



Appeal Decision

Site visit made on 24 January 2025

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 March 2025

Appeal Ref: APP/Z3635/W/24/3349634

Kristaval, 47 Lower Hampton Road, Sunbury-on-Thames, Surrey TW16 5PR

- 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 A Singh against the decision of Spelthorne Borough Council.
 - The application Ref is 24/00561/FUL.
 - The development proposed is the demolition of an existing dwelling and carport and the erection of a replacement dwelling, new landscaping and other associated works other associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In December 2024 the Government published a revised National Planning Policy Framework (“the Framework”), which amongst others included changes to the Green Belt chapter. The main parties were given an opportunity to comment on the relevance of the revised Framework to their respective cases and I have taken any comments received into account in this decision.

Main Issues

3. The main issues in this appeal are:
 - The effect on protected bat species.
 - Whether the appeal site is grey belt land and whether the proposed development would be inappropriate development in the Green Belt having regard to any relevant development plan policies and the Framework.
 - The effect of the proposed development on the openness of the Green Belt.
 - If the proposal is inappropriate development, whether the 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 required to justify it.

Reasons

Protected bat species

4. Bat species are a European protected species under the Conservation of Habitats and Species Regulations 2017 (“the Regulations”) and several species are of principal importance under the Natural Environment and Rural Communities Act 2006 (“the NERC Act”). As such, they are afforded full protection under UK and EU-derived legislation.

5. Circular 06/2005 'Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system', states that it is essential that the presence or absence of protected species, and the extent to which they may be affected by a proposed development, is established before planning permission is granted. Otherwise, all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances.
6. The appellant's Preliminary Roost Assessment (PRA) states that in order to adhere to guidance, legislation and planning policy, one bat emergence or re-entry survey is required during the active bat season to confirm the presence or likely absence of a bat roost in the appeal building. No such survey is before me. Even though the probability of bats occupying the building is assessed in the PRA as 'low', I see no basis on the evidence before me to depart from the appellant's PRA. Based on the advice in the Circular and in taking a precautionary approach, the additional survey work recommended in the PRA should be completed and any necessary avoidance or mitigation measures identified, before planning permission could be granted.
7. In the absence of a bat emergence or re-entry survey, I do not have sufficient confidence that the proposal would not harm legally protected bat species or that Natural England would be likely to grant a European Protected Species License. Therefore, this is not a matter that could be satisfactorily addressed by a planning condition and there is no substantive evidence before me to demonstrate any exceptional circumstances that would justify departing from the advice in the Circular. An absence of any consultation reply from a nature conservation expert does not lead me away from this conclusion.
8. To ensure the effective and efficient administration of the appeal system, it would not be appropriate to delay a decision on this appeal until the additional survey is undertaken and the appeal process should not be used to evolve the appellant's evidence base.
9. In having regard to my duty under the Regulations and the NERC Act, I conclude on this issue that the proposed development would be likely to harm protected bat species. This is an important matter that carries substantial weight against the appeal proposal and it brings the development into conflict with Framework Paragraphs 187 and 193, which state that planning permission should be refused if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort compensated for.

Whether inappropriate development

10. The Framework states in Paragraph 153 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 resulting from the proposal, is clearly outweighed by other considerations.
11. Development is inappropriate under the Framework unless one of the exceptions under Paragraph 154 applies or where the criteria under Paragraph 155 apply, including whether the development is grey belt land. Grey belt land is defined in the Framework's glossary as land comprising previously developed land and/or

