
Appeal Decision

Site visit made on 27 March 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 24th April 2017

Appeal Ref: APP/B3030/W/16/3166056

Land at Dumble Cottage, Water Lane, Oxtun, NG25 0SH

- 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 and Mrs Borrett against the decision of Newark & Sherwood District Council.
 - The application Ref 16/01190/FUL, dated 22 July 2016, was refused by notice dated 5 October 2016.
 - The development proposed is 1 no. one bedroom 'live-work' (self-build) unit.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site is located within the Nottinghamshire-Derby Green Belt and also within Oxtun Conservation Area. I take as my starting point the proposal's Green Belt location, and the relevant policy context set out in the *National Planning Policy Framework* (the Framework). It is necessary firstly to establish whether it represents inappropriate development in the Green Belt, and then to consider its effect on the openness of the Green Belt, before going on, under the heading of "any other harm", to consider its effects on the conservation area, on highway safety, and with regard to flood risk. In dealing with the effect on the conservation area, I have had regard to the special duty placed on decision makers in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
 3. Therefore the main issues in the appeal are:
 - whether or not the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the Framework;
 - the effect of the proposal on the openness of the Green Belt;
 - whether or not the proposal would preserve or enhance the character or appearance of Oxtun Conservation Area;
 - the effect of the proposal on highway and pedestrian safety;
 - whether or not the proposed development would be at risk of flooding, or would increase flood risk elsewhere; and
 - if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by
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other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate development and the effect on openness

4. Spatial Policy 4B of the *Newark and Sherwood Core Strategy (adopted March 2011)* (NSCS) indicates that Oxton is one of a small number of villages within the Green Belt where in, or adjacent to, the main built-up area consideration will be given to the development of 'Rural Affordable Housing Exceptions Sites' to meet local housing need. The appellants have suggested that the proposal would meet a local housing need as it would enable them to downsize whilst remaining in the area. Nevertheless, there is no indication that the proposal would provide affordable housing as defined by the Framework. Without this, and a mechanism to secure its provision as such, the development cannot be considered as a 'Rural Affordable Exception Site'. Beyond this the policy indicates that national policy is to be used to determine what represents inappropriate development within the Green Belt.
5. The Framework establishes in paragraph 89 that new buildings within the Green Belt are inappropriate unless they are for one of a small number of exceptions. One such exception (bullet point 5) is that they represent "limited infilling in villages". The Framework does not provide a definition of what constitutes limited infilling in villages, and there is no evidence to indicate that the development plan provides any such definition either. As a result, what constitutes limited infilling needs to be determined in the light of the circumstances of the case.
6. Although both parties indicate that the site, which forms part of the residential curtilage of Dumble Cottage, is not within the main built up part of the village, it has not been suggested that it does not form part of the village. From my own observations I would agree. However, development along this side of Water Lane is more sporadic and disparate, and Dumble Cottage and the attached Pilgrim Cottage, are separated from other dwellings by open fields on 3 sides. Given this I consider that the site does not represent an infill plot, and so the development would not represent limited infilling in the village. It therefore does not fall within this exception to the generally restrictive Framework policy.
7. In addition, the appellants argue that the site could be considered under the sixth bullet point exception to paragraph 89 which concerns the limited infilling, or the partial or complete redevelopment, of previously developed land. The site forms part of the garden area of Dumble Cottage. The definition of previously developed land given in Annex 2 of the Framework only excludes private residential gardens in built up areas from the definition. As the site is outside the main built up part of the village, the appellants have argued that the site is previously developed land. However, the Council have stated that although not in the main built up part of the village, as part of the village it is still part of a built up area, and so would not be previously developed land.
8. Notwithstanding this, even if the site were to be considered to be previously developed land, to fall within the exception in paragraph 89 (bullet point 6) of the Framework, as well as being previously developed land, the development

must also not have a greater impact on the openness of the Green Belt, and the purposes of including land within it.

9. Openness is an essential characteristic of the Green Belt. At present the site is partly hard surfaced and contains a number of outbuildings, other structures, and a caravan. These are all single storey, and several are lightweight, temporary structures. The appellant has confirmed that the floorspace that would be created by the development would be greater than all the outbuildings that would be removed. Moreover, although the design of the dwelling is such that its height would be limited, it would still be significantly taller than any of the existing structures on the site.
10. Therefore, whilst the proposed development may give the site a less cluttered appearance, I consider that the development of a larger, taller building, with a solid and permanent character, would have a significantly greater impact on openness than the current outbuildings and hard surfacing.
11. The purposes of including land within the Green Belt are set out in paragraph 80 of the Framework. As the site currently forms part of the garden area of the host property, it would not result in any encroachment into the countryside. Nor do I consider that it would be contrary to any of the other purposes of including land in the Green Belt.
12. However, notwithstanding my conclusion regarding the purposes of the Green Belt, even if the proposal were to amount to the redevelopment of previously developed land, as suggested by the appellant, it would still be inappropriate development in terms of Framework Paragraph 89 (bullet point 6) because it would have a greater impact on the openness of the Green Belt.
13. In the light of the above I therefore conclude that the proposal would be inappropriate development, which according to paragraph 87 of the Framework is, by definition, harmful to the Green Belt. In addition, there would be a degree of harm arising from the loss of openness.

