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## Appeal Decision

Site visit made on 26 May 2016

**by M Seaton BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 8 July 2016**

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**Appeal Ref: APP/N2739/W/16/3142755**  
**215 Weeland Road, Kellingley, Selby, WF11 8DN**

- 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 & Mrs S Huscroft against Selby District Council.
  - The application Ref 2015/0998/FUL, dated 3 September 2015, was refused by notice dated 24 November 2015.
  - The development proposed is a replacement dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. There has been a recent Court of Appeal judgement of 11 May 2016 in respect of *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441*. In this case, the Secretary of State successfully appealed against the judgment of the High Court of 31 July 2015. The judgement has clarified that the policies in the Written Ministerial Statement as to the specific circumstances where contributions for affordable housing and tariff-style planning obligations should not be sought from small scale and self-build development, must once again be treated as a material consideration in development management and development plan procedures and decisions, and in the exercise of powers and duties under the Planning Acts more generally.
3. I am mindful that the Council had highlighted within its appeal statement that a contribution towards affordable housing would be required for a replacement dwelling, in accordance with Policy SP9 of the Selby District Core Strategy 2013 (the Core Strategy), and that the appellant had agreed in principle during the course of the planning application to pay the affordable housing contribution. However, whilst the Council had also indicated the intention to review their position in respect of the judgement and the impact on the requirement of affordable housing contributions, no further correspondence has been forthcoming on the matter. Nevertheless, I am satisfied on the basis of the judgement that there would no longer be a requirement for the appellant to make provision for an affordable housing contribution in this circumstance.

### Main Issues

4. The main issues are:
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- whether the proposed development would amount to inappropriate development for the purposes of the National Planning Policy Framework ('the Framework') and development plan policy;
- the effect on the openness of the Green Belt and the purposes of including land within it;
- if the development is deemed inappropriate, whether the harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

5. The existing appeal site accommodates a single detached two-storey rendered brick dwelling, with the curtilage to the rear accommodating existing outhouses, which it is indicated are to be demolished. The existing dwelling is situated on a main road, with further residential properties to the east, an electricity sub-station to the west, and land and development associated with Kellingley Colliery further to the south. The application site is indicated to be in a generally poor state of repair, which on the basis of my observations, is an assessment with which I would not disagree. The appeal site is indicated to be 'washed over' by the Green Belt.

### *Whether inappropriate development*

6. Paragraphs 87-89 of the Framework state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 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. Subject to a number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt.
7. The listed exceptions in paragraph 89 of the Framework include the replacement of a building, provided that the new building is in the same use and is not materially larger than the one it replaces. In this instance, both the Council and appellant have directed me to this exception as a basis for assessment, with it accepted that the use of the replacement building would be consistent with that of the existing dwelling. The appellant has indicated on the submitted floor plans that the replacement dwelling would be 29% larger in terms of its volume, whilst the Council has approximated the increase volume as being 32.59%. However, whilst I have had regard to the difference between the two calculated figures, the Council has indicated that its conclusion on the materiality of the increase is based upon previous case law stating that an increase of volume in excess of 10% would be judged as the maximum for a replacement dwelling. On this basis, and being mindful of the absence of an explanation as to the methodology for the Council's calculations, I have adopted the appellant's figures.
8. The appellant has refuted the Council's assertion that an increase of 10% is reasonable as a basis for the size of a replacement dwelling, and has challenged the applicability of the case law which the Council has referred to in this instance on the basis that it would have been site-specific. In this respect,

I am mindful that the Council has not directed me specifically to the case law in question, or a policy basis within the Development Plan which seeks to define the extent of a material increase in the context of a replacement dwelling within the Green Belt. Nevertheless, I note that the appellant has conceded within the Grounds of Appeal that "*the proposed development is materially larger than the existing dwelling to be replaced...*", which in the context of assessing whether development in the Green Belt would be inappropriate, is a conclusion with which I would agree.

9. As a consequence, I am satisfied that the proposed development would not accord with any of the exceptions for new buildings in the Green Belt set out at paragraph 89 of the Framework, and I therefore attach substantial weight to the harm arising due to the inappropriate nature of the development. In this respect, the proposal would also be contrary to Policy SP3 of the Core Strategy, which the Council has cited as comprising its position related to development in Green Belts, and where additional restrictions would be applicable to development in line with the Framework.

