
Appeal Decision

Site visit made on 25 April 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 25 May 2017

Appeal Ref: APP/J3720/W/17/3166659
28 Malthouse Lane, Earlswood B94 5RX

- 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 Rewind Developments Ltd against the decision of Stratford-on-Avon District Council.
 - The application Ref 16/03127/FUL, dated 21 September 2016, was refused by notice dated 17 November 2016.
 - The development proposed is demolition of existing building and erection of 2 no. dwellings.
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Decision

1. **The appeal is allowed** in relation to the demolition of the existing building on the site and the erection of a dwelling on Plot 1 and planning permission is granted for demolition of existing building on the site and the erection of a dwelling on Plot no. 1 at 28 Malthouse Lane, Earlswood B94 5RX in accordance with the terms of the application, Ref 16/03127/FUL, dated 21 September 2016, and the plans submitted with it, so far as relevant to those parts of the development hereby permitted and subject to the attached schedule of conditions.
2. **The appeal is dismissed** in relation to the erection of a dwelling on Plot 2.

Procedural Matter

3. The Council's decision notice refuses permission for the development but its reasons for refusal refer only to the proposed dwelling on Plot 2. Furthermore, the Council Officer's report makes clear that the Council have no objection to the proposed dwelling on Plot 1. For the reasons that follow, I find the demolition of the existing building on the site and the proposed dwelling, garage and access on Plot 1 to be acceptable and clearly severable, both physically and functionally, from the proposed dwelling on Plot 2 to the rear. Therefore, I intend to issue a split decision in this case as detailed above.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework)¹ and any relevant development plan policies;

¹ Published 2012

- The effect on the openness of the Green Belt;
- The effect on the character and appearance of the area; and,
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Background

5. The appeal site is a long narrow strip of grassed land in a residential area. It is occupied by the fire-damaged remains of a small dwelling set well back, about 80 metres or so from the road. The dwellings on both sides of Malthouse Lane are mainly semi-detached and two-storey but there are also detached houses and bungalows, including the bungalows on either side of the appeal site. This part of Malthouse Lane is on a peninsula stretching out into Earlswood Lakes and many of the dwellings have long rear gardens extending towards the water. It is located in the rural village of Earlswood within the West Midlands Green Belt.
6. The dwelling on Plot 1 would be to the front of the plot adjacent to the road with a garage to the rear. The dwelling on Plot 2 would replace the existing fire-damaged ruins of the former dwelling further towards the back of the site.

Plot 1

Reasons

Inappropriate development

7. The proposed dwelling on Plot 1 would fill a relatively small gap between the bungalows at 26 and 30 Malthouse Lane. It would be located to the front of the plot near the highway and on a similar building line to the majority of residential housing on that side of the road. The Council advise that there is also an extant planning permission,² dating from 2014, which established that a single dwelling in that position was acceptable.
8. Earlswood is identified as a Category 3 Local Service Village (LSV) within the explanation of Policy CS.15 of the Stratford-on-Avon Core Strategy 2011 to 2031(CS)³. As the proposed dormer bungalow on Plot 1 is filling a small gap between existing houses, I consider that it meets exception 'e' in Policy CS.10 of the CS, which allows limited infilling in LSVs within the Green Belt. It is also in accord with the similar exception in the fifth bullet point of paragraph 89 of the Framework. Therefore, I share the Council's view that it would not be inappropriate development within the Green Belt. Consequently, it would not have an adverse impact on the purposes of the Green Belt.

Other Matters

9. Though it is beyond Plot 1, there would be no adverse effects associated with the proposed demolition of the fire-damaged building on the site.

