
Appeal Decision

Site visit made on 28 November 2016

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 9th December 2016

Appeal Ref: APP/B1930/W/16/3155470

Land between Hillside and Holly Cottage, Lamer Lane, Gustard Wood, Wheathampstead, Hertfordshire AL4 8RU

- 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 Mrs Catherine Howells against the decision of St Albans City & District Council.
 - The application Ref 5/16/1097, dated 3 April 2016, was refused by notice dated 2 June 2016.
 - The development proposed is for the construction of new four bedroom house.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of new four bedroom house on land between Hillside and Holly Cottage, Lamer Lane, Gustard Wood, Wheathampstead, Hertfordshire AL4 8RU in accordance with the terms of the application, Ref 5/16/1097, dated 3 April 2016 and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: LLH/2015/01A and Site Location Plan.
 - 3) No development shall take place until details and samples of the proposed external facing and roofing materials including colour and finish have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and samples.
 - 4) Prior to the first occupation of the dwelling hereby approved, the site shall be landscaped in accordance with a hard and soft landscape plan that has been agreed in writing with the Local Planning Authority. The landscaping plan shall include details of all hard landscaping proposals, fences and gates, new tree and shrub planting as well as existing trees and plants to be retained. Any plants or trees removed, dying or becoming diseased within 5 years of the occupation of the development shall be replaced by similar trees or plants as those removed.
 - 5) The development shall proceed in accordance with the Arboricultural Impact Assessment dated 26 October 2015 incorporating the agreed method statement. No equipment, machinery or materials shall be brought onto the site for the purposes of the development until fencing has been erected in accordance with the Tree Protection Plan. Within any
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area fenced in accordance with this condition, nothing shall be stored, placed or disposed of above or below ground, the ground level shall not be altered, no excavations shall be made, nor shall any fires be lit, without the prior written consent of the local planning authority. The fencing shall be maintained in accordance with the approved details, until all equipment, machinery and surplus materials have been moved from the site.

- 6) The development shall not be occupied until the car parking and turning areas shown on the approved plan LLH/2015/01'A', have been constructed and surfaced in accordance with details and specifications that have had the prior approval in writing by the local planning authority. The car parking and turning areas so provided shall be maintained for such purposes thereafter and shall be used for no other purpose at any time.
- 7) The access shall be constructed in a hard surfacing material for the first 6 metres from the edge of the carriageway prior to commencement of building works for the dwelling house.
- 8) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 9) No construction works relating to the development hereby permitted shall be carried out on any Sunday or Bank Holiday nor before 07:30 and 18:00 hours on any week day Mondays to Fridays nor on any Saturday before 08:00 hours or after 13:00 hours.
- 10) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

Procedural matters

2. The appeal site address and date of the application the subject of this appeal is taken from the Council's decision notice.

Main Issues

3. The main issues in this appeal are firstly, whether or not the proposed development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and development plan policy; and secondly its effects on the character and appearance of the area having regard to the site's location within the Gustard Wood Conservation Area and adjoining listed building and, any other harm.

