



Appeal Decision

Site visit made on 3 April 2025

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 May 2025

Appeal Ref: APP/P3040/W/24/3353882

Tally Ho, Ash Lane, Costock, Nottinghamshire LE12 6UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Nigel Burton against Rushcliffe Borough Council.
 - The application Ref is 23/02297/FUL.
 - The development proposed is demolition of existing dwelling and erection of replacement dwelling and outbuilding.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Nigel Burton against Rushcliffe Borough Council. That application is subject to a separate decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024 and is a material consideration in this appeal. Having considered the revisions to the Framework, as well as the principles of natural justice, together with the nature of the determining issues in this appeal it is clear to me that there are no material changes in the revised Framework relevant to the substance of this appeal. Therefore, I do not consider it necessary, in this instance, to invite any submissions from the parties on the revised Framework. Any reference to the Framework in this decision is to the most recent version and its new paragraph numbers.
4. The description of development has changed from that on the application form and accepted by both parties as indicated on the submitted e-mails. The above description is taken from the appeal form which replicates those agreed changes.
5. The Council had not made a determination on the planning application within the prescribed period nor within the extended time agreed. The planning application was amended since originally submitted and the Council's current views are based on these revisions. It states that it would have refused the planning application on the basis of the proposal being inappropriate development in the Green Belt. I have assessed this appeal on the same basis.

Main Issues

6. The main issues are:-

- whether the proposal is inappropriate development in the Green Belt;
- its effect on openness; and
- whether any 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

Inappropriate Development in the Green Belt

7. The Framework explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It makes it clear that development is considered inappropriate unless it satisfies one of the exceptions cited in paragraphs 154 or 155. Paragraph 154, sub-section d) allows the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Local Plan¹ Policy 21 requires development in the Green Belt to be determined in accordance with the Framework.
8. The parties agree that the new dwelling would be materially larger than the one it would replace and therefore the proposal is inappropriate development in the Green Belt. As stated by the Framework, inappropriate development is, by definition, harmful to the Green Belt. Such harm carries substantial weight.

Openness

9. The proposal would be substantially larger than the existing house and therefore there would be an impact on the openness of the Green Belt. Spatially and visually, the proposal would result in a large dwelling which, in part, would intrude into areas currently free of development and reposition the house closer to the lane. Whilst there is already a dwelling on this site, the re-positioning and enlargement would impact on the openness of the Green Belt.

Other Considerations

10. The appellant states that the existing house could be substantially increased by exercising its permitted development rights. The appeal site benefits from two Certificates of Lawfulness, one for extension to the house² and another for outbuildings³. The appellant contends that these would have a greater impact on the Green Belt and allow a greater volume of development than the appeal proposal and therefore comprise a fall-back position.
11. The appellant has put forward a case for the acceptability of a fall-back position, citing Case Law as appropriate. I do not disagree with these conclusions. There is a fall-back position due to the approved Certificates of Lawfulness and I see no reason why these cannot be legally implemented. The appellant states that due to the requirements for additional family living space, there is a significant likelihood

¹ Rushcliffe Local Plan Part 2: Land and Planning Policies Adopted October 2019.

² Ref: 23/01470/CLUPRD), dated 28 July 2023.

³ Ref: 23/01621/CLUPRD), dated 24 August 2023.

of the scheme being implemented. Although the Council considers that the weight afforded to the fall-back position presented here should be lessened as work on the permitted development (PD) scheme has not been implemented or even started. No evidence has been submitted in terms of Case Law or a legal interpretation as to why this view has been taken. On the basis of the evidence submitted, I am satisfied that the fall-back should carry significant weight.

12. The appellant has set out the difference in volume increase between the proposed dwelling and the fall-back position. This details the existing house and its outbuildings equating to 687.35 cubic metres; the fall back house plus outbuildings equals 1148.42 cubic metres; and the proposed house plus outbuildings equals 1139.53 cubic metres. The appellant refers to outbuildings in the plural but the Certificate of Lawfulness for the outbuilding is for one outbuilding and this proposal includes one outbuilding. There is also an existing detached garage and outbuilding which do not seem to be included in these calculations.
13. The Council consider that the above calculations should not include the outbuildings in a comparison between the PD house and the proposed one subject to this appeal. I'm inclined to agree. The appeal site comprises a large plot of land and the outbuildings in both the PD scenario and the appeal proposal are sited a substantial distance away from the house. In each scenario they are detached buildings and whilst a smaller outbuilding is applied for in this appeal, I do not accept adding these buildings to the volume calculations justifies allowing a larger house.
14. In any case, the proposed house would be wider than the PD scheme and consolidating the PD rear extensions at the rear of the house, would result in a greater overall volume. The house would also be re-positioned so that it would be closer to the lane which would add to its impact in terms of its visual effect on the openness of the Green Belt. The appellant indicates that the area of hardstanding would be less but this would not be sufficient to lessen the impact of the harm caused by a larger house. I accept that the proposal would produce a more cohesive design but the advantage of this is small in comparison to the greater impact of a larger house.
15. The proposal includes an outbuilding which the Council accept could itself be built under permitted development rights and therefore represents a genuine fall-back position. I have no reason to disagree with this.

Planning Balance

16. The Framework makes it clear that inappropriate development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the harm, by reason of inappropriateness and any other harm, is clearly outweighed by other circumstances.
17. The proposed dwelling would be materially larger than the one it would replace and therefore would be inappropriate development. I have also found that the openness of the Green Belt would be harmed by the larger house proposed. Harm caused by inappropriateness carries substantial weight.
18. The fall-back position is a material consideration and, in this case, carries significant weight. The PD scheme would create a larger house than exists now

but it would be a less desirable design and visually appear less cohesive and more cumbersome than the appeal proposal. However, I do not find that the harm that would be caused by the PD scheme sufficiently worse than the appeal scheme as to amount to the very special circumstances required to overcome the harm caused by inappropriateness.

19. I therefore conclude that the proposal would be inappropriate development in the Green Belt and the very special circumstances required to clearly outweigh the harm caused by inappropriateness do not exist. The scheme would conflict with the Framework and Local Plan Policy 21.

Conclusion

20. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Consequently, the appeal should be dismissed.

J D Clark

INSPECTOR