



Appeal Decision

Site visit made on 2 September 2025

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th September 2025

Appeal Ref: APP/B1550/W/25/3367308

3 Hooley Drive, Rayleigh, Essex SS6 9RA

- 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 Ms C Hannan against the decision of Rochford District Council.
 - The application Ref is 24/00664/FUL.
 - The development proposed is a replacement dwelling and garage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the 'Framework') and relevant development plan policies;
 - the effect on the openness of the Green Belt;
 - whether the proposed development would harm the existing trees on the appeal site; and
 - 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 proposal.

Reasons

Whether it is inappropriate development

3. The appeal site is occupied by a single storey detached dwelling in the centre of the site, close to the boundary with No.4 Hooley Drive, a garage outbuilding to the front of the site and a pond and large outbuilding to the rear of the site. It is surrounded by a number of other residential properties, however these are limited and spread out giving the area a semi-rural character. The appeal site is also located within the Green Belt. The proposed development would replace the existing dwelling and garage on the appeal site with a new single storey dwelling and garage outbuilding.
4. Paragraph 154 of the Framework indicates that the construction of new buildings in the Green Belt are inappropriate subject to a number of exceptions. Under paragraph 154 (d), the exceptions include the replacement of a building, provided

the new building is in the same use and not materially larger than the one it replaces. The proposed replacement building would be in the same use as the existing building on the appeal site.

5. There is no specific definition of the term 'materially larger' within the Framework. However, Policy DM21 of the Rochford District Council Local Development Framework Development Management Plan 2014 (the LP) states that replacement or rebuild of existing dwellings in the Green Belt will be permitted, taking into consideration several criteria. This includes (i) the total size of the dwelling should result in no more than a 25% increase in the floorspace of the original dwelling.
6. The current dwelling on the appeal site has a floorspace of approximately 108m². However, the Council indicate that the original dwelling, prior to any extensions which have taken place, had a floorspace of just 50m². The appellant contends that, as shown on the 1952 Ordnance Survey plan, the original dwelling had a floorspace of around 70m², including an outside toilet, and therefore had a total floorspace of 77m² as referenced within a previous appeal decision¹ on the site.
7. The proposed dwelling would have a floorspace of approximately 107m². Even if I were to conclude that the floorspace of the original dwelling was 77m², as outlined by the appellant, this would still constitute a 39% increase which would conflict with the requirement of Policy DM21(i) of the LP.
8. The criterion in this policy makes reference to the 'original' dwelling, however the exception within paragraph 154 (d) does not include the term original and therefore can be taken as meaning the dwelling in its current form.
9. It is noted that the test in the Framework is slightly more generous than in the development plan. However, Policy DM21 has been put in place to offer guidance in relation to the term 'materially larger' within the Framework and the pre-ambles states that this is to ensure consistency with the extension in the Green Belt policy. Furthermore, whilst the Framework is a material consideration, the starting point is that appeals should be determined in accordance with the development plan unless other material considerations indicate otherwise.
10. Policies might not be the same as the Framework but still consistent with it. Therefore, whilst, unlike the Framework, Policy DM21 makes reference to increases above the original dwelling, as the policy reflects the general aims of the Framework, I have attributed moderate weight to it.
11. Therefore, the proposed development would be inappropriate development in the Green Belt as it would not comply with Policy DM21 of the LP. This policy seeks to restrict inappropriate forms of development in the Green Belt, an aim which is consistent with the Framework.
12. This is harmful to the Green Belt which, in accordance with paragraph 153 of the Framework, should be given substantial weight. Development should not be approved unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations, which will be considered below.

¹ Ref APP/B1550/W/20/3254794 (the previous appeal decision)

13. It is noted that in a recent appeal decision², for the replacement of a dwelling in the Green Belt which is also located within this district, the dwelling to be replaced was taken in its current form as per the wording of the Framework. However, even with this more generous definition of materially larger, the proposed dwelling in this case was still significantly larger than the 25% increase permissible within Policy DM21. Therefore, the consideration of the original dwelling or the existing dwelling made no difference to the outcome of the appeal.

Openness

14. In considering the concept of openness, the courts have found that it broadly has two dimensions; spatial and visual. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. Equally this does not mean that the openness of the Green Belt has no visual dimension.
15. Although significantly larger than the original dwelling, the proposed dwelling would be very similar in size and scale to the existing dwelling on the appeal site at present. It would also be in a similar location on the appeal site to the existing dwelling. The proposed garage outbuilding would also be similar in scale to the existing garage on the appeal site and, although not in the same position, would be moved closer to the main dwelling. Therefore, the proposed development would not harm the visual or spatial openness of the Green Belt.