Any Other Harm

Character and appearance

14. Water Lane is a narrow lane and the open fields, mature vegetation, and the beck that runs along one side of the road, give it a green and rural character. I understand that Dumble and Pilgrim Cottages were once the only cottages to the east of the lane, and housing to the eastern side is still limited and interspersed by open fields. Dwellings along the lane, and in the wider conservation area, vary considerably in terms of age, type and design, but in the vicinity of the site are generally low density, detached houses.
15. The site at present forms part of the curtilage of Dumble Cottage. Although more domestic in character than the surrounding fields, as I said before, the various outbuildings it contains are small scale, compact structures, which limits the views of them from Water Lane. Whilst the site may appear relatively cluttered, I do not agree with the appellant that it detracts from the character and appearance of the area.
16. The proposal would replace the outbuildings with a dwelling, which would have a modern contemporary design. This would be located to the rear of the site, with an area of hardstanding to the front, and a carport structure adjacent to

the road. As outlined above, the scale and mass of the buildings would be significantly greater than the existing structures, and the dwelling, in particular, would have a much more solid and permanent form than the existing buildings. Whilst this would make the dwelling a more prominent feature in the street scene, especially when approaching the site from the south, views of it would still be limited by the road side vegetation. Moreover, as the site already has a domestic character that is different to the rural and open character of the surrounding fields, it would not significantly alter the character of the site or the surrounding area.

17. Whilst the Council have stated that the proposal would have no links to the local vernacular and style, they have not identified what they consider these to be, nor have they outlined any of the key characteristics of the conservation area. From my observations, given the rich variety in the design, materials, and age of properties in the conservation area, the contemporary design of the proposed dwelling, although different, would reflect and continue the evolution of the design of dwellings within the conservation area. As such, it would complement, and be a sympathetic modern addition to it.
18. The car port would be located immediately adjacent to the front boundary of the site. However, I observed that there are some dwellings along Water Lane, including Dumble Cottage, that are located close to the road and/or their front boundaries. As such, the position of the car port would not appear out of keeping. Moreover, the open nature of the structure, and the trees and other vegetation to the front of the site, would restrict the impact it would have.
19. The proposal would result in the loss of two trees. Their location at the rear of the site means that the contribution they make to the conservation area is more limited than those located at the front and along the grass verge. In particular, Dumble and Pilgrim Cottage limit the views of them when approaching from the north. In the light of this I am not persuaded that their removal would be detrimental to the amenity of the area.
20. Consequently, I consider the proposal would preserve the character and appearance of the Oxton Conservation Area. Accordingly there would be no conflict with Core Policy 14 of the NSCS and Policy DM9 of the *Allocations and Development Management Development Plan Document (adopted July 2013)* (ADM) which seek to ensure that developments preserve or enhance the character of heritage assets, and take account of the distinctive character of conservation areas.
21. The appellant has argued that the scheme would lead to an enhancement of the character and appearance of the site, and the conservation area. However, as I do not share the appellants' view that the site currently has a negative impact on the conservation area, I have concluded it would preserve rather than enhance the character and appearance of the conservation area.

Highway and Pedestrian Safety

22. Water Lane is a narrow road, whose width is often not sufficient to allow two vehicles to pass, and which does not have a footpath along its full length. Given the small number of properties along the lane, traffic movements are limited. The appellant has indicated that there are in the region of 4-5 car movements an hour, and this has not been disputed by the Council. Furthermore, the speed of traffic is limited by the nature of the road and the

sharp bend to the south of the site. It is indicated that the road is a popular route for pedestrians, especially dog walkers. However, the accident records show that despite its substandard nature there have been no accidents along the road over a 17 year period.

23. The proposed dwelling would utilise the existing access, and the hardstanding to the front of the house would provide parking and turning space for both the host property and the new dwelling. The proposed development of a single dwelling would not significantly increase the amount of traffic movements along the road. Given that at present the accident record shows that the substandard nature of the road does not give rise to a highway or pedestrian safety problem, I am satisfied that the very modest increase in traffic that would be generated by the appeal scheme would not alter this position.
24. Therefore, I consider that the proposal would not harm highway or pedestrian safety. As a result it would not be contrary to Policy DM5 of the ADM which, amongst other things, requires that provision is made for a safe and inclusive access to new developments.