Reasons

Whether or not inappropriate development

4. Sitting within the Metropolitan Green Belt and the Gustard Wood Conservation Area (CA), the appeal site is a field containing many scrub type trees as well as two or three trees of moderate quality. It contains remnants of structures; however having regard to the definition in the Glossary to the National Planning Policy Framework (the 'Framework') it is not previously developed land. The site addresses Lamer Lane and lies between two residential properties that form part of a small grouping of houses. To its rear there are open fields with hedgerows and mature trees. The frontage "gap" between Holly Cottage to the south and Hillside, a listed building to the north is about 18m in width. Beyond Hillside to the north are a small number of detached and semi-detached cottages and more modern houses grouped either side of Lamer Lane.
5. The appeal scheme seeks to develop a two storey cottage with four bedrooms at first floor and designed to incorporate a granny-annex at ground floor. The existing access would be utilised and improved to provide off-road parking and turning facilities.
6. For the purposes of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework states at paragraph 89, that construction of new buildings in the Green Belt is inappropriate. Inappropriate development is, by definition, harmful and should not be permitted except in very exceptional circumstances. However, the paragraph proceeds to list several exceptions wherein development would not be inappropriate. One of these is where a proposal would constitute "limited infilling in villages".
7. Gustard Wood is defined as a Green Belt Settlement in the St Albans District Local Plan Review (the 'LP'), which allows for infill housing development provided they are compatible with the maintenance and enhancement of their character and Green Belt boundaries. However no further definition is provided and neither is reference made to 'limited infilling', which is the phrase used in the Framework. As such this policy is out of kilter with the Framework in this regard. Consequently, Policy 1 of the LP (Metropolitan Green Belt) carries little weight having regard to paragraph 215 of the Framework.
8. That said, there is in any event, disagreement between the parties whether or not the appeal site is located within the village sufficient for the principle of 'limited infilling' established in the fifth bullet point of the Framework to be considered. It is surprising then to note that the Council believes the enclave of development at this particular location to not fall within the settlement of Gustard Wood. The appellant draws an inconsistency of approach taken here when compared to an appeal decision involving a site to the south of 'The Slype' (APP/B1930/W/15/3027401) ("*The Slype*" decision). Despite the appeal site's location falling to the south of the main body of the village to the north of The Slype, the Inspector noted the Council's view that it was located 'within' the settlement but also comprising part of the Conservation Area consisting of "groups of dwellings in Lamer Lane, Firs Drive and Gustard Wood".
9. Apart from this inconsistency, which I agree does exist, the parties acknowledge that the Council is unable to demonstrate a five years' deliverable supply of housing. Consequently policies directed towards the supply of housing should be considered out of date for the purposes of paragraph 14 of the Framework. However, the Council draws attention to the Court of Appeal

judgement of Hunston¹ supported by four subsequent appeal decisions involving developments within the local planning authority area. These judgements and decisions relate to whether the lack of five year housing supply or an up-to-date Local Plan constitute the very special circumstances that are necessary to justify developments in the Green Belt when balanced against harm by reason of inappropriateness and other identified harms to the Green Belt. The Council also draws attention to the footnote in the Framework at paragraph 14.

10. That said, I consider that paragraph 14 would include those policies that seek to identify settlement limits as a method of restricting housing development, including those within Green Belt settlements. For the purposes of this appeal site, I am satisfied that the settlement boundary for Gustard Wood is out of date for the purposes of paragraph 14 of the Framework. Furthermore, the current appeal site is located within an area of Gustard Wood that has a small nucleated core that extends in a ribbon of several houses in a southerly direction down the hill. It is not isolated and can reasonably be considered as falling within the settlement of Gustard Wood. The question boils down as to whether the appeal proposal as a site within Gustard Wood can reasonably be considered under the exceptions listed in Paragraph 89 of the Framework which, as a matter of principle, was the view taken in 'The Slype' decision above.
11. I have also paid due regard to the appeals² cited by the appellant, which articulate the views of Inspectors in relation to the meaning of *limited infilling*. Despite not having the full details of these decisions before me, I do not disagree with these interpretations as matters of principle. I also visited the appeal site south of 'The Slype' to see whether any further comparisons could be drawn.
12. As I found above, infilling is normally associated with the completion of an otherwise substantial built up frontage of several dwellings or at the very least, consolidation of a largely built up area. It is not a question of how small or large a gap measures that is at stake and as the appellant points out, each case has to be considered on its merits. Whilst I agree with the Inspector in 'The Slype' case that, for reasons stated, the site could not be considered as infilling, I found that the current appeal site by comparison, has all the characteristics normally associated with infill development and therefore can be treated fairly and squarely within the exceptions identified in paragraph 89 of the Framework.
13. It is a matter of law following the Court of Appeal judgment in *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404* that where development is 'not inappropriate', in applying paragraphs 89 or 90 of the Framework, it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land within it. Crucially, I have found that the proposal satisfies the fifth bullet point in paragraph 89 of the Framework. Development here would not be *inappropriate development* for the purposes of the Framework.

¹ Hunston Properties Ltd v Secretary of State for Communities and Local Government [2013] EWHC 2678 (Admin) and Affirmed Court of Appeal (Civil Division) [2013] EWCA Civ 1610; [2014] 1 E.G.L.R. 79.

² APP/B1930/A/13/220924; APP/B1930/W/15/3027401.

