The Planning Inspectorate

Appeal Decision

Hearing held on 18 November 2022

Site visit made on 18 November 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2023

Appeal Refs: APP/X0415/C/22/3293635
Land at Rosewood Farm, Watchet Lane, Little Kingshill, Great Missenden, Bucks HP16 0DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Thomas Rose against a notice issued by Buckinghamshire Council.
- The notice was issued on 13 January 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a detached dwelling.
- The requirements of the notice are:

  5.1 Demolish the dwelling (within the hatched area on the attached Plan 2) and;

  5.2 Rip up the decking and footings (within the hatched area on the attached Plan 2) and;

  5.3 Disconnect and remove all utility connections including, but not limited to, electric, sewerage and water, and;

  5.4 Remove from the Land all debris and materials arising as a result of compliance with steps 1-3 of this Notice.
- The period for compliance with the requirements is within 6 months of this Notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Formal Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the construction of a detached dwelling on land at Rosewood Farm, Watchet Lane, Little Kingshill, Great Missenden HP16 0DR, referred to in the notice, subject to the conditions set out in the attached Schedule.

Application for costs

2. An application for costs was made by Buckinghamshire Council against Thomas Rose, followed by a counter claim. These applications are the subject of separate decisions.

Background

3. Rosewood Farm is a large piece of land once used primarily for the keeping of horses which has more recently diversified into a cluster of single-storey farm-type buildings mainly rented out for commercial storage purposes. These buildings are concentrated together in an area towards the south of the area of land ringed on the plan attached to the enforcement notice.

4. Walking westwards away from this part of the site, along a hard-surfaced track wide enough for vehicles to travel along, the land climbs with a significant area of woodland covering the expansive and sloping land to the north. At this point the two-storey timber-framed dwelling, located amongst the trees, sits on the level land at the top of the slope looking down across the site to the heavily wooded land situated soutwards.

5. In September 2021 the Council, in responding to a complaint received, found that a 'large wooden clad building' – as referred to in the case report – was under construction. The appellant confirmed that he and his partner, Ms Kovacs, moved in later that year and have resided there since.

6. No planning application was received in an attempt to regularise the planning position and, in the circumstances, due to its Green Belt location and the protection of the immediate landscape, the Council saw it expedient to issue an enforcement notice against the development.

The appeal on Ground (a) and the deemed planning application (DPA)

Main Issues

7. The site lies within the Metropolitan Green Belt and the main issues are the following:

- Whether the dwelling constitutes inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework);
- If it is inappropriate development, the effect on the Green Belt's openness;
- Whether there is any other resultant harm, with particular regard to the effect on the surrounding landscape, with particular regard to the site's location within the Chilterns Area of Outstanding Natural Beauty (AONB)
- 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

Inappropriate development

8. Paragraph 147 of the National Planning Policy Framework (the Framework) says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework says that the construction of new buildings is inappropriate in the Green Belt, but with certain exceptions stated. One of these, exception (d) being *'the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.'*

9. The principle is that the replacement building should not have a greater impact on the openness of the Green Belt than the existing building.

10. The DPA seeks to retain the dwelling and, in mitigation, the appellant has produced a Unilateral Undertaking which offers, in return, the demolition of two existing buildings; one being a structure used for a combination of residential and storage purposes and located amongst the said cluster of former farm buildings, with the other a steel-framed, open-sided barn with a high central ridge, currently used for the storage of timber and vehicle parking, and positioned close to the dwelling atop the slope. The former will hereafter be referred to as Building B, which the Council apparently accepts is, along with its uses, immune from enforcement action. As regards Building C the Council has seemingly accepted that this building is similarly immune.

11. In the judgement of *R (Heath and Hampstead Society) v Camden LBC* [2008] EWCA Civ 193 it was 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."

12. 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. In this particular instance Building B has a similar floorspace to the new dwellinghouse, but is markedly lower in height.

13. Given the wording of exception (d) only Building B, in part residential use, if demolished, can be seen to possibly facilitate a replacement building. However, in this particular instance, it is not the case that a previous building's footprint would be used for development. Instead, the distance between Building B and the new dwelling is considerable, with the latter also occupying a much higher land level and, moreover, is of two-storey height. Further, as mentioned, Building B is part of a cluster of single-storey buildings, and in this context its demolition would not necessarily make a such a difference as to be obvious to the naked eye.

