inappropriateness and any other harm of the proposal. Consequently, the very special circumstances necessary to justify the development do not exist.
22. My above findings bring the proposal into conflict with the development plan when read as a whole. There are no material considerations, including the Framework, which indicate the decision should be made other than in accordance with the development plan. I, therefore, conclude that the appeal should be dismissed.

R Gee

INSPECTOR