
Appeal Decision

Site visit made on 4 July 2017

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 11th September 2017

Appeal Ref: APP/J1535/W/17/3168916

Land south of Horseshoe Hill, adjacent to 1 Ash Tree Cottage and High View, Upshire, Essex EN9 3SN

- 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 Hercules Fisherman against the decision of Epping Forest District Council.
 - The application Ref EPF/1692/16, dated 17 June 2016, was refused by notice dated 5 December 2016.
 - The development proposed is the removal of trees and existing structures on land to accommodate the development of a residential dwelling (use class C3), with associated landscaping works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - Whether the development is inappropriate development for the purposes of the National Planning Policy Framework and the development plan;
 - Whether the development would preserve or enhance the character or appearance of the Upshire Conservation Area;
 - The effect of the development on the living conditions of adjacent occupiers with regard to privacy; and
 - If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate development

3. The appeal site lies within the Metropolitan Green Belt. The National Planning Policy Framework at paragraph 89 states that local planning authorities should regard the construction of new buildings in the Green Belt as inappropriate, with a number of limited exceptions. The appellant contends that the proposal would comply with the fifth bullet point of paragraph 89, which allows for limited infilling in villages.

4. Policy GB2A of the Epping Forest Local Plan and Alterations (LP)(2006) allows for a replacement for an existing dwelling or a limited extension to an existing dwelling but does not specifically address the matter of limited infilling within villages. The proposal is therefore contrary to it but since the Framework is more recent and is current national policy it is reasonable to consider whether the proposal is inappropriate against its provisions. Nevertheless, the Framework does not define "limited infilling" or "villages".
5. The Council has confirmed that the site falls within the Settlement of Upshire and is therefore considered to fall within a 'village'. Turning to an assessment of "limited infilling", the appeal site is a heavily wooded L shaped plot that lies between two residential properties with a frontage to Horseshoe Hill. Infill development is generally taken to mean the filling of a narrow gap along an otherwise uninterrupted developed frontage.
6. However the plot is substantially larger than that of the neighbouring houses and the southern portion extends across the rear of several properties to the east. In addition the dwelling would have a considerable mass including the lower ground floor area and two upper ground sections at the front and rear, which would be two to three storeys in height and of a substantial depth. Whilst only a single dwelling, the proposal would be large in scale in comparison to neighbouring buildings. Therefore it would not fall within the description of "limited infilling."
7. The appellant has referred to two appeals within Green Belt land. In the appeal at Brickfield Street, Glossop for two dwellings, the appeal was in outline and matters of layout and scale were reserved for future consideration. In the appeal at Copthorne Road, Felbridge,¹ for 8 dwellings, the Inspector took account of three allowed appeals which resulted in the development of nearly 40 dwellings near to the appeal site on land of a similar depth with similar plot sizes, and policy DP12 of the relevant local plan specifically addressed the issue of infill development in villages. The site circumstances in these appeals are therefore materially different to the proposal before me.
8. Paragraph 89 also provides, at bullet point 6, for limited infilling and partial/complete redevelopment of previously developed land. The appellant has stated that the appeal site was formerly part of Warlies Farm, whilst a neighbour contends that the land was previously part of the garden of the adjacent dwelling, High View. The Council considers the land has a nil use given the time that has elapsed since it was last occupied.
9. Previously developed land is or was occupied by structures. There is evidence that a small garage was sited towards the front of the site, but the remainder has been woodland for many years. The occupation of a small part of the entire plot with a building does not mean that it is all previously developed land. If it was formerly part of the farm it could be excluded from the definition of previously developed land as agricultural land. Alternatively, as the site lies within a village it could thus be considered a built up area and residential gardens are excluded from the definition² of previously developed land in such areas. In either case the site would not fall within bullet point 6 of paragraph 89 but even if neither apply, due to the considerable passage of

¹ APP/M3645/W/16/3141780

² Annex 2 of the Framework

time the remains of the garage have blended into the landscape and thus the site cannot be described as previously developed.

10. I therefore conclude that the development would be inappropriate development, which is, by definition, harmful to the Green Belt.