14. In these circumstances, and irrespective of the indication that Building B has a similar floorspace to the dwelling, the perception given is that the dwelling is materially larger than Building B. Accordingly, I consider that floorspace, due to the factors involved here, holds little relevance here. The attempt, therefore, to suggest that the dwelling is a replacement building, and the claim that exception (d) would apply, is somewhat stretching the parameters.

15. The appellant has provided an appeal decision *(APP/X0415/A/05/1174541)* relating to a local property for what he considers is a case helpful to the success of the current appeal. The previous decision from 2007 involved the demolition of a then existing house and the erection of a replacement dwelling on slightly lower land. To this extent I see a similarity in the two cases but beyond this, and in having no direct knowledge of the case, a direct parallel is not obvious, especially given the factors surrounding Building B, its form and design, and its considerable

distance from the new dwelling. Further, the previous decision cited pre-dated the original version of the Framework in 2012. Accordingly, I ascribe little weight to this decision as having any meaningful bearing on the outcome of the current appeal.

16. I must therefore conclude that the building and its use for residential purposes constitute inappropriate development in the Green Belt for the purposes of the Framework, and is also in conflict with policy GB2 of the Chiltern District Local Plan (LP).

Openness

17. The next point to examine is whether the development at appeal is harmful to the openness of the Green Belt. The Framework states that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land within them permanently open.

18. Openness in terms of the Green Belt, which is recognised as relating to the absence of built form, can have a spatial as well as a visual aspect, although the Supreme Court has held that a consideration of openness is essentially a matter for the decision maker on a case by case basis. Here, although the dwelling is partly screened by trees it is visible as an isolated building on top of the slope. That said, both main parties, in the Statement of Common Ground, have agreed that the dwellinghouse has only a minor effect on the landscape. Its design, form and timber construction helps in this regard.

19. To illustrate, in the judgement of *John Turner v Secretary of State for Communities and Local Government*, heard in the Court of Appeal, it was said that the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if development occurs and also factors relevant to the visual impact on the aspect of openness which the Green Belt presents. A 2020 judgement (*Samuel Smith Old Brewery and others v North Yorkshire CC)* concluded that matters relevant to openness in any particular case are a matter of planning assessment, so whilst visual impact can be relevant to openness it is not necessarily relevant in all cases.

20. The appellant has provided a Landscape and Visual Impact Appraisal (LVIA), but this does not relate to maintaining the openness of the Green Belt, as it is instead more concerned with vegetative screening which does not itself mitigate against the use's adverse impact on the Green Belt's openness.

21. The Council considers that, due to its location on the site, beyond which are open fields, the development has extended the area of Rosewood Farm's built form further into the Green Belt. The Council has also stated concerns raised that the dwelling is out of character with the landscape and, in introducing an urbanising feature, does not preserve or enhance the special landscape character and high scenic quality of the AONB. That said, by the time the Statement of Common Ground (SOCG) was put together and agreed there is now an acceptance amongst both main parties that the new building has only a minor effect on the landscape.

22. Given the timber building's discreet appearance and features, even if visible through a gap in the tree cover, I am less convinced as to the term 'urbanising' as such a building is more likely to be found in a rural environment. I am more

concerned as to its residential use and any potential for externally placed domestic paraphernalia that would arise from the building's residential use. I am, though, mindful that the dwelling's occupants, and their nature of occupation, is unlikely to amass any open storage of materials, either related to the domestic use or otherwise; the latter for which the Council holds remedial powers.

23. Nonetheless, in the above regard I must agree with the Council that the spread of built form adversely affects the openness of the Green Belt and this could potentially give rise to pressure for additional development that would encroach upon the level open land beyond to the north.

24. I can understand the Council's objection arising from what it considers to be the consequences of the development at issue here – doubtless exacerbated by the fact that the dwelling was built without any prior reference to the Council - and the apparent absence of records as to any past planning permissions for the site, despite developments having previously been undertaken without being regularised. That said, the Council does, of course, hold enforcement powers should additional development take place without planning permission, but also that each case must be determined with regard to its own individual circumstances and the particular merits and/or impacts resulting.

25. Relating to the appeal development I consider that the removal of Building C is a plus in terms of mitigation measures but I am not fully convinced by the appellant's claim that the proposal in full would lead to a "net openness gain in the Green Belt." Instead, I find that in both spatial and visual terms the development does have an impact on the openness of the Green Belt. Although the impact is somewhat lessened physically the residential use itself is inconsistent with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open.

