The Planning Inspectorate

Appeal Decision

Site visit made on 18 December 2017

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

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

Decision date: 11th January 2018

Appeal Ref: APP/P0240/W/17/3185864
Land adjacent Timber Ridge, Woburn Lane, Aspley Guise

- 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 Decesare against the decision of Central Bedfordshire Council.
- The application Ref CB/17/02661/FULL, dated 26 May 2017, was refused by notice dated 27 July 2017.
- The development proposed on the application form is described as "The erection of a two storey detached dwelling with attached double garage, associated driveway, landscaping and tree work."

Decision

1. The appeal is allowed and planning permission is granted for the erection of a two storey detached dwelling with attached double garage, associated driveway, landscaping and tree work on land adjacent to Timber Ridge, Woburn Lane, Aspley Guise in accordance with the terms of the application, Ref CB/17/02661/FULL, dated 26 May 2017, subject to the conditions set out in the attached schedule.

Procedural matters

2. The Council has confirmed that its decision was based on amended plans. For the avoidance of doubt and in view of the fact that there does not appear to be any dispute between the Council and appellant on this matter, I have proceeded on the basis that the plans under consideration in this appeal are Drawing Nos PL01, PL02 (Issue A), PL03 (Issue A), PL04 (Issue A), PL05 and PL06 (Issue A) and am satisfied that this has not prejudiced the interests of any party.

3. The appellants' have confirmed that the appeal site does not fall within a settlement envelope and this has not been disputed by the Council. The Core Strategy[1] states in the preceding text[2] to *Policy DM4:Development Within and Beyond Settlement Envelopes*, that settlement envelopes help to distinguish between settlements and the surrounding countryside, and that outside of settlements where the countryside needs to be protected from inappropriate development, only certain types of new development will be permitted, such as residential exception schemes or dwellings for the essential needs of those employed in agricultural or forestry.

[1] Core Strategy and Development Management Policies, November 2009, Central Bedfordshire Council
[2] Paragraphs 11.1.1 and 11.1.15

4. Although there is no evidence that the scheme meets any of the specified exceptions for developments beyond a settlement envelope, the Council accepts the appellants' view that the appeal site lies within the built-up area of the village. Both parties also agree that Aspley Guise is 'washed over' by the Green Belt and that the appeal site falls outside the defined Green Belt Infill Boundary.

5. Despite the Council having referred to *Policy DM6:Development within Green Belt Infill Boundaries* of the Core Strategy in its reason for refusal, I have concluded that this is not applicable to the proposal as:- (a) the development does not fall within the defined Green Belt Infill Boundary which the text of the policy specifically refers to; and (b) this policy provides no criteria based guidance or definition as to what development may be considered inappropriate outside of the defined Green Belt Infill Boundary, but within the Green Belt area.

6. Whilst I recognise that the preceding text[3] to Policy DM6 states that the Council will, in considering planning applications within the Green Belt, adhere to the restrictive principles set out in *Planning Policy Statement 2: Green Belts*, this national guidance has now been replaced by the Framework[4] and is therefore out-of-date. In view of this, my assessment of the Green Belt issue in this appeal has been against the Framework and any other material planning considerations.

7. There have been some references made by third parties to the emerging Local Plan. However, because this document has not yet been subject to an examination and is not referred to in the reasons for refusal, I have given it limited weight in my assessment.

Main issues

8. The Council has raised no concerns regarding: (a) the site falling outside of a defined settlement envelope as shown on the Proposals Map; (b) the design of the dwelling; (c) its impact upon the living conditions of neighbouring occupiers; (d) its impact upon the local highway network; (e) its impact upon trees; and (f) its ecological impact. Accordingly, within the context of the Council's reason for refusal and the evidence in this case, the main issues are:-

   - whether the proposal would be inappropriate development in the Green Belt;
   - the effect of the development on the openness of the Green Belt;
   - the effect of the development on the character and appearance of the area, with specific regard to the existing settlement pattern, and its height and scale;
   - if the development is inappropriate, 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 the development.

[3] Paragraph 11.3.1
[4] National Planning Policy Framework, Communities and Local Government, March 2012

Reasons

Appeal site context

9. The appeal site forms part of the existing rear garden to Timber Ridge, a modern 2-storey detached property. It is laid to grass, enclosed by close-boarded fencing and slopes slightly upwards in a north-westerly direction. There are a modest number of mature trees that are dispersed throughout the site. The area is characterised by a variety of 1 and 2-storey dwellings that front onto roads on substantial wide-fronted plots.