Effect on Upshire Conservation Area

11. The village of Upshire is comprised of a series of hamlets, all designated as the Upshire Conservation Area. Properties in the hamlet of Upshirebury Green are generally two storeys in height with use of red brick, weatherboarding and clay decorative tiles. There are also a number of listed buildings including the grade II listed High View immediately to the west of the appeal site. The heritage significance of the village lies in the coherence of the materials, modest scale and traditional character of properties, which make a positive contribution to the character and appearance of the village.
12. The proposed building would be contemporary in appearance, with irregular angled panels of mirrored glass and corten steel. I acknowledge that the corten steel would weather over time and produce a more muted appearance and the mirrored glass would reflect the surrounding trees. Contemporary design approaches can also be an appropriate response within Conservation Areas. However the significant depth, massing and bulk of the dwelling in comparison with neighbouring properties would be wholly out of scale with the prevailing pattern of development. Furthermore, its irregular shape would seriously detract from the visual coherence of the historic buildings within the village and would be at odds with its traditional character. A building designed as a 'landmark' would be entirely jarring and out of place amongst the more restrained buildings that surround it.
13. Moreover, the proposal would also result in the loss of 23 mature trees, 10 of which are subject of a Tree Preservation Order. The trees proposed to be removed are generally concentrated within the central portion of the site. These are an important local feature and have a group value, being attractive in their own right and as a complement to the surrounding attractive buildings. Their loss would significantly erode the verdant character of the site which makes an important and positive contribution to the conservation area.
14. Given the extent of the Upshire Conservation Area across a number of hamlets and the scale of the proposal I consider it would cause significant harm but less than the substantial harm referred to in the Framework. This is nevertheless a matter of considerable importance and weight. The appellant considers that the building would be a landmark and that it would provide an inspirational and spacious environment in which to live, paint and sculpt, but these personal advantages would be of very limited public benefit. Having regard to Paragraph 134 of the Framework this does not outweigh the harm that would be caused. The proposal would therefore fail to preserve or enhance the character or appearance of the Upshire Conservation Area. It would also be contrary to LP policies LL9, LL10, LL11 and HC5.

Living Conditions

15. The rear garden of High View, to the east, runs more or less the entire length of the appeal site, and contains a decked seating area adjacent to the rear boundary. The proposal would include three timber decked walkways

extending towards the rear of the appeal site. These walkways were originally elevated but the design has been amended so that the pods at the end of the walkways would be at ground level. It is proposed to remove some of the trees along the southern boundary which overlooks open fields, but the extensive tree coverage along the side boundaries would be retained and many other trees interspersed within the site towards the southern boundary would also be retained. Accordingly, due to the presence of mature trees and shrubs along the site boundaries and the drop in ground level towards the rear of the site, significant overlooking of properties to the west and the Churchyard would be avoided.

16. There would be some overlooking of the rearmost part of the rear garden of High View as the common boundary at this point is formed of a wire mesh fence, but this could be ameliorated satisfactorily through the erection of a solid boundary fence or additional soft landscaping.
17. For the above reasons I conclude there would be no harm to the living conditions of neighbouring occupiers by reason of privacy. The proposal would therefore accord with LP policy DBE9, which seeks to prevent excessive loss of harm of amenity to neighbouring occupiers in relation to overlooking.

Other Considerations

18. The provision of one additional dwelling would be of only modest benefit and no reasons have been provided why the dwelling should be in this particular location. Accordingly I give this matter very limited weight.

Other Matters

19. Whether the red line site boundary is incorrect is a private legal matter to be resolved with the relevant parties, and thus outside the scope of this appeal.
20. I have had regard to all other matters raised in respect of this appeal, including impact on local drainage and the alleged potential for the property to be used as an art facility or visitor attraction, but these matters are all of limited weight. The Council has indicated that biodiversity concerns could be dealt with by use of pre-commencement conditions.

Conclusion

21. In conclusion the proposal would not be limited infilling in a village and so would be inappropriate development within the Green Belt, as defined by the Framework. Thus it would, by definition, be harmful to the Green Belt. The Framework indicates that such harm should be given substantial weight. The scheme would also significantly harm the character and appearance of the Upshire Conservation Area.
22. I have given only limited weight to the other considerations cited in support of the proposal, and conclude that, taken together, they do not clearly outweigh the harm that the scheme would cause. Consequently there are not the very special circumstances necessary to justify inappropriate development in the Green Belt. The proposal would also be contrary to the development plan.
23. I therefore conclude that the appeal should be dismissed.

Claire Victory INSPECTOR