26. Accordingly, the dwelling cannot be seen as preserving the openness of the Green Belt, and I find the development to be in material conflict with the Framework's objectives and harmful to the openness of the Green Belt.

Landscape and the AONB

27. The Framework says that valued landscapes should be protected, and enhanced via planning policies and decisions. Paragraph 176 of the Framework says that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. This reinforces the statutory protection of such designated land by s85(1) of the Countryside and Rights of Way Act 2000, and is also reflected in the objectives of policy LSQ1 of the Chiltern District Local Plan (LP) and policy CS22 of the Core Strategy for Chiltern District.

28. In the above connection the judgement of *Bayliss v SSCLG* [2014] EWCA Civ 347 held that a decision did necessarily need to use the phrase "*conserving and enhancing landscape and scenic beauty"* as some form of incantation, with it said that the effect of a proposal on an AONB will itself vary, and different weights can be given, dependent upon the degree of harm. Further, in the case of *R (Morris) v Wealden DC* [2014] EWHC 4081 (Admin) the judge commented that, in terms of the wording *"great weight"* in this context should be considered in relation to the harm which would be brought about by a particular proposal. In acknowledging that some cases would involve only trivial harm, he said that, in such

circumstances, the great weight to be attached could more easily be outweighed by an advantage that accrued from the development in question.

29. Notwithstanding this, the AONB must be considered as a special category of material consideration and the Framework looks to cover the impact on the scenic beauty of the land within the AONB.

30. I have had regard to the Ecological Planning Statement carried out by specialist consultants which recommends a number of enhancements that could be carried out to ameliorate any impacts arising. I also note the assessment therein that there might be some minor light spill in the immediate area but, given the extent of the woodland, this is not considered to have a significant effect on the movement of nocturnal wildlife. In the circumstances I am satisfied that the recommended measures would constitute suitable mitigation.

31. As mentioned, the Council accepts that the development has only a minor effect on the landscape. The fact that the dwelling is screened by mature trees and also its somewhat rustic appearance, lessen its prominence and contribute towards its partial integration. As such I find that the development has had little effect on the aim of protecting the landscape. Accordingly, any resultant harm here is to a limited degree and the development is not in material conflict with either LP policy LSQ1 or CP policy CS22.

32. Further, having inspected the dwelling closely I consider that the dwelling has been well designed, is respectful of its surroundings, and generally meets the aims and requirements of LP policy GC1 and also CP policy CS20.

Other Considerations

Personal circumstances

33. The appellant's partner is incapacitated to a significant extent by health problems, and written confirmation of such has been provided by East and North Hertfordshire NHS Trust. Although both Mr Rose and Ms Kovacs previously resided in Building B, prior to the new dwelling being constructed, evidence was given at the Hearing to indicate that a return to that building would no longer be convivial to her needs, whereas the new dwelling has been constructed, accordingly.

34. Personal circumstances are themselves capable of being a material consideration in a planning case is well established in law. In this particular instance I consider that the displacement of Ms Kovacs might imperil her medical treatment and possibly worsen her condition.

35. In this instance I afford the personal circumstances as particularly relevant and to carry significant weight.

Intentional Unauthorised development

36. The government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission, particularly on land within the Green Belt. In such cases there is often no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve Councils having to take time consuming enforcement action and, since August 2015, intentional unauthorised development

(IUD) has been considered as a material consideration to be weighed in the determination of planning applications and appeals.

37. It is clear from the evidence presented, both written and oral, that the new dwelling was constructed without any consultation with the Council. In this respect it is interesting to note the appellant's comment in paragraph 5.3 of his initial Grounds of appeal, where it is stated:

"…Furthermore , the appellant has not had the opportunity for their case to be heard through a planning application due to the premature service of the Enforcement Notice with no prior warning or discussion with the appellant."

38. This is rather disingenuous and, having heard the responses to questions asked at the Hearing, I am of the view that the development was undertaken regardless of the knowledge that planning permission was required. Indeed, had the local planning authority not initiated its enforcement investigation the development might easily have not come to its notice. Accordingly, I find that this is a classic case of 'build first, apply later'. However, given the circumstances involved, I have balanced this with Ms Kovacs' needs, and my consideration that the harm caused can be limited or mitigated by imposing necessary and reasonable planning conditions.

Planning Balance

39. Paragraph 148 indicates that the decision maker should ensure that substantial weight is given to any harm to the Green Belt. Also, the very special circumstances that must be demonstrated will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting, is clearly outweighed by other considerations.

40. Although finding that the dwelling erected represents inappropriate development within the Green Belt, and that both the dwelling, and to a greater extent, its residential use, also adversely impacts on the openness on the Green Belt, I am, though, satisfied that its effect on the landscape and the AONB is limitedl. Having also found that the personal circumstances involved carry substantial weight, this has to be balanced against the fact that the breach identified is clearly IUD.

41. Weighing up these factors I have concluded that, on balance, the appeal turns on the personal need involved and, to a slightly lesser extent, the obligations put forward in the Unilateral Undertaking produced by the appellant. The Undertaking gives an assurance that, within a specified period of time, the demolition of Buildings B and C would take place; the latter which would entail a physical improvement in the landscape to aid the Green Belt's openness, and the former due mainly to the extinguishment of an existing residential use by reason of its demolition which would also slightly reduce the degree of built form on the wider site. Otherwise there is little case to justify an unrestricted residential use in this instance.

42. Only one letter of objection was received in response to the appeal, the grounds for which are covered in this decision letter. The Council has also raised a concern regarding additional planting under electricity power lines above the site. However, from my site visit observations I am not convinced that the building at issue has, or will, cause direct problems in this respect. Besides, if the required clearance between the trees below and the overhead power lines becomes an

issue then there is no good reason why the appellant should not arrange for a suitable cutback.

Conclusion

43. On balance, I am satisfied that the above factors, when taken together in my assessment of the DPA, are sufficiently material as to outweigh the harm to the Green Belt's openness and I conclude that the very special circumstances necessary to outweigh the policy objection have here been demonstrated. Accordingly, the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Conditions

44. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

45. Both parties agree that the ecological enhancements recommended in the appellant's Ecological Planning Statement, which would include the provision of bat, raptor and owl boxes, should be carried out. I share this view and a condition is imposed to this effect.

46. I also agree with the Council's suggestion, and one accepted by the appellant, that the normal householder permitted development entitlement should be removed in order that the Council can retain control over any intended future material alterations to the dwelling. Notwithstanding the possibility of any extensions to, or enlargement of, the dwelling itself (Classes A to D) I note here that the dwelling has no defined curtilage which could potentially have implications for the interpretation of Class E and its applicability in this case. Accordingly, this reinforces the need for the imposition of a restrictive condition to this effect and, to this end, I have had regard to the aims and requirements of LP policy GB7.

47. Although the appellant disagreed with the need for such the necessity for a condition making the planning permission personal to the appellant and his partner has already been discussed, and when their occupation ceases, either jointly or severably, the residential use hereby permitted shall expire.

48. However, given the building's rustic appearance, such that it reasonably integrates within its setting, helped by the appellant's undertaking to demolish Buildings B and C, I am satisfied that the new building itself need not be removed at the end of the said tenure, and the relevant condition therefore stops short of this. That said, the building at that point would take on a nil use.

49. Finally, in view of the small scale nature of occupation and the dwelling's limited internal accommodation, I see no need for any condition formalising any parking layout outside the dwelling. Besides, the removal of Building C will be helpful in accessing the site.

Timothy C King

INSPECTOR

SCHEDULE OF CONDITIONS

1) The ecological enhancements, as set out at 4.1 of the Ecological Planning Statement dated April 2022, shall be carried out within 4 months of the date of this permission.

2) The dwelling hereby permitted shall be occupied only by Thomas Edward Rose and Gyongi Kovacs. When the premises cease to be occupied by Thomas Edward Rose and Gyongi Kovacs, either jointly or severerably, the use hereby permitted shall cease.

3) Notwithstanding the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking orre-enacting that Order) no development falling within Classes A to E inclusive of Schedule 2 to the said Order shall be erected within the Rosewood Farm site unless planning permission is first granted by the local planning authority.

APPEARANCES

For the Appellant

Rowan Clapp	Counsel
David Wetherill	Consultant
Thomas Rose	Appellant
Gyongyi Kovacs	Appellant's partner

For the Local Planning Authority

Stephanie Penney	Buckinghamshire Council
Selina Islam	" "
Lisa Norris	" "
Billy Johal	" "