10. The appeal site lies at the periphery of Aspley Guise where its built form starts to thin out and marks a transition between the more densely built-up part of the village and the surrounding open countryside. In particular, the residential area immediately surrounding the appeal site on Woodside, Woburn Lane and Peers Drive has a parkland type character with mature landscaping, hedges and trees, which I consider to be very different to the agricultural character of the surrounding countryside beyond.

Whether the proposal would be inappropriate development in the Green Belt

11. Paragraph 89 of the Framework states that the construction of new buildings should be regarded as inappropriate development in the Green Belt, unless, amongst other things, it would involve limited infilling in villages (bullet point 5). Although the Framework does not provide a definition of infilling, Paragraphs 11.1.7 and 11.3.2 of the Core Strategy states that infill development can be defined as small-scale development utilising a vacant plot which should continue to complement the surrounding pattern of development. Whilst I see no reason why infill development needs to specifically fill-in a gap in an otherwise built-up frontage, I recognise that each case will need to be determined on its own merits having regard to the characteristics of an area.

12. The Council and appellants' both agree that the appeal site falls within the built-up area of the village and I see no reason to take a different view given the prevailing built form which extends to the highway boundary of Woodside and Woburn Lane.

13. The proposed dwelling and its garden would be fully surrounded by existing housing and not encroach into the countryside to the east of Woburn Lane and south of Woodside. The appeal site and resulting separate plot for Timber Ridge would also be comparable in size to those at Outwood (No 2), Springwood and The Birches on Peers Drive and Woburn Lane.

14. Although the appeal site would be accessed via a separate private drive and partly sit behind an existing dwelling (Timber Ridge), this is not uncommon on the edge of rural settlements where the prevailing built form thins out and the pattern of development often becomes more irregular, as demonstrated by the two dwellings to the west of the appeal site accessed via Woodside and Peers Drive[5].

15. Having collectively taken all of the above factors into account, I have concluded that the proposal would constitute an infill development and complement the surrounding settlement pattern.

[5] Please see Appendix 7 of the appellant's statement.

16. Despite the substantial size of the dwelling, it would nonetheless be small-scale in terms of number of units when compared with the overall size of the village. I have as a consequence concluded that the extent of infilling proposed would be limited.

17. In view of the above, I have concluded that the scheme would fall within the exception category for limited infilling in villages identified by Paragraph 89 of the Framework (bullet point 5) and would not therefore constitute inappropriate development in the Green Belt.

18. Representations have been made that the site does not constitute an infill plot and have referred to a recent appeal decision in Aspley Guise[6] to support this. However, this site is materially different in that it is not wholly surrounded by built form and in any event, the current scheme must be considered on its own merits.

19. Representations have also been made that the scheme would result in a material change in use of the land and that it would not therefore comply with the exceptions outlined in Paragraphs 89 and 90 of the Framework. However, the aerial photographic evidence is inconclusive and I have no other information before me to indicate that the existing site has not been lawfully used as a private garden to Timber Lodge. I am also satisfied that the appeal site has a sufficiently close and intimate association with this property for it to constitute part of its private garden.

20. Although the Council states that the development would compromise the openness of the Green Belt, case law[7] has determined that where development is found to be 'not inappropriate' when 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 in the Green Belt. In view of this, there is no need for me to consider the effect of the development on the openness of the Green Belt.

Character and appearance

21. As outlined above, the scheme would complement the surrounding settlement pattern and not appear obtrusive in the wider landscape given the built form surrounding the site.

22. Representations have been made that the development's crown roof would add to its bulk and that overall, it would appear too tall, cramped and contrived, and constitute overdevelopment. I recognise that the development would be taller than some neighbouring dwellings, but in view of the varying architectural styles and building heights in the immediate locality, and the amount of intervening space between houses, I am satisfied that it would not dominate the area. Furthermore, despite its significant size and footprint, I am not of the view that the scheme would appear so large as to be out of character with the scale of other dwellings in the area or leave insufficient space about the building. I am also satisfied that it would not appear out of proportion with the appeal site, which I consider to be of a substantial size.

[6] APP/P0240/A/14/2212686 dated 7 July 2014
[7] *Lee Valley Regional Park Authority v Epping Forest District Council* [2015] EWHC 1471 (Admin) and *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1)* [2016] EWCA Civ 404

23. Third party concerns have been raised over the development of garden land. However, the site's existing use does not in itself preclude its use for residential development. Representations have also been made that the scheme would result in the potential loss or harm to existing mature trees. However, the Council's Tree and Landscaping Officer has raised no objections subject to conditions governing their protection, and on the basis of my site inspection, I am satisfied that there would be sufficient space to ensure they are not damaged.

24. In view of the above, I have concluded that the proposed development would not harm the character and appearance of the area. The scheme would therefore accord with Policy DM3 of the Core Strategy, which seeks to, amongst other things, ensure that new development is appropriate in scale and design to its setting.

Other matters

25. Third party concerns have been raised in respect of visual impact and loss of privacy to neighbouring properties that back onto the site on Peers Drive, Woburn Lane and Woodside. However, given the extent of intervening distances, existing landscaping, boundary fencing and orientation of the dwelling, I am satisfied that the scheme would not appear oppressive to these neighbouring occupiers or harm their privacy.

26. Noise concerns have been raised by third parties in respect of construction works and the position of the plant room. However, impacts during construction would be of limited duration and I have no reason to conclude that the plant room would give rise to harmful noise or disturbance. I am in any event satisfied that these matters could be suitably controlled under other legislation.

27. Further representations have been made in respect of potential structural damage to neighbouring properties and trees. However, there is no evidence that the proposal would incur such damage and in any event, this would be a private civil matter. Neighbour concerns have also been raised in respect of loss of property value. However, the Planning Practice Guidance states that planning is concerned with land-use in the public interest and not the protection of purely private interests.

28. Representations have also been made that the development would create an undesirable precedent. However, I have concluded that the development is acceptable in terms of development plan policy and the Framework, and in any case, I must consider the appeal scheme on its own merits.

29. Additional third party concerns have been raised about potential ecological harm. However, the appeal site is not designated as a Special Area of Conservation (SAC) or a Special Protection Area (SPA) and no European Protected Species have been found on the site. Furthermore, the site does not benefit from any local designation of nature conservation importance and no rare or legally protected species of Flora and Fauna have been found. I am as a consequence satisfied that conditions to protect existing trees together with the provision of a new landscaping scheme would ensure that any ecological impact is minimised.

Conditions

30. The Council has suggested conditions which I have considered in the light of the Planning Practice Guidance and comments by the appellants'. I have made some amendments to clarify certain details, assign different trigger deadlines or where the submitted information is unclear.

31. A condition requiring development to be in accordance with the plans is needed for the avoidance of doubt and in the interests of proper planning. A condition relating to external materials is necessary to ensure a high standard of development.

32. Conditions are also needed to protect existing trees during construction and require details of a hard and soft landscaping scheme. A requirement to address surface water discharge onto the public highway has been incorporated into the landscaping condition. A separate condition to ensure the junction work is carried out prior to occupation of the dwelling has been imposed in the interests of highway safety.

Conclusion

33. I have found that the proposal would comply with the Framework as; (a) it would not constitute inappropriate development in the Green Belt; (b) it would not be harmful to the character and appearance of the area. In view of this, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Robert Fallon

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:- Drawing Nos PL01, PL02 (Issue A), PL03 (Issue A), PL04 (Issue A), PL05 and PL06 (Issue A).

3) No development shall take place above damp proof course level until details of all external facing materials and finishes have been submitted to and approved in writing by the local planning authority. The relevant works shall thereafter be carried out in accordance with the approved details.

4) No development shall take place until a tree protection plan has been submitted to and approved in writing by the local planning authority. No site clearance, preparatory work or development shall take place until the approved tree protection measures have been installed and these shall remain in place until completion of the development and all

equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

5) All tree work shall be carried out in accordance with British Standard BS 3998: Tree work: Recommendations (or an equivalent British Standard if replaced), in accordance with the submitted Arboricultural Impact Statement.

6) The dwelling hereby permitted shall not be occupied until details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:

   a) soft landscaping to include: planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of new trees, hedgerows and plants noting species, plant supply sizes and proposed numbers/densities;

   b) an implementation programme for all soft landscaping works;

   c) hard surfacing material samples for the access, driveway, parking, patios and any other hardstandings;

   d) a scheme to prevent the discharge of surface water from the site access on to the highway;

   e) boundary treatments, to include design, materials, colours and finishes.

   The hard landscaping, surface water drainage and boundary treatment works shall be carried out in accordance with the approved details before the dwelling is first occupied.

7) Any trees, hedges 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. No new tree or hedgerow planted in accordance with condition 6 shall be pruned or cut in any manner within 5 years from the date of the occupation of the dwelling hereby approved, other than in accordance with the approved plans and details, without the prior written approval of the local planning authority.

8) The dwelling hereby permitted shall not be occupied until the junction of the proposed vehicular access within the highway has been constructed in accordance with the approved details shown on Drawing No PL02 (Issue A).

End of schedule