

Appeal Decision

Site visit made on 30 August 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 30 September 2016

Appeal Ref: APP/M1005/W/16/3150646

63 Brook Street, Loscoe, Heanor, Derbyshire DE75 7LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs Melvin Severn against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2015/0943, dated 24 September 2015, was refused by notice dated 24 November 2015.
 - The development proposed is described as the *"change of use from existing nursery to residential development to construct 5 number bungalow dwellings"*.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters reserved for future consideration. There is a variance in the extent of the red line, indicating the appeal site, between the Site Location Plan and the Site Plan(Google earth image). As the red line on the Site Location Plan is indicated on an Ordnance Survey Map I have treated that as the extent of the appeal site. I have dealt with the appeal on that basis.
3. For the purposes of clarity I have based the application date on that used on the appeal form and decision notice.
4. Both parties have referred to the Council's emerging Core Strategy. However, given that it is not expected to be adopted until 2018 and I have not been provided with a copy of the document I can give it only very limited weight in the determination of this appeal.

Main Issues

5. The main issues are:-
 - Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - If the proposal 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.
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Reasons

Whether the proposal would be inappropriate development in the Green Belt

6. The appeal site comprises of a glasshouse, polytunnels, hardstandings and lawned areas which form the appellants' commercial plant nursery. The appellants' large detached dwelling, its garden and an open field which are adjacent to the nursery are not part of the appeal site. The site is located at the end of Brook Street which is a no through road. The appeal site is on the edge of the settlement of Loscoe and is bounded by fields/paddocks on three sides.
7. Apart from certain clearly defined exceptions set out in paragraph 89 of the Framework the construction of new buildings in the Green Belt is to be regarded as inappropriate development. One of those exceptions is, in short, limited infilling or the partial or complete redevelopment of previously developed sites. Although based on previous national policy, saved Policy EN2 of the Amber Valley Local Plan (the LP) essentially takes a similar approach to the Framework but it does not consider previously developed land within the exceptions. Under paragraph 215 of the Framework moderate weight is therefore given to this policy in respect of its degree of consistency with the Framework.
8. I have read everything that has been said about the case law surrounding the permanence of structures on land in the context that the appellants claim the land is previously developed or brownfield land. However, their overall use is for a horticulture purpose which is an agricultural use as defined in the Town and Country Planning Act 1990. The Glossary at Annex 2 of the Framework specifically excludes land occupied by agricultural buildings from the definition of previously developed land. As such the proposed development would not fall within the previously developed land exception in the Framework. Moreover, given the appeal site's location, the proposal could not be considered as limited infilling in a village.
9. Against this background the proposal for five bungalows would be inappropriate development not in accordance with LP Policy EN2 and the Framework which seek to avoid inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Other considerations

10. There is a range of structures on the site comprised mainly of a large glasshouse and several polytunnels. Because the application for five bungalows is in outline form with all matters reserved for later approval it is difficult to fully ascertain the impact that the replacement development would have on the physical openness of the Green Belt. Nevertheless, it may be, based on the conclusions I can draw from what I saw at my site visit and what has been proposed, a negligible or no impact. In addition, I agree with the Council that bearing in mind this is an outline application, a reserved matters scheme could be appropriately designed which would be in keeping with the locality. As such the character of the area would be maintained. However, these findings of no harm are neutral factors which do not weigh for or against the proposal.
11. The appellants have stated that environmentally degraded parts of the Green Belt should be released to address the supply of housing issues. However, the

appropriateness or otherwise of the Green Belt boundary is not a matter for me to consider. The Framework at paragraph 83 is abundantly clear that Green Belt boundaries are to be altered only in exceptional circumstances, through the preparation or review of the Local Plan.

12. There would be social and economic benefits through the provision of five dwellings. Five dwellings would provide a limited contribution to housing supply within an area with an acknowledged shortfall. The edge of settlement location would provide relatively good access to the shops and services in the locality. The development would result in some economic benefit through the activity associated with its construction and occupation. These social and economic benefits weigh in favour of the appeal proposal.
13. Landscaping and other measures could enhance the bio-diversity of the site. The removal of the commercial nursery could also reduce the number of vehicles accessing the appeal site. These would be limited benefits.
14. I acknowledge that the proposal would not harm the public footpath but this is a neutral consideration that is not a benefit of the proposal.
15. I have had regard to the appeal decision at Roes Lane¹. However, that site does not lie within the Green Belt and as such it is not directly comparable to this case. As such it has only limited weight. In any case, I am required to determine the appeal on its own merits.

Conclusion

16. The Framework indicates 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 the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. I acknowledge that the other considerations do not have to be rare or uncommon to be special.²
17. For the reasons given above, I find that the totality of the other considerations do not clearly outweigh the harm to the Green Belt and there is conflict with the development plan and the Framework as a whole. Consequently, the very special circumstances necessary to justify the development do not exist.
18. Even though the Council cannot demonstrate a 5 year housing land supply, given the finding above, and with reference to footnote 9 from the Framework, specific policies in the Framework indicate that the development should be restricted. As such, the presumption in favour of sustainable development as envisaged by the first limb of the fourth bullet point of paragraph 14 of the Framework does not apply.
19. Having had regard to all other matters raised, it is concluded that the appeal should be dismissed.

D. Boffin

INSPECTOR

¹ APP/M1005/A/14/2226553

² Wychavon v SSCLG & Butler, Court of Appeal EWCA Civ 692 June 2008