14. I now turn to issues of character and appearance.

Character and appearance

15. As I have described above, the appeal site is located within an area of sporadic roadside development that combines with the more nucleated form which in combination has the characteristics of a village. Visually, the site constitutes a narrow gap between Holly Cottage and the ribbon development that straddles the line of Lamer Lane to the north.
16. The Council has confirmed that the proposal in terms of its design, form, layout and choice of materials would preserve the character and appearance of the Conservation Area. However, it also believes that the development would not be sympathetic to the CA as a whole. This is based on the view that the development would not contribute to the special characteristics of the area, citing section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) and LP Policy 85. This policy seeks to ensure that new developments within conservation areas are designed to a high standard. The Council offers no further explanation of its concerns.
17. The proposed development would have features which reflect the design of traditional cottages in the area, including a steeply pitched natural slate roof and strong gable features with a mix of render and brick. I saw at the site visit that although adjacent to the road, the site was well screened by a relatively dense tree belt so that with substantial retention of vegetation as proposed, the development would enjoy the benefit of a ready-made landscaped setting, which would be further supplemented and the site enhanced by additional further landscaping. The building would be set into the sloping ground thus helping to reduce its height and scale.
18. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) requires decision makers to have special regard to the desirability or enhancing the character or appearance of a conservation area. LP Policy 85 seeks to ensure that the design of development is of a high standard that preserved or enhances the appearance of conservation areas.
19. I have not been given any conservation appraisal of the CA; however from what I saw, the significance of this CA is derived from its low density arrangement with a distinctive wedge shaped common to the west of the B4651 and the woodland area mainly to the east of the B651. Development areas within the CA are predominantly small clusters of houses with important intervening gaps giving an overwhelming rural character to the CA.
20. I share the Council's view that the design of the proposed house set into the sloping ground would preserve the appearance of the CA. I do not believe that the gap between the adjoining cottages constitutes one of these important undeveloped gaps that contribute to the significance of the CA and, provided the majority of frontage trees are retained on site as proposed, the proposal would not harm the area's significance as a designated heritage asset. Neither would it amount to "unrestricted sprawl of development..." It would therefore meet the design ambitions of LP Policy 85 and at the very least preserve the appearance of the CA and its significance derived from its rural setting.
21. A detailed survey and arboricultural assessment was provided by the appellant at the application stage. I am mindful of the advice of the Tree and Landscape

Officer who confirms that the development will result in the loss of two large sycamores and a single ash tree to make way for the proposed building whilst pressure would be placed on the ability to retain other trees that would be within close proximity to the proposed house. However, these particular trees are multi stemmed and show signs of being suppressed. Unlike the frontage trees to be retained, they do not contribute significantly to the character or appearance of the CA.

22. The proposal provides for the retention of frontage trees and for replacement and additional planting. Consequently, given the quality of the trees that exist, I am satisfied that the proposal would not undermine the objectives of LP Policies 74 and 85, which seeks amongst other things to prevent the felling of healthy trees and to prevent situations which give rise to requests for tree felling once developments have been built and to ensure that new effective landscaping takes place.
23. In exercising of my statutory duty in relation to the preservation of heritage assets under the Act, I agree with both parties that the development would not harm the setting of the listed building at Hillside Cottage. Thus the proposal would not conflict with LP Policy 86 that pays special regard to the desirability of preserving the setting of listed buildings.

Conditions

24. The Council has not suggested any planning conditions; however I have taken account of consultation responses to the application and have had regard to the guidance set out in the Planning Practice Guidance. In addition to a condition setting out the timeframe for commencement, a condition specifying approved plans is necessary to provide certainty.
25. Conditions are also necessary to require the Council's prior agreement to external finishing materials and landscaping and subsequent implementation in the interests of protecting the character and appearance of the area. For similar reasons compliance with the submitted arboricultural impact statement is also necessary to protect existing trees considered worthy of retention and the management of the existing retained trees.
26. Two conditions are also necessary to ensure a satisfactory standard of access and parking arrangements in the interests of highway safety. A condition requiring prior approval of drainage is necessary in the interests of residential amenity.
27. Having regard to the advice of the Council's Environmental Compliance officer, conditions are necessary, firstly to control hours of working and to deal with unexpected contamination if necessary in the interests of the living conditions of occupiers of neighbouring properties.

Conclusion

28. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be allowed.

Gareth W Thomas

INSPECTOR