Trees

16. There are a number of mature trees located on the western boundary of the appeal site, the submitted plans indicate that these are oak trees. The Council contend that, as an Arboricultural Impact Assessment has not been submitted as part of the planning application, it is not possible to assess the impact of the proposed development on these existing trees. They indicate that due to the size of the trees and their likely root protection areas, they would be highly susceptible to damage from construction related activities.
17. However, whilst within the red line boundary of the appeal site, these trees would still be some distance away from the proposed dwelling and garage. I am therefore satisfied that, should planning permission be granted, a condition could be imposed requiring the submission of a tree protection plan to ensure that the trees are sufficiently protected during the construction period.
18. Therefore, subject to the condition outlined above, the proposed development would not result in harm to the existing trees on the appeal site and would not conflict with Policy DM25 of the LP which seeks to conserve and enhance existing trees and woodlands.

Other Considerations

19. The appellant contends that the proposed replacement dwelling would provide a modern, energy efficient home which, unlike the current dwelling, can be lived in comfortably. It has been outlined that the current dwelling is unoccupied, in a poor state of repair and is inefficient to run, and that the proposed replacement has a design which would help to reduce greenhouse gas emissions. They also state that the dwelling would be moved slightly away from the shared boundary with 4

² Ref APP/B1550/W/24/3353380 (Woodlands, 39 Wood Avenue, Hockley, Essex, SS5 5NU)

Hooley Drive, to improve the living conditions for the occupiers of both dwellings. These benefits are afforded moderate weight.

20. A lawful development certificate³ was granted on the appeal site in 2009 for a side and rear extension to the existing dwelling permissible under permitted development rights. The parties indicate that these additions would have a total floorspace of 16.52m². If carried out, these extensions would clearly increase the scale of the current dwelling on the appeal site and therefore would be more harmful to the green belt than the proposed development, which would have approximately the same floorspace as the current dwelling. The extensions would also have an impact on the openness of the green belt whereas the proposed development would not.
21. However, as confirmed in a Court of Appeal decision⁴, for a scheme to be considered a 'fallback' there should be a real prospect that it would be constructed. As outlined above, the appellant's appeal submission makes various references to the existing building being in a poor state of repair which would be difficult to bring up to modern standards, and I saw during my site visit that the dwelling was in poor condition. As such, I find that it is unlikely that the appellant would be willing to extend such a dwelling. Therefore, whilst the extensions permissible under permitted development rights would be more harmful than the proposed development before me, I am not convinced that there is a greater than theoretical possibility that this development might take place due to the current state of the building.
22. The appellant also suggests that the refurbishment of the current building could be considered a fallback position as this would result in a dwelling larger than the original dwelling. The appellant considers that this is a realistic option, although I note, for the reasons above, this would be a difficult undertaking due to the condition of the building. However, this would not be any more harmful to the green belt or its openness than the current dwelling on site and therefore has limited weight as a fallback position.
23. The appellant has highlighted a number of previous appeal decisions⁵ where development under permitted development rights as a relevant fallback position has been accepted. However, this is not the case in this instance where I have found that there is no real prospect of the extensions, permissible under permitted development rights, taking place. Therefore, these appeal decisions do not set a precedent in this instance.

Green Belt Balance

24. The development would be inappropriate development in the Green Belt in that it would result in new buildings within the Green Belt which do not fall under any of the listed exceptions. The Framework establishes that substantial weight should be given to any harm to the Green Belt and the development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.

³ Ref 09/00463/LDC

⁴ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

⁵ Refs APP/P1805/W/16/3143807, APP/R0660/W/22/3309363, APP/L1765/W/22/3308026, APP/X0415/W/23/333224

25. I find that the other considerations in this case do not clearly outweigh the harm to the Green Belt, in terms of an inappropriateness that I have identified. Consequently, the very special circumstances necessary to justify the development in the Green Belt do not exist. Therefore, the proposal conflicts with paragraph 153 of the Framework.

Planning Balance

26. It is noted that the Council cannot achieve a five year supply of deliverable housing and are only able to demonstrate a 4.53 year supply, a moderate shortfall. The appellant therefore considers that the development plan is out of date and as such, due to the provisions of footnote 8, paragraph 11(d) of the Framework should be applied.
27. However, while the framework advocates granting planning permission where there are no relevant development plan policies, this is unless, in accordance with paragraph 11(d)(i), the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. The harm to the Green Belt identified is such that the policies in the Framework relating to the Green Belt provide that strong reason for refusing the development. As a result, the presumption in favour of sustainable development does not apply and does not weigh in favour of the proposal.

Conclusion

28. For the reasons given above, I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR