



Appeal Decision

Site visit made on 30 November 2017

by D Guiver LLB(Hons) Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 February 2018

Appeal Ref: APP/P2365/W/17/3181655

Land adjacent to 337 Blackgate Lane, Tarleton PR4 6JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Peter Jackson against West Lancashire Borough Council.
 - The application Ref 2016/1313/FUL is dated 19 December 2016.
 - The development proposed is demolition of existing buildings and erection of one detached dormer bungalow.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appeal is against the Council's failure to determine an application for planning permission. The Council has stated that had it been in a position to do so it would have refused the application on a number of grounds contained in a report compiled to set out the reasons for defending the appeal. The report also identified what the Council considered to be the main issues, which were less comprehensive than the reasons for defending the appeal. However as the Council's statement dealt with the more comprehensive reasons I have considered these to be the main issues. These are addressed in greater detail in the 'Main Issues' section at paragraph 6 below.
3. There is a reference in the Council's evidence to a revised proposed layout drawing numbered L17/16 Rev B. There is no plan with this number in the papers before me and the most recent proposed layout drawing is numbered L17/16 Rev A and I have considered this drawing in determining the appeal.
4. There are a number of discrepancies in the application description and plans. First, the address of the appeal site is No 339 rather than 337 Blackgate Lane, although the application refers to the site as both No 337 and more accurately as 'Land Adjacent to 337 Blackgate Lane', and I have adopted this latter description.
5. Drawing no. P56/16 appears to show the chimney on the proposed building's western flank wall and rising above the western gable roughly 2.5 metres behind the ridge line of the roof, whereas the proposed front and rear elevations appear to show the chimney to be located in the centre of the eastern elevation. Internal layout on drawing no. 56/16 shows the line of the chimney stack as being on the western flank and to the rear of the roof ridgeline. Finally, drawing no. P56/16 shows three evenly-spaced dormer windows to the rear roof-pitch with a single

roof-light window between the first and second dormer and a further single roof-light between the second and third dormer. However, drawing no. 56/16 appears to show three roof-lights to the rear roof pitch, one on the outer edge of both the first and third dormers and one between the middle and westernmost of the outer dormers. The significant number of discrepancies between the proposed elevations and the internal layout can be resolved by assuming that the internal layout in drawings 56/16 shows the correct location of the chimney and roof-lights, which also addresses problems in drawing P56/16 showing these items in different locations that are contradicted within the drawing itself and I have considered the appeal on that basis.

Main Issues

6. The main issues are:

- (1) whether the proposed development would provide a suitable site for housing, having regard to flood risk;
- (2) (a) whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and Development Plan Policy; and
(b) the effect of the proposal on the openness of the Green Belt, and on the character and appearance of the area;
- (3) whether the proposal would result in the unacceptable loss of an active rural employment site;
- (4) the effect of the proposed development on the living conditions of the occupiers of the neighbouring property at No. 337 Blackgate Lane with particular reference to outlook; and
- (5) whether the proposal would result in an isolated new development in the countryside.

Reasons

Flood Risk

7. The appeal site is in Flood Risk Zone 3 and the appellant provided a Flood Risk Assessment (FRA) that concluded the development would be suitable, subject to appropriate mitigation measures being introduced and maintained. However, the Environment Agency informed the Council that the FRA was not adequate to address the conditions in the Flood Zone. It appears that this information was not passed to the appellant until after the appeal was submitted.
8. The Environment Agency stated that its objections could be overcome by the submission of an acceptable FRA and revised drawings showing Ordnance Data which demonstrated the suitability of the site. Any further report and drawings would necessarily have to be considered and approved before development could commence. However, any FRA would also have to demonstrate that the Sequential Test is satisfied and, if necessary, the Exception Test.
9. The Environment Agency also raised a concern about the proposals for foul and surface water drainage given the flood risk for the area. The proposal for foul water disposal did not include connection to the foul sewer, despite the area being served by a public sewer. The Environment Agency again stated that its

objections could be overcome by the submission of an acceptable proposal to be approved before development commences.

10. Until it can be determined that appropriate mitigation measures can be implemented the proposed development would be at an unquantifiable and therefore unacceptable risk from flooding and pose a similar risk of contamination of the area and water courses from the escape of foul sewage. I have had regard to paragraph 101 of the National Planning Policy Framework (the Framework) which advises that development should not be permitted if there are reasonably available sites for the proposed development in areas with a lower probability of flooding. Therefore, satisfaction of the sequential test is a prerequisite of planning permission and unless and until it is satisfied the principle of development cannot be determined. Therefore, the scheme does not accord with Policies GN3 and GN5 of the Local Plan, which seek to ensure that developments do not pose unacceptable flood risk and drainage problems.

Inappropriate Development

11. Blackgate Lane is a long, semi-rural road bisected by the A565 Primary Route. The western portion of the road (the Lane) is approximately half a mile long and sits to the south of the A565 and ends close to the open countryside. The Lane road is wholly within the Green Belt and sits outside the settlement boundary for the village of Tarleton. Close to the junction with the A565 sits a large horticultural distribution business whose site is split and located on both sides of the Lane. The majority of development on the Lane sits on the southern side