Flood Risk

25. The Environment Agency (EA) Flood Zone maps indicate that the site is located within Flood Zone 3a, and so has a high probability of flooding. It is also stated to be in an area at risk of surface water flooding. The dwelling part of the scheme is classified as a 'more vulnerable' development. The Framework and the *Planning Practice Guidance* (PPG) set out strict tests to protect people and property from flooding. The aim of these being to avoid inappropriate development in areas at risk of flooding by directing development away from areas of highest risk.
26. Paragraph 103 of the Framework states that development should only be considered appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment (FRA) following the Sequential Test, and if required the Exception Test, a number of matters can be demonstrated. These include that the development is appropriately flood resilient and resistant, with safe access and egress routes, and that any residual risk can be safely managed.
27. At appeal stage the appellant has produced a site specific FRA. On the basis of more recent modelling this concludes that the site is in Flood Zone 1. However, the EA, who consider the site to be in Zone 3a, have disputed this finding as the modelling on which it is based considered the presence of flood defences. The PPG (Table1) says the flood zones refer to the probability of flooding, ignoring the presence of defences. The EA have also raised other issues with regard to the suitability of the modelling work, as well as various other concerns with the findings and conclusions of the FRA. Overall they consider that the FRA does not provide an adequate assessment of the risks of flooding to people and property.
28. I understand that the EA may undertake further hydraulic modelling for the undefended scenario, which may result in revisions to the flood risk maps in the future. I also note that the Parish Council is very proactive in regularly monitoring and maintaining drainage courses in the village to ensure that they function optimally, and in manning and monitoring the sluice gate. However, at the present time, I consider that the appeal site has to be taken as being in

Flood Zone 3a, and therefore the site must pass the sequential test, and if necessary the exceptions test. Although no detailed evidence has been provided, the Council have indicated that they consider that they have sufficient undeveloped allocated and windfall housing sites within the district that are sequentially better located in terms of flood risk.

29. As a result, I am not satisfied that it has been adequately demonstrated that the proposed development would not be at risk of flooding, or would not increase flood risk elsewhere. Therefore, it would conflict with Policies CP9 and CP10 of the NSCS which require developments to have a high standard of sustainable design and to be located in order to avoid both present and future flood risk.

Other Considerations

30. The appellants have put forward a number of other considerations which they consider would justify the proposal. It is disputed whether the Council can currently demonstrate a 5 year housing land supply, and it has been argued that the proposal would enable the provision of a self-build live work unit, specifically boosting the proportion of these sectors within the overall housing supply. However, even if one accepts the appellants' argument that the Council cannot demonstrate a 5 year housing land supply, the PPG states that "unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt."
31. The dwelling has been designed so that it would be highly accessible, and to be able to adapt to the needs of the occupiers over time. It would also incorporate a number of energy efficiency measures, and the living roof and walls, and additional planting on the site, would have some biodiversity and ecological benefits. These are matters that, together with the letters in support of the proposal, favour the scheme.
32. In line with paragraph 55 of the Framework, Policy DM8 of the ADM states that in the open countryside new dwellings may be allowed where they are of exceptional quality or innovative nature of design. Whilst the high level of accessibility and energy efficiency proposed here are commendable, in general terms the delivery of a high level of energy efficiency and accessibility, in a purpose built contemporary house, is no longer innovative in itself. Moreover, there is no indication that the way these features are incorporated into the design of the dwelling, or that the specific materials to be used, are particularly innovative or exceptional.
33. The construction of the dwelling would provide some temporary work for local contractors, and future occupiers would help to maintain the vibrancy of local services. However, given the scale of the development, these benefits would be limited.
34. I note that the proposal would enable the appellants to downsize whilst remaining in the local area. However, I have not been provided with any substantive evidence to show that the appeal scheme represents the only way that this can be achieved, and so I give this little weight.

Conclusion

35. The proposal would be inappropriate development in the Green Belt which is harmful by definition. Whilst it would not conflict with the purposes of including land within the Green Belt, the proposal would result in a reduction in openness, and there is a degree of harm arising from this as well. According to the Framework (paragraph 88) substantial weight has to be given to any harm to the Green Belt.
36. In addition, harm would be caused as a result of the fact that it has not been adequately demonstrated that the proposed development would not be at risk of flooding, or would not increase flood risk elsewhere. Although I have found that the proposal would preserve the character and appearance of Oxton Conservation Area, and would not harm highway or pedestrian safety, an absence of harm in these regards is a neutral factor.
37. I conclude that, taken together, the factors cited in its favour do not outweigh the harm that the scheme would cause. Consequently, very special circumstances do not exist, and the proposal would conflict with the Framework and Spatial Policy 4B of the NSCS outlined above. I therefore conclude that the appeal should be dismissed.

Alison Partington

INSPECTOR