



## Appeal Decision

Site visit made on 29 July 2022

by **Lewis Condé BSc (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

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**Appeal Ref: APP/Y3940/W/22/3293999**

**37A Monkton Farleigh, Bradford-on-Avon, Wiltshire BA15 2QD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr J Stone against the decision of Wiltshire Council.
  - The application Ref 20/10353/FUL, dated 18 November 2020, was refused by notice dated 29 September 2021.
  - The development proposed is 'Erection of replacement dwelling'.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs has been made by the appellant and is subject to a separate decision.

### Preliminary Matters

3. Various amended plans were submitted during the course of the planning application. Clarification was sought as to the final plans/drawings for the scheme against which the Council made its decision, with conflicting responses received from the appellant and the Council.
4. The Council has provided a copy of an email from the appellant (dated 22 July 2021) that indicates the latest set of revised drawings that were submitted for the Council's determination were as follows: Location Plan (scale 1:1250); Amended Proposed Block Plan (dwg no. LPC 4788 SD6 001A); Amended Proposed Ground Floor Plan scale (dwg no. LPC 4788 SD6 002A); Amended Proposed First and Second Floor Plans (dwg no. LPC 4788 SD6 003A); Amended Proposed Elevations (dwg no. LPC 4788 SD6 004A); Amended Proposed Cross Sections (dwg no. LPC 4788 SD6 005A).
5. The reference numbers of the above drawings suggest that they are later versions than those referred to by the appellant. Furthermore, details contained within the Council's committee report appear to corroborate that the Council's decision was based on the above specified drawings. The appeal has therefore been determined on this basis.

### Main Issues

6. The main issues are:

- Whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- The effect of the proposal on the openness of the Green Belt;
- The effect of the proposal on the living conditions of neighbouring occupiers; and
- If the proposal is inappropriate development, whether the harm to the Green Belt by reasons of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

## Reasons

### *Whether the proposal is inappropriate development*

7. The appeal site lies within the Green Belt. The Council's committee report indicates that there are no relevant development plan policies relating to the Green Belt and I have not been referred to any local level Green Belt Policy by the parties. The Council's reason for refusal, insofar as it relates to Green Belt implications, refers solely to paragraph 149(d) of the Framework. Under these circumstances and given that the Framework provides the Government's up-to-date policy intentions for Green Belt, I give it significant weight in my determination of this appeal.
8. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 149.
9. Paragraph 149 d) of the Framework is of most relevance to the proposal. It provides an exception for the replacement of a building provided that it is in the same use and is not materially larger than the one it replaces. The Framework provides no definition of what constitutes 'materially larger'. The Council states that the volume of the proposed dwelling would be approximately 50% larger than the one it would replace, a figure not disputed by the appellant. Despite being narrower in width and of a comparable floorspace, the proposed dwelling is also markedly taller in height and greater in depth than the existing dwelling. As such, having regard to its overall scale and massing relative to the existing dwelling, the proposal would result in a materially larger building.
10. For these reasons, the proposal would be inappropriate development in the Green Belt which is, by definition, harmful.

### *Openness*

11. Openness is an essential characteristic of the Green Belt that has a spatial as well as a visual dimension. The proposed dwelling would have an increased volume, height and massing compared to the existing dwelling and would therefore reduce the openness of the Green Belt in spatial terms. Although the

proposed dwelling would be repositioned within the site and therefore be less prominent from public vantage points, this would not alleviate its spatial impact on openness.

12. Therefore, whilst the harm to the visual aspect of openness would be negligible, the harm to the spatial aspect would be moderate. In any case, the Framework establishes that any harm to the Green Belt should be given substantial weight.

#### *Living Conditions*

13. The Council's reason for refusal cites unacceptable impacts on amenities of neighbouring properties, especially No. 37B Monkton Farleigh (No. 37B). From my observations on site, the most acute effects in terms of living conditions would be experienced by the adjacent occupiers at No. 37B. This is due to its siting in relation to the appeal site.
14. The proposed dwelling would be set further back within its plot and be of greater depth and height than the existing dwelling, resulting in a two-storey element projecting beyond the rear elevation of No. 37B. The side elevation of the proposed dwelling facing onto No. 37B would be blank. Together, these factors would result in a greater sense of enclosure to the occupiers of the neighbouring property. However, the level of enclosure would be somewhat limited due to the proposed dwelling not projecting significantly beyond the building line of the neighbouring property.
15. Furthermore, the proposal is located some distance from the shared boundary. No. 37B also has a fairly long rear garden, with the topography falling away from the rear of the dwelling, providing expansive views over the surrounding countryside beyond. As such, it has a rather open aspect.
16. Overall, the scale of the proposal, its position to the south of and relative to the shared boundary with the neighbouring property means that the proposal would not result in any harmful loss of outlook or light to the occupiers of No. 37B.
17. The lack of first floor windows within the side elevation of the proposed dwelling, and the partially enclosed nature of the proposed first floor balcony, mean that the proposal would not result in any harmful overlooking of neighbouring properties. Whilst the proposal may allow for views over the rear gardens of 37B and 37C Monkton Farleigh, it would not include the more sensitive areas immediately to the rear of these dwellings. Additionally, I observed at my site visit that there was already some mutual overlooking of rear gardens between these properties, given their linear arrangement.
18. Turning to the remaining adjacent neighbouring properties, a substantial amount of trees and vegetation is positioned between the appeal site and the neighbouring dwellings to the rear and south. Even if the vegetation were to be lost, the proposal would not result in any materially harmful effect on the living conditions of the occupiers of those properties. This is due to the scale of the proposal, the separation distances involved, the orientation of those neighbouring dwellings alongside the large size of their gardens.
19. I have noted the concerns of other interested parties, including the occupiers of 37C Monkton Farleigh. However, from my observations on site, I am satisfied

that the proposal would not result in any significant harmful impacts on the occupiers of other nearby properties.

20. For the reasons outlined above, I conclude that the proposal would not have a harmful effect on the living conditions of neighbouring occupiers. The proposal would therefore comply with Core Policy 57 of the Wiltshire Core Strategy, Adopted January 2015. The policy, amongst other matters, requires that new developments have regard to their compatibility with adjoining uses and to the impact on the amenities of existing occupants.

*Other Considerations*

21. The appellant has indicated that the existing dwelling has unexpended permitted development rights (PDR) for extensions. The maximum scale of extensions that could be built using PDR has been indicated, which it is argued should be considered when assessing whether the proposal is materially larger than the building it seeks to replace. However, no detailed plans or drawings have been provided to demonstrate the precise nature and scale of any such extensions and how they would relate to the existing dwelling.
22. Paragraph 149 d) of the Framework is specific in that the baseline position that proposals must be determined against is the existing building that is to be replaced. As such, it is not considered that unbuilt permitted development should be included in the assessment against Paragraph 149 d). However, I have had regard to the fallback position of PDR as part of the wider deliberation as to whether there are other considerations to outweigh the harm identified.
23. The limited details of the fallback position, cast doubt on the likelihood of whether the PDR extensions would be pursued. In addition, it is unclear from the evidence as to what the difference in overall scale and volume would be between the existing dwelling, as could be extended, and the proposed dwelling. As such, it has not been demonstrated that the fallback position would be materially comparable or more harmful than the proposal.
24. I also note that the appellant's statement of case sets out the need of the existing dwelling to undergo substantial renovation, with a replacement dwelling being deemed the only viable option. I am therefore not convinced that there is a realistic prospect of the fallback position being implemented. Consequently, I give only limited weight to the unexpended PDR.
25. The appellant refers to a previous decision of the Council in allowing an extension to No. 37C that increased the volume of that property by over 50%. Whilst I do not have the full details of that planning application, it seems that the policy test which that extension would have been considered against is different to the proposal before me. I also appreciate that extensions to existing dwellings at this order of size are sometimes considered to comply with the exception at paragraph 149 c) of the Framework. However, this exception requires such extensions do not result in 'disproportionate additions' over and above the size of the original building. I consider this to be a very different test from a replacement building not being 'materially larger', as required under 149 d) of the Framework. Little weight is therefore given to this line of argument from the appellant.
26. The site is located within the Monkton Farleigh Conservation Area (CA). The significance of the CA appears to derive from the tranquil rural village character