² 14/01291/FUL

³ Adopted 11 July 2016

10. Concern has been expressed by the occupiers of No 26 about the proximity of the proposed access drive to the boundary with their property. Whilst there would be some noise and disturbance from vehicles accessing the garage to the rear, there are numerous other driveways in the area, including longer access roads between properties leading to developments to the rear. The occupiers of No 30 have also expressed some concern on the issue. However, the overall level of traffic generated would be limited. Therefore, it would not have a significant adverse effect on the living conditions of the occupants of the adjoining dwellings. I note that the Council took a similar view.
11. There would be windows on the north east and south west side elevations of the proposed dwelling. Nos 26 and 30 also have side windows facing the appeal site. The Council assessed that aspect referring to advice in its 'Extending Your Home' guidance, which gives side windows less protection than front and rear-facing windows. Given that, and the separation distances typical of the area, I do not consider that there would be a significant adverse effect on the living conditions of the occupants of Nos 26 and 30 or other nearby occupiers. I also note that there is already an extant planning permission for a similar dwelling in that position.
12. References have also been made to parking and visibility splays but I note that the Council and the highway authority are satisfied on those matters and I find no reason to disagree with their assessment. Appropriate conditions would address any safety concerns.
13. There is a variety of development in the area, including two-storey and some substantial properties. Therefore, whilst the ridge and eaves height of the proposed dwelling would be slightly higher than its immediate neighbours, its hipped roof, layout, hardstanding and the possibility of fencing would not be significantly discordant in terms of the character and appearance of the area. An appropriate landscaping condition would also mitigate any negative effects.

Conditions

14. The Council has suggested conditions which I have considered, making minor amendments where necessary to ensure compliance with the tests contained in the Planning Practice Guidance. A condition setting a time limit for commencement of the development is required by statute. It is appropriate that there is a condition for the development to be carried out in accordance with the approved plans for certainty. It is necessary for there to be a condition regarding materials to protect the character and appearance of the area and the Green Belt.
15. Conditions regarding visibility splays, the access, a footway/verge crossing and surfacing of the access are necessary in the interests of highway safety. A condition regarding foul and surface water disposal is required to safeguard against pollution. It is appropriate for there to be a condition regarding recommendations in an Ecological Survey in order to protect biodiversity and the environment. I have modified the Council's suggested ecology condition, as a bat survey has already been carried out. It is also unnecessary to re-state the other recommendations which are detailed in the Ecological Survey.
16. Landscaping conditions are included to improve and enhance the environment of the development and its appearance. I have modified the Council's suggested condition for brevity and because it is not necessary for the scheme

to be carried out concurrently with development. Conditions regarding refuse, recycling, green waste and water butts are appropriate in the interests of good domestic waste management and the re-use of water resources. I have not included a condition suggested by the Council which, in effect, duplicated the plans condition.

Conclusion

17. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed insofar as it relates to Plot 1 and the demolition of the building on the site.

Plot 2

Reasons

Inappropriate development

18. As already established, Earlswood is defined in the CS as a Category 3 LSV. CS Policy CS.15 envisages development in LSVs via sites identified in a Neighbourhood Plan and through small-scale schemes on unidentified but suitable sites that are within their built-up area boundaries (where defined) or otherwise within their physical confines.
19. Policy CS.10 identifies forms of development, at 'a-e', within the Green Belt which would not be inappropriate in principle. The categories reflect similar exceptions contained in paragraph 89 of the Framework, which is a significant material consideration in all planning decisions.
20. Point 'b' of Policy CS.10, and the fourth bullet point of paragraph 89 of the Framework, allow for the replacement of a building, provided that the new building is in the same use and is not materially larger than the one it replaces. It is evident from the submitted plans that the proposed replacement building would be materially larger than the existing building. Therefore, the proposal for Plot 2 would not meet the 'replacement building' exception.
21. Point 'e' of Policy CS.10 refers to limited infilling in LSVs and is similar to the fifth bullet point of paragraph 89 of the Framework. There is no definition of 'infilling' in the CS or in the Framework. In assessing the Plot 1 proposal, the Council concluded that, as it would be located between two existing dwellings, within an existing ribbon of established development, it would be 'limited infilling' in the LSV. I reached the same conclusion in relation to Plot 1.
22. The appellant asserts with regard to 'infilling' that: *'it is quite evident that it must mean more than the oft used version, that of the filling of a small gap between existing houses, otherwise the scale of development envisaged under the policies could not possibly be accommodated; there are simply not enough, if any, sites within the settlement which would meet that description.'*
23. The appellant also refers to point 4 of the 'Development Management Considerations' part of Policy CS.16. However, that is simply clarifying that the LSV housing requirement figures apply to development in and adjacent to the village settlement itself, rather than to the wider parish. The appellant says that this *'must demonstrably include sites which are not the filling of a small gap'*.

24. The scale of development envisaged by Policy CS.16 in Category 3 LSVs is 450 homes in total. The Council advises that 357 units have either been committed or delivered, which has not been disputed. It seems to me, therefore, that the requirement is well on the way to being met. Paragraph 5.1.10 of the 'Explanation' of Policy CS.15 lists ten Category 3 LSVs across the District. It is unlikely that all of those LSVs are within the Green Belt. Therefore, they would not be subject to the same restrictions. Even if they were, 'limited infilling' is not the only possible exception category and, in any event, in some cases there could be other considerations amounting to 'very special circumstances' which would allow development. Therefore, I do not agree with the appellant's rationale.
25. There is no implication in the relevant policies that 'infilling' should mean something beyond or other than 'the oft used version'. Policy CS.15 and Policy CS.16 both clearly indicate that any development within the Green Belt should be in accord with Policy CS.10 and its restrictions. If the intention was to adopt some different meaning or more expansive definition of 'infilling', it is reasonable to suppose that the CS policies or the Framework would have said so explicitly.
26. My attention has also been drawn to a recent appeal, relating to 130 Malthouse Lane.⁴ The Inspector's view of 'limited infill', expressed in paragraph 10 of the decision, is *'the small scale development of a plot of land which fills in a gap within an otherwise built-up area.'* The appellant submits that the proposal for Plot 2 meets that definition.
27. However, in paragraph 11 of the decision, the Inspector finds that whilst the site adjoins built development on two of its boundaries, it is also adjoined by open fields and the development would not, therefore, fill a gap within an otherwise built-up area. The Inspector did not, therefore, find it to be limited infilling as it was not between built development. I consider that in the appeal before me, Plot 2 lies between undeveloped garden land, whereas Plot 1 is between built forms. Therefore, I do not see any inconsistency in the analysis of 'limited infilling' and that appeal decision does not lead me to alter my decision. In any event, I have reached my own conclusions on the appeal proposal based on the evidence before me.
28. The dwelling on Plot 2 would be immediately adjoined by gardens on either side. There is a dwelling to the north east but that is separated from Plot 2 by a number of gardens. To the south west there is a backland development of four houses on Warren Close but domestic gardens, the Earlswood Lakes Sailing Club and its access road lie between. Therefore, though there is some development to the rear of houses along Malthouse Lane, the majority of dwellings are to the front of their plots near the road. The position of the dwelling on Plot 2 would not, in the context described, be filling a small gap between existing houses and I do not, therefore, consider that it would constitute 'limited infilling'. Consequently, it does not meet the exception in Policy CS.10 'e' or the fifth bullet point of paragraph 89 of the Framework.
29. Point 'c' of Policy CS.10, and the corresponding sixth bullet point of Paragraph 89 of the Framework, refer to limited infilling or the partial or complete redevelopment of a previously developed site (brownfield land), whether redundant or in continuing use. However, such development must not have a

⁴ APP/J3720/W/16/3155450

materially greater impact on the openness of the Green Belt, and the purpose of including land within it, than the existing development.

