
Appeal Decision

Site visit made on 14 March 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 3rd April 2017

Appeal Ref: APP/N1025/W/16/3165637

No 6 Chalet Field West of 392 Harrington Arms, Tamworth Road, Sawley, NG10 3AU

- 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 Peter Edgar against the decision of Erewash Borough Council.
 - The application Ref ERE/0816/0009, dated 8 July 2016, was refused by notice dated 17 November 2016.
 - The development proposed is the replacement of the existing dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies.
 - (b) The effect on the openness of the Green Belt.
 - (c) The effect of the proposal upon flood risk
 - (d) If the development is inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

3. The appeal site comprises of a small single storey timber chalet structure. It is raised above ground level due to its location within the functional floodplain of the River Trent and has a picket fence surrounding its immediate curtilage.
 4. The property is located within an open field which contains a small number of other chalets, all of differing design. The field also contains a large area of ridge and furrow and is located within the Sawley Conservation Area.
 5. The proposed replacement building dwelling would be a 2-bed dwelling with a mezzanine at first floor level. It would be located on a raised platform and would be clad in timber with a mono-pitched sedum roof covering. There would be an attached covered car port area and projecting balconies with a glazed balustrade. The curtilage would be defined by a close-boarded fence to the front and the side boundaries would be part fence and part planting.
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Inappropriate Development

6. Saved Policy GB1 of the Erewash Borough Local Plan 2005 (LP) states that there is a presumption against inappropriate development within the Green Belt except in very special circumstances. LP Policy GB3 permits replacement dwellings within the Green Belt where this is not materially larger than the dwelling it will replace and provided that it is in keeping with the local area and does not harm the character or openness of the Green Belt.
7. The National Planning Policy Framework (the Framework) is clear that the Government attaches great importance to Green Belts and paragraph 89 indicates that the construction of new buildings within the Green Belt should be regarded as inappropriate. The replacement of a building, provided that the new building does not result in disproportionate additions over and above the size of the original building is listed as one of the exceptions to this. While the LP Policies are of some age, I consider that they are consistent with the advice in the Framework.
8. The original floor area of the existing dwelling is around 32sq.m and the proposed replacement dwelling would have a floorspace of around 79.4sq.m. This would represent an increase of around 148% and I note that this figure excludes the proposed car port and the outdoor balcony areas. While there is no formal definition as to what 'materially larger' within the LP or the Framework, I consider that such an increase cannot reasonably be considered as anything other than materially larger.
9. I therefore conclude that the development proposed would constitute inappropriate development within a Green Belt and would not accord with LP Policy GB3. The Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be attributed to any harm to the Green Belt.
10. Recent case law¹ has established that where development is found to be not inappropriate, it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in it. However, as I have found that the development would be inappropriate, I now turn to the matter of openness in my assessment.

Green Belt Openness

11. It is clear from the submitted plans that the proposed dwelling would have a larger footprint than the existing dwelling. Its height would also increase as the ground floor level would be 2 metres above ground level for flood mitigation purposes. The height of the dwelling itself is also greater than existing single storey building, and would incorporate a mezzanine floor at first floor level to part of the dwelling.
12. I note that the concept of openness is not strictly limited to an increase in volume.² The proposed development would also replace a poor quality and dilapidated building. However, the proposal would result in a significantly larger building and, due to its scale, design and siting, I consider that the proposed dwelling would represent a more intrusive structure than exists at

¹ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

² As established by Turner v Secretary of State for Communities and Local Government [2016] EWCA Civ 466

present. The development would also be likely to be prominent due to the open position of the site and would be highly visible from Tamworth Road. This would give rise to an urbanising and encroaching impact which would not, in my view, preserve Green Belt openness.

13. While the effect of a single dwelling would be moderate, on the basis that the fundamental aim and purpose of the Green Belt is to keep land permanently open and safeguard the countryside from encroachment, as set out in paragraphs 79 and 80 of the Framework, the proposals would result in harm in the Green Belt.
14. I therefore conclude that the development would conflict with the Framework, as well as Policy 3 of the Erewash Core Strategy 2014 (CS) which seeks to maintain openness and the statutory purposes of the Green Belt.

