

Appeal Decision

Site visit made on 15 November 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 6th December 2016

Appeal Ref: APP/N2739/W/16/3154645

Austfield House, Hillam Common Lane, Hillam, Selby LS25 5HU

- 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 D & T Holbrook against the decision of Selby District Council.
 - The application Ref 2015/1159/OUT, dated 5 October 2015, was refused by notice dated 9 February 2016.
 - The development proposed is the erection of a detached dwelling.
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Decision

1. The appeal is allowed and outline planning permission is granted with all matters reserved for the erection of a detached dwelling at Austfield House, Hillam Common Lane, Hillam, Selby LS25 5HU in accordance with the terms of the application, Ref 2015/1159/OUT, dated 5 October 2015, subject to the attached schedule of conditions.

Procedural Matter

2. The proposal seeks outline planning permission, with all matters of detail reserved for future consideration. I have treated the drawing submitted showing an indicative site layout and the position of the proposed access position on Hillam Common Lane as illustrative.

Main Issues

3. The main issues in the appeal are:
 - Whether the proposal is inappropriate development in the Green Belt.
 - Whether the proposed development can be safely undertaken and occupied with particular regard to the extent to which the site may be subject to contamination.

Reasons

Inappropriate development

4. The appeal site is situated in the Green Belt and comprises an unmanaged part of the western side garden of Austfield House. Immediately to the west is Woodlands Lane which leads to a cricket pitch and pavilion. This road effectively forms the boundary between the defined development limits of
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Hillam and the Green Belt. The site is situated between two existing dwellings that front Hillam Common Lane, Austfield House to the east and Field View to the west with open countryside to the rear and on the opposite side of the road.

5. The southern side of the Hillam Common Lane in the vicinity of the appeal site is characterised by a small ribbon of detached housing development set in relatively large gardens that generally have a common building line to the road. Beyond Austfield House to the east are a further two residential properties and Hillam Nurseries. The Nurseries, in my view, form a distinctive visual break between the open countryside to the east and the settlement to the west.
6. Paragraph 89 of the National Planning Policy Framework (the Framework) sets out the categories of development which may be regarded as not inappropriate in the Green Belt, subject to certain conditions. New buildings within the Green Belt are inappropriate unless, amongst other things, they represent limited infilling in villages.
7. The development proposed is for the erection of a dwelling with a frontage to the road that would be positioned with a building line approximately commensurate with that of the adjacent properties. The proposed dwelling would have a similar scale, mass and plot size to the adjacent properties to the west and would be reflective of the pattern of development on this part of Hillam Common Road. Given the position of the appeal site between two adjacent properties, this could be construed as representing infilling. However, as the site is located within the Green Belt the issue therefore turns on whether the appeal site is within a village for the purposes of paragraph 89 of the Framework.
8. The area of ribbon development containing the appeal site is situated relatively close to the centre of the village. Although the density of development decreases eastwards along Chapel Street and Hillam Common Road the visual break between the extent of built development and open countryside appears to occur at Hillam Nurseries to the east of the appeal site. The village sign to Hillam is also located in the vicinity of the Nurseries.
9. I agree with the appellant that paragraph 89 of the Framework does not specifically identify that a defined development limit should be considered as forming the extent of a village. My attention has also been drawn to the judgement in *Julian Wood v Secretary of State for Communities and Local Government and Gravesham Borough Council* [2015] EWCA Civ 195. This found that consideration of paragraph 89 of the Framework 'required the decision-maker to consider whether, as a matter of fact on the ground, the site appeared to be in the village. The fact that the site lay outside the village boundary as designated in the development plan was not determinative of the point'.
10. The appeal site is not isolated from adjacent development and lies close to the village centre and community facilities. Taking into account the above judgement, and my observations of the character of the existing development in the vicinity, leads me to conclude that the appeal site is located within the village and comprises limited infilling between two existing properties. There would be some limited effect on openness. However, given the current use of the appeal site as part of a garden and its location adjacent to existing

dwellings, I consider that, overall, the proposed dwelling would have a broadly neutral effect on the openness of the Green Belt. In addition, it would not result in the encroachment of built development into the countryside. In these circumstances, the proposal would not be inappropriate development within the Green Belt.

11. Taking the above factors into account, as the proposal would not be inappropriate development within the Green Belt it is not necessary for very special circumstances to be demonstrated in this case. Consequently, there would be no conflict with Policies SP3(B) or SP2(A)(d) of the Selby District Core Strategy Local Plan 2013 (Core Strategy). These policies, amongst other things, indicate that within the Green Belt planning permission will not be granted for development unless special circumstances have been demonstrated.