*The effect on the Green Belt and the purposes of including land within it*

10. Paragraph 79 of the Framework identifies that openness and permanence are the two essential characteristics of Green Belts, whilst paragraph 80 highlights that the Green Belt serves five purposes, including checking the unrestricted sprawl of large built-up areas; preventing neighbouring towns from merging into one another; safeguarding the countryside from encroachment; preserving the setting and special character of historic towns; and assisting in urban regeneration by encouraging the recycling of derelict and other urban land.
11. The Council has not highlighted any conflict with the five purposes as set out at paragraph 80, and on the basis of my observations on site, I would agree with this conclusion. However, whilst I have also had regard to the Council's conclusion that as a consequence of the appeal site being surrounded by residential development that there would not be a *materially adverse effect on the openness of the Green Belt*, given that the replacement dwelling would be materially larger in volume, there would be a limited permanent loss of openness to the land within the Green Belt, contrary to the essential characteristics of the Green Belt set out at paragraph 79 of the Framework.

*Other considerations*

12. I have identified that the proposal would amount to inappropriate development in the Green Belt, and the presumption against inappropriate development would mean that this harm alone attracts substantial weight. The development would also have a limited adverse effect on the openness of the Green Belt, and would therefore be contrary to the essential characteristics of the Green Belt as set out in the Framework.
13. The Council has indicated that it is unable to demonstrate a 5 year supply of deliverable housing sites, although I am mindful that the replacement of the existing dwelling would for all intents and purposes merely maintain the existing *status quo* in respect of housing supply. However, whilst the Council has indicated as a consequence of its housing policies being out-of-date that proposals should be considered against paragraph 14 of the Framework and the presumption in favour of sustainable development, I note that this is unless specific policies in the Framework indicate development should be restricted. In

this respect, footnote 9 identifies land designated as Green Belt to be one of the exceptional criteria. Furthermore, I am mindful that paragraph 34 of the chapter on Housing and Economic Land Availability Assessment within national Planning Practice Guidance (the Guidance) states that *in decision-taking, unmet housing need (including for traveller sites) is unlikely to outweigh harm to the green belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the green belt.* I do not therefore consider that the absence of a 5 year supply of deliverable housing sites has any significant bearing on the decision-taking.

14. I have also carefully considered the appellant's contention that the proposed replacement dwelling would be of a sympathetic design, character and form in the context of existing development within the area. In this respect, I note that the Council does not dispute that the proposed dwelling would be in keeping with the character, scale and design of the surrounding residential development. I would agree with these conclusions. However, whilst I agree that that the development would also not represent an isolated dwelling and would have the potential to enhance the vitality of the community, I am mindful that it is not the principle of a replacement dwelling within the Green Belt which is at dispute.
15. The appellant has indicated that the dwelling is in need of replacement to allow a family home as it would not be viable to undertake the conversion and renovation. However, I have not seen any compelling or persuasive evidence that the only viable prospect for the continued use and occupation of the site would be by allowing a replacement dwelling of the size proposed to accommodate a family. This is not a matter which would therefore provide any significant weight in support of the proposals.
16. I have noted the Council's conclusions in respect of land contamination, nature conservation, flood risk, drainage and climate change, and that there would not be any adverse impacts on the living conditions of other existing occupiers in the area, or highway safety. However, these would be neutral factors and would not weigh in support of the proposal.
17. The appellant has cited other development in the vicinity, with particular reference made to recently completed housing schemes located to the south-east of the site, as well as development to the rear of 211 Weeland Road, and at the neighbouring property, 213 Weeland Road.
18. I note that the permissions for the housing schemes pre-date the publication of the Framework and the updating of national Green Belt policy, being approved between 2003 and 2009. However, overall the evidence and detail submitted in support of these cases as having set a precedent is extremely limited, and whilst I would accept some apparent locational similarities, in the absence of any detailed context I have limited my determination of this appeal to the basis of my own observations and the evidence placed before me.
19. I have also noted the Council's response to the observation over extensions to the neighbouring property at 213 Weeland Road, and that there are no records of permissions for extensions having been granted. As a consequence, this would not provide an established basis for comparison.

*Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations*

20. I have identified that the scheme would amount to inappropriate development in the Green Belt, and the presumption against inappropriate development means that this harm alone attracts substantial weight. The development would also have a limited adverse effect on the openness of the Green Belt, and would therefore be contrary to the essential characteristics of the Green Belt as set out in the Framework.
21. Notwithstanding the harm identified above, I have had careful regard to the contended benefits of the development as advocated by the appellant, but do not conclude that these would carry any more than limited weight in favour of the proposals. As a consequence, these would not be sufficient to clearly outweigh the harm to the Green Belt and other harm. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist.

**Conclusion**

22. For the reasons above, and having regard to all matters before me, the appeal must be dismissed.

*M Seaton*

INSPECTOR