Flood Risk

15. One of the Government's core planning principles is to take full account of flood risk (paragraph 17). Paragraph 100 of the Framework also states that inappropriate development in areas of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Paragraph 103 of the Framework relates to site specific Flood Risk Assessments (FRA) and states that development should only be considered appropriate in areas of flooding where it can be demonstrated that development is appropriately flood resilient and resistant.
16. In seeking to support development which avoids areas of current and future flood risk and which do not increase the risk of flooding elsewhere and where possible reduce flood risk, CS Policy 1 reflects the Framework. Similarly, in setting out criteria for development in areas of flood risk, saved Policy DC7 is also in broad accordance with the Framework.
17. The appeal site is positioned between the banks of the river and flood defence bunds which help to protect Sawley. As such it is located within the functional floodplain of the River Trent (Zone 3b) where flood waters are predicted to be over 2 metres deep during a major flood event.
18. I am mindful that a lawful development certificate was granted in 2015 for the permanent occupation of the existing chalet as a dwelling. As such there would be no net increase in dwellings in this location arising from the proposed replacement dwelling. Furthermore, the proposals would offer some benefits in respect of flood risk to occupants due to improvements in respect of flood mitigation measures as evidenced by the submitted FRA.
19. However, the proposed development would create a much larger dwelling than currently exists, including 2 bedrooms, a large open plan living area, a mezzanine floor and external balconies. I therefore consider that the number of occupants of the dwelling is likely to increase.
20. The building would also be a more substantial and solid form of construction than the present chalet and would present a more attractive and an appreciable standard of living over the current arrangement. While the existing development could lawfully be occupied permanently, the likelihood of this would significantly increase with the proposals before me.

21. Given the development's location, there is a serious concern in respect of the risk to life. This relates to both future occupants and others, such as the emergency services. On balance, I therefore consider that the development would increase that risk.
22. While I note that the Environment Agency did not object, they were clear in their concern regarding the severity of risk. Ultimately it is now for myself as decision maker to form a judgment in respect of flood risk and in this regard I do not consider that the proposed development would be safe.
23. I have also considered the Council's argument that the current proposal would set a precedent for similar redevelopment of the other chalets within the wider site. While each application must be considered on its individual merits, I can appreciate the Council's concern that approval of this proposal could be used in support of such similar schemes. I consider that this is not a generalised fear of precedent, but a realistic and specific concern in respect of flood risk and safety. I consider that any cumulative effect would exacerbate the harm and severe risk to human life as I have identified above.
24. Overall I therefore conclude that the development would not be safe from flooding and would not accord with CS Policy 1, LP Policy DC7 and would also be contrary to paragraphs 100, 101 and 103 of the Framework.

Other Considerations

25. In accordance with the Framework, I have found that substantial weight must be given to the harm to the Green Belt by reason of inappropriateness of the development. I have also found harm in respect of flood risk.
26. Very special circumstances to justify such development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (Framework paragraphs 87 and 88).
27. The appellant contends that significant weight should be attached to enhancements to the character or appearance of the Conservation Area through the redevelopment of a building which causes harm. In respect of the existing building, this forms part of a wider and informal development of chalets. While this is currently in a poor condition, the proposed replacement would be a much more formal and prominent structure. On this basis, while I am satisfied that the development would preserve the character or appearance of the Conservation Area, I do not consider that it would offer any specific overall enhancement and as such would be neutral in the balance.
28. The existing building could be extended without the need for planning permission. Be that as it may, permitted development rights are more limited within Conservation Areas and due to the siting of the appeal property and the location of the rear brook, any such extension would be restricted in scale and would not be as substantial as the proposed replacement dwelling. Therefore, this fallback position attracts only limited weight.
29. I also note that planning permission was granted 2011 consent for replacement and relocation of 7 holiday lodges. However, based upon the submitted information, their occupation was limited for holiday use only and while their size was greater than existing, at 66sq.m, this is still smaller than the proposals before me. Furthermore, this permission was granted pre- the Framework and has now lapsed. As such I can only afford this limited weight.

30. When taken together, these considerations do not clearly outweigh the harm I have identified. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt. The development would therefore be contrary to CS Policy 3 and saved LP Policy GB3. The proposal would also be contrary to paragraphs 79, 87 and 88 the Framework.

Conclusion

31. For the reasons given above, taking into account all other matters raised, I conclude that the appeal should be dismissed.

C Searson
INSPECTOR