Contamination

12. Although the appeal site does not share the same kept appearance of the rest of the garden at Austfield House, I have no evidence to suggest that it has been used otherwise than as part of the garden of the host property. I recognise the Council's concerns regarding the impact of former development that could give rise to contamination. However, given the former use of the site, in this case I consider that the risks posed by any potential contamination can be adequately considered and, if necessary, remediation undertaken as a requirement of a suitable planning condition. Given the former use of the site, the absence of a detailed contaminated land assessment at this stage would not, in itself, be a sustainable reason sufficient to warrant the dismissal of this appeal.
13. Taking the above factors into account, I do not consider that there is any demonstrable evidence to suggest that the site is affected by unacceptable levels of contamination which would indicate that, subject to the imposition of a suitable planning condition, the proposed development could not be safely undertaken and occupied. Consequently, there would be no conflict with Policy ENV2 of the Selby District Local Plan (2005) or Policy SP19 of the Selby District Core Strategy Local Plan (2013). These policies, amongst other things, indicate that planning permission will not be granted for development which would give rise to, or would be affected by, unacceptable levels of contamination or other environmental pollution unless satisfactory remedial or preventative measures are incorporated as an integral element in the scheme.

Other matters

14. Since the date of the submission of this appeal the Council has confirmed that it cannot demonstrate a 5 year housing supply. Consequently, the policies relevant to the supply of housing contained in the Core Strategy and Local Plan are out of date. The Framework states that housing proposals should be considered in the context of the presumption in favour of sustainable development.
15. Where relevant policies, as in this case, are out of date paragraph 14 of the Framework applies. It states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

16. Notwithstanding my findings regarding the location of the site in the Green Belt, it is located adjacent to the settlement boundary and close to the village centre. Hillam with Monk Fryston is identified as a 'Designated Service Village' within the Core Strategy where Policy SP2 indicates that such villages have scope for additional residential development. I have no evidence to suggest that the site is located within an unsustainable location or that it would demonstrably fail to meet the economic, social and environmental role of the dimensions of sustainable development. In my view, the proposal would constitute a sustainable development.
17. The Council have not suggested that the proposal would otherwise compromise any spatial development framework for the village. The proposed development would occupy a gap between existing housing. The indicative site layout plan demonstrates that the site is capable of accommodating a dwelling of a scale and density that would be comparable to that of adjacent development on the south side of Hillam Common Lane which would not be unduly isolated from the main body of the settlement.
18. In terms of the benefits, the proposal would make a modest contribution towards the supply of housing on a sustainable site located between two existing properties and adjacent to the settlement boundary. In my view it would be a sustainable development. Collectively, these considerations are of very significant weight in favour of allowing the appeal.

Conditions

19. The Council has suggested a number of planning conditions which I have considered against the advice given in paragraph 206 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the government's Planning Practice Guidance. As a result, I have amended some of them for clarity and eliminated some for the reasons set out below.
20. I have attached conditions limiting the life of the planning permission and setting out the requirements for the submission of reserved matters. I have specified the approved plans in the interests of certainty.
21. The Council suggested four conditions relating to the investigation and remediation of contaminated land. Given the previous use of the site as a garden I do not consider that the full extent of the suggested conditions is reasonable or necessary. I have therefore amalgamated the suggested conditions into three. The first requires an investigation and risk assessment of land contamination to be undertaken. The second condition requires remediation to be undertaken in the event that any contamination that poses a risk is found. The third deals with any unexpected contamination that may be found during the construction operations on the site. These conditions are necessary to ensure that the development can be safely undertaken and occupied without causing risk to human health, controlled waters, property and ecological systems.

Conclusion

22. My overall conclusion in this case, having considered all other matters raised, is that the proposal would not be inappropriate development within the Green Belt. In addition, although the site is located outside of the defined development limits of Hillam, the presumption in favour of sustainable

development set out in paragraph 14 of the Framework is engaged by virtue of policies in the Core Strategy and Local Plan relevant to the supply of housing being out of date. In this case the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. The appeal should therefore be allowed.

Stephen Normington

INSPECTOR

CONDITIONS SCHEDULE

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No Holbrook 01A – Location Plan; Drawing No Holbrook 02A – Indicative Site Layout.
- 5) No development shall commence until an investigation and risk assessment of land contamination has been completed by competent persons and a report of the findings has been submitted to and approved in writing by the local planning authority. This shall include an appropriate survey of the nature and extent of any contamination affecting the site and an assessment of the potential risks to human health, controlled waters, property and ecological systems. Where unacceptable risks are identified, an appropriate scheme of remediation to make the site suitable for the intended use shall also be submitted to and approved in writing by the local planning authority.
- 6) In the event that investigation and risk assessment of land contamination, as required by condition No 5 above, demonstrates that remediation is necessary, no dwelling shall be occupied until the approved scheme of remediation has been completed and a verification report demonstrating the effectiveness of the remediation carried out has been submitted to and approved in writing by the local planning authority. The verification report shall include a description of the works undertaken, a photographic record where appropriate, the results of any additional monitoring or sampling, evidence that any imported soil is from a suitable source and copies of relevant waste management documentation for any contaminated material removed from the site.
- 7) In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works on site (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the local planning authority, works on site shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority or (b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in

accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the local planning authority. Unless otherwise agreed in writing with the local planning authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the local planning authority.