and general consistency in built form, particularly in the use of materials. Notably, many of the buildings within the CA are constructed from stone under tiled roofs, are of a broadly comparable scale, and they often share similar detailing. The existing dwelling is a more modern addition to the village. Except for its stone boundary wall, the existing dwelling does not positively contribute to the character or significance of the CA.

27. It is suggested by the appellant that the design of the proposed dwelling more effectively harmonises with its surrounding context through its proposed scale and use of materials. As such, it is put forward that the proposal would provide enhancements to the CA. The proposed materials incorporating stone, subject to its precise detailing, may more closely reflect the local surroundings. Nevertheless, I find that the proposed dwelling would not result in a significant uplift in design quality that would offer a material enhancement to the CA. Consequently, the proposal is deemed to have a neutral impact on the character and significance of the CA and I have afforded limited weight to it in the planning balance.
28. The appellant highlights that No. 37B has previously been extended to the side, towards the appeal property, thus removing a significant area of open space between the houses. Notwithstanding the overall impacts on the openness of the Green Belt, the proposed dwelling would result in an increase in open space between the two dwellings as viewed in the street-scene. This is a matter that I find would have a modest positive impact, accordingly it is also afforded modest weight.
29. I recognise that the re-use of the site as a family home would help to support local facilities and services. However, given the scale of the proposal, such benefits would be modest and are not necessarily dependent on the form of development that is being pursued. As such, I also give this matter limited weight.

#### *Green Belt Balance*

30. The proposal is inappropriate development in the Green Belt and it would result in moderate harm to openness. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 states that substantial weight should 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, is clearly outweighed by other considerations.
31. Overall, I find that together the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, very special circumstances do not exist which justify the proposal.

#### **Other Matters**

32. The site is located within the Cotswolds Area of Outstanding Natural Beauty (AONB). The Council does not allege that the proposal would cause harm to the AONB. From my own observations, I concur that given the scale of the proposal and the context of the site, the AONB's landscape and scenic beauty would be conserved.

**Conclusion**

33. The proposal is contrary to policies in the Framework relating to the Green Belt. There are no further material considerations worthy of sufficient weight that would indicate a decision other than in accordance with the Framework policy. Accordingly, the appeal should be dismissed.

*Lewis Condé*

INSPECTOR



## Costs Decision

Site visit made on 29 July 2022

**By Lewis Condé BSc (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

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### **Costs application in relation to Appeal Ref: APP/Y3940/W/22/3293999 37A Monkton Farleigh, Bradford-on-Avon, Wiltshire BA15 2QD**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr J Stone for a full award of costs against Wiltshire Council.
  - The appeal was against the refusal of planning permission for development described as 'Erection of replacement dwelling'.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The application essentially relies on the fact that the Council Members went against the advice of its professional officers and failed to provide adequate reasons for refusing planning permission.
4. The PPG also indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal.
5. In this case I have noted the recommendation of the Council's Officers. However, the decision is one which is a matter of judgement. The Council Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view.
6. Although I did not agree with the Council in respect of the effect of the proposal on the living conditions of the occupiers of the neighbouring properties, I am nevertheless satisfied that the Council produced sufficient evidence to substantiate its concerns in this regard. It will also be seen from my decision that I concur with Council Members and that there were sufficient grounds for refusing planning permission in relation to harm to the Green Belt. I am therefore satisfied that the Council has shown that it was able to substantiate its reason for refusal.
7. For the reasons set out above, I consider that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

Consequently, having regard to all matters raised, an award for costs is not justified.

*Lewis Condé*

INSPECTOR