30. I have already found that the proposal for Plot 2 would not be limited infilling. It could fall within the ambit of partial or complete redevelopment of a previously developed site, as the site was once occupied by a dwelling. However, I have already concluded that the proposed dwelling would be significantly larger than the existing building. It would therefore, despite its context, which I will discuss in more detail below, inevitably have a materially greater impact on openness and Green Belt purposes and so cannot fall within exception 'c' of Policy CS.10 or the equivalent Framework exception.
31. The appellant refers, in paragraph 5.18 of the Appeal Statement to compliance with paragraph 90 of the Framework. The only possible relevant exception there would be the fourth bullet point. However, that concerns the re-use of buildings which would mean the conversion of an existing building rather than its demolition and replacement, as proposed here. Therefore, it cannot be applicable.
32. Consequently, I conclude that, as the proposed development in relation to Plot 2 does not meet any of the possible exceptions in CS Policy CS.10 or the Framework, it would be inappropriate development in the Green Belt.

Openness and Green Belt purposes

33. A fundamental aim of Green Belt policy, as set out in paragraph 79 of the Framework, is to keep land permanently open. Additional bulk and physical presence can affect openness whilst there can also be a visual element. I have already commented briefly on openness above. Despite its position on land that slopes gradually down towards the lake, and the presence of some other backland development, replacing a small single storey building with a significantly larger two storey dwelling would materially affect the openness of the Green Belt, due to the significant increase in built form.
34. In addition, whilst it would be set well back, behind the proposed building on Plot 1, because of its bulk and scale, parts of it would still be likely to be seen from the road, as illustrated in the indicative street scene included in Drawing No (25)M-101. It would also be visible from the footpath that skirts the lake to the south east. Though the appellant advises that it is not a public footpath, I saw various people using the path, which signage indicates is operated by the Canal and River Trust. In any case, even if the proposed development was out of immediate public view, it would still have a significant adverse effect on the openness of the Green Belt by substantively increasing the amount of built form.

Character and appearance

35. Whilst the existing plot would be subdivided to accommodate the proposed dwelling on Plot 2, it is a long parcel of land and there are some other developments in the area to the rear of houses, such as at No 18 to the north east and at Warren Close to the south west. Therefore, the proposal would not be out-of- keeping with the pattern of development in the area in that sense.
36. There would be a large expanse of glass to the rear elevation, which would differ from the design of the neighbouring houses at Nos 26 and 30, but they are at the front of their plots near the road, whereas the Plot 2 dwelling would

be some distance away closer to the lake. The development would be visible from the path to the east but, as I saw, the dwelling to the north east has French windows and balconies to the rear which are also visible from the path.

37. In addition, my attention has been drawn to extensive glazing on other properties in the area, including the modernist design at 131 Malthouse Lane and to the rear elevation of 61 and 63 Wood Lane, which back on to Engine Pool on the other side of the lake. They are also visible, though more distantly from the footpath and from the causeway to the northeast. Those properties also contribute to the character of the locality. Therefore, I do not find that the glazing element of the design would make the proposal incongruous in the wider context of the area.
38. The building is sizeable but there are other relatively substantial properties in the area, including at No. 18. The appellant advises that the design is informed by the style of a simple gable rooved boathouse overlooking the water. CS Policy CS.9 (C) states that high quality design innovation will be encouraged, where it reflects and complements the immediate local environment. Such a design would not be incongruous at a lakeside location.
39. Therefore, I conclude that it would not have an adverse effect on the character and appearance of the area. It follows that it would not be contrary to CS Policy CS.9 or Policy CS.5 which, amongst other things, seek to encourage high quality design which can be distinctive and innovative provided that it is sensitive to its local setting and has regard to local distinctiveness.