- any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in Framework Paragraph 143.
12. The appellant's undisputed evidence indicates an unmet need for housing in the Council's area within the terms of Framework Footnote 56. In reading the Framework as a whole, the objective of Paragraph 155 is to exempt the development of additional homes on grey belt land from being inappropriate development where there is, amongst other criteria, a demonstrable unmet need for housing.
 13. It is my interpretation that in order to meet the exception to inappropriate development in Framework Paragraph 155, a housing development must contribute to addressing the demonstrable unmet need for housing by delivering a net gain in housing units. However, as the appeal proposal would replace one dwelling with another, it would not contribute positively to addressing the unmet need for housing. There is limited evidence of a demonstrable unmet need for replacement dwellings in the Council's area.
 14. Therefore, even if I were to agree with the appellant that the appeal site would comprise grey belt land, the appeal proposal would not meet the requirement of Framework Paragraph 155.b) and it would be inappropriate development under Paragraph 155 as a consequence. Accordingly, my attention turns to the exception under Framework Paragraph 154.d), which states that the replacement of a building is not inappropriate development in the Green Belt, provided the new building is in the same use and not materially larger than the one it replaces. The main parties have not referred me to any other relevant exceptions.
 15. In having regard to the development plan, Policy GB1 of the Spelthorne Local Plan 2001 'Saved' Policies and Proposals as at 28 September 2007 ("the SLP") states that development will not be permitted in the Green Belt, except for those developments listed as appropriate. This includes the replacement of existing dwellings, provided that they do not, in accordance with Policy EN2, criterion a) of the Spelthorne Borough Council Core Strategy and Policies Development Plan Document Adopted 2009 ("the DPD"), significantly change the scale of the original building. As the policy test of 'significance', to be applied to a replacement building's scale, is not wholly consistent with the Framework's exception in Paragraph 154.d), I attribute greater weight to the Framework in this decision.
 16. The Framework does not quantify what might constitute a materially larger replacement building. Whether a proposed building is materially larger than the building to be replaced is primarily an objective planning judgement by reference to its size. Factors including floor space, footprint, volume and height can all be relevant to this judgement, as can the relationship between them in terms of the scale, form and massing of the replacement building.
 17. The parties dispute the calculations of the footprint and volume of the building to be replaced. However, even taking the appellant's calculations as a best case scenario, the appeal proposal would result in an uplift in footprint of approximately 20% and a considerable volumetric uplift. Furthermore, it is clear from the drawings that the proposed building's greater volume and mass would be consolidated at an elevated level within a markedly taller building with a pitched gabled roof. Consequently, based on the relationship between its volume, height

and form, the proposed building would have a much greater bulk and massing than the existing building.

18. I have had regard to several appeal decisions¹ and decisions of the Council in which increases in the footprint and volume of buildings of up to 38% and 92% respectively were granted. However, full details of most of those cases are not before me and I cannot be sure that they represent a direct parallel to the appeal proposal. Those decisions would likely have turned on their own evidence, including site-specific characteristics. As such, they have limited weight and relevance to my considerations in this appeal, which are necessarily based on the evidence before me.
19. In having regard to the factors relevant to an objective assessment of size, the proposed dwelling would, in isolation to the site's surroundings and effect on Green Belt openness, be significantly larger, and thus materially larger, than the building it would replace. It follows that it would not meet the exceptions for replacement buildings in the Green Belt set out in Framework Paragraph 154.d), and SLP Policy GB1 and DPD Policy EN2. Consequently, it would be inappropriate development in the Green Belt.

Openness

20. The essential characteristics of Green Belts are their openness and permanence. Openness is not defined in the Framework, but has been established by caselaw, including that referred to by the appellant, as open textured. It has spatial and visual aspects, and a number of factors can be relevant in its consideration.
21. The larger footprint and built form of the proposed dwelling would inevitably reduce Green Belt openness in spatial terms. In visual terms, only the relatively low height walls around the building's parking space are visible from the road. In views from the river, the building to be replaced would be seen mostly amongst the row of generally taller and larger buildings.
22. By comparison to the building to be replaced, I find that the greater height and elevated mass of the proposed dwelling would be more prominent from both viewpoints. Although it would be built on stilts with open sides at ground level and would reinstate a gap between it and Number 49, the proposed dwelling would cause a harmful loss of openness in the Green Belt, albeit to a generally localised and modest degree.
23. I note that an Inspector found there was very limited visibility of the stable building beyond its immediate site in an appeal in Studham². However, based on the limited details provided, that case differed from the appeal scheme before me, which would be clearly visible beyond the site boundaries. In any case I do not have full details of the stable building, and I cannot be sure that it represents a direct parallel to the appeal proposal. Therefore, the Studham appeal has limited relevance to my assessment of the appeal proposal.

Other considerations

24. By setting the finished floor level of the proposed dwelling above the design flood level with an allowance for climate change, both it and the access and escape

¹ APP/Z3635/C/18/3212752; APP/Z3635/A/10/2130959; APP/Z3635/A/06/2008450

² APP/P0240/W/23/3316421

route to the road would be expected to remain dry during the design flood event. This would not be the case for the existing dwelling, the floor level of which is set well below the design flood level. The void beneath the dwelling would provide a net gain in flood storage. The Framework seeks to reduce flood risk where possible. Compared to the building to be replaced, the proposal would significantly reduce the safety risk to occupants in the event of flooding and therefore this is a benefit of substantial weight in its favour, consistent with DPD Policy LO1.

25. Although larger and more prominent, the proposed dwelling's simple and coherent design, with a pitched roof similar to the flanking buildings, would be a visual improvement over the existing building's discordant mixture of utilitarian elements. The appeal building's appearance, including the reinstatement of a gap between it and Number 49, would enhance the character and appearance of the area, as acknowledged by the Council. This is a benefit of significant weight in the appeal proposal's favour, consistent with DPD Policies EN1 and EN9, and the criteria in EN2, with the exception of a).
26. The proposed dwelling would be highly insulated and incorporate devices to generate and store renewable energy, thus reducing energy consumption and carbon emissions to help combat climate change. It would also enhance ecology and deliver a net gain in biodiversity, including through native planting, and bird and bat boxes. Given the small scale of the proposal these environmental benefits are of modest weight in its favour. The benefits to the occupants of enhancing the quantity and quality of the internal and exterior living space at the appeal site are of limited weight in favour of the appeal proposal.
27. The evidence suggests that the appellant's potential 'fallback' scheme under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to enlarge the existing dwelling would require the prior approval of the Council and a Flood Risk Activity Permit (FRAP) from the Environment Agency (EA), or an exemption, for activities within 8 metres of the river. In order to be granted a FRAP or an exemption, the EA states that it would need to be demonstrated that the potential fallback scheme would not adversely impact on flood risk. This has not, on the evidence before me, been demonstrated.
28. I have nothing before me to indicate that those approvals for the fallback scheme would be likely to be granted. Accordingly, in having regard to the judgement in *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314, the fallback scheme presented has no more than a theoretical prospect of being implemented and therefore has limited relevance and weight to my considerations.
29. The evidence indicates that the proposed development would cause no harm to highway safety or the living conditions of nearby occupiers. However, an absence of harm in these respects would be requirements of any well-designed scheme and they do not carry positive weight in favour of the appeal proposal. Land in built-up areas such as residential gardens is excluded from the Framework's definition of previously developed land and therefore such land would not be reused. Even if it did, it would not deliver a beneficial increase in housing supply and the economic benefits of the construction works would be small and of limited weight in its favour.

Green Belt Balance and Conclusion

30. Framework Paragraph 153 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, and that substantial weight should be given to any harm to the Green Belt. Together the proposal's harmful effect on the openness of the Green Belt and its inappropriateness carries substantial weight against it. The proposal's potential adverse impact on legally protected bat species carries substantial weight against the grant of planning permission.
31. The other considerations, which include the safety benefits to the occupants in the event of flooding and the enhancement of the character and appearance of the area, are not sufficient to clearly outweigh the totality of the proposal's harm to the Green Belt, and the potential adverse impacts on protected bat species. Consequently, the very special circumstances necessary to justify the development do not exist.
32. The proposal would comply with DPD Policies LO1, EN1, EN9 and most of the criteria in Policy EN2. However, the substantial weight that I attribute to the harm to the Green Belt and the conflict with SLP Policy GB1 and DPD Policy EN2 criterion a) is sufficient to bring the proposal into conflict with the development plan as a whole, and the Framework. The material considerations, including the benefits of the proposal, do not indicate that a decision should be taken other than in accordance with that plan. Therefore, the appeal should be dismissed.

G Sylvester

INSPECTOR