Other considerations

40. The demolition of the fire-damaged former dwelling would visually improve the environment but it is small, currently screened by planting to the north-west, and some way from the road. However, it can be viewed from the path to the east. There would, therefore, be some benefit to the visual environment from its removal.
41. There would also be economic benefits during the construction period and from the contribution of future occupiers to the local economy. Socially, the dwelling would contribute to the supply of housing and future occupiers would be likely to participate in the community and help to maintain the viability of local services. The appellant recognises that the Council considers that it can demonstrate a five year housing land supply and does not appear to contest that matter. Though that target should not be viewed as a cap, the benefits referred to above relate to one dwelling, albeit a relatively large one, and would, therefore, inevitably be limited.
42. An outline planning permission,⁵ dating from 1989 and long since expired, gave consent for a single dwelling to replace the existing fire-damaged house. The appellant submits that it demonstrates that there is no fundamental issue with a dwelling on Plot 2. However, I am also advised that condition 4 of that permission required the demolition of all existing buildings on the site before the dwelling, which was never built, was first occupied. The stated reason for the condition being that '*not more than one dwelling is retained on this site within the Green Belt*'. I have only been provided with limited details of that permission and given that it was in outline only, expired long ago, and was on

⁵ 89/00456/FUL

the basis of a single dwelling on the site rather than two dwellings proposed, I give it, at best, minimal weight.

Very special circumstances

43. I have already identified that the proposal for Plot 2 would be inappropriate development, as it does not meet relevant exceptions in the development plan or the Framework. The Framework indicates, at paragraph 87, that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have also found that the Plot 2 proposal would have a significant adverse effect on openness.
44. Paragraph 88 of the Framework advises that substantial weight should be given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
45. Though I did not find harm to the character and appearance of the area which is, therefore, neutral in any balancing exercise, I have only given limited weight to the other considerations. Overall, I find that the other considerations in this case do not clearly outweigh the harm to the Green Belt that I have identified. Consequently, the very special circumstances necessary to justify the development on Plot 2 do not exist.

Other Matters

46. In addition to the above issues, the occupiers of Nos 26 and 30, immediately adjoining the site, expressed concerns about the effect of the proposed dwelling on their privacy. The upper floor windows in the north-west elevation of the proposed dwelling would face back towards the road and there would be angled views towards a bedroom window and conservatory/orangery at No 26 and a conservatory at No 30. On balance, the separation distances between the proposed dwelling on Plot 2 and Nos 26 and 30 would be sufficient to avoid a significant adverse effect on privacy in habitable rooms. In any event, I have dismissed the appeal regarding Plot 2 on other grounds.

Conclusion

47. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed insofar as it relates to Plot 2.

Jonathan Tudor

INSPECTOR

SCHEDULE OF 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 insofar as they relate to Plot 1 and the

demolition of the existing building on Plot 2: Drawing Nos (20)M-101 and (25)M-101.

- 3) No development shall commence until details /samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The development shall not be occupied until visibility splays have been provided to the vehicular access to the site passing through the limits of the site fronting the public highway with an 'x' distance of 2.4 metres and 'y' distances of 43.0 metres to the near edge of the public highway carriageway. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.
- 5) The development shall not be occupied until the existing vehicular access to the site has been widened so as to provide an access of not less than 5 metres, as measured from the near edge of the public highway carriageway.
- 6) The access to the site for vehicles shall not be used unless a public highway footway/verge crossing has been laid out and constructed in accordance with the standard specification of the Highway Authority.
- 7) The access to the site for vehicles shall not be used in connection with the development until it has been surfaced with a bound material for a distance of 7.5 metres as measured from the rear edge of the public highway carriageway.
- 8) No works shall commence until a scheme for foul and surface water disposal has first been submitted to and approved in writing by the local planning authority, the development shall be implemented in accordance with such approved details prior to the first use of the buildings hereby permitted and shall be retained thereafter.
- 9) With the exception of the recommendations for a bat survey, which has already been carried out, the development hereby approved shall be carried out in strict accordance with the recommendations set out in the Ecological Review by Acorn Ecology dated 6th June 2016.
- 10) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 11) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 12) The dwelling hereby approved shall not be occupied until 3 bins for the purposes of refuse, recycling and green waste have been provided for each

of the approved dwellings, in accordance with the Council's bin specifications.

- 13) No dwelling that has a downpipe within the development hereby permitted shall be occupied or used until it has been provided with a minimum 190 litre capacity water butt fitted with a child-proof lid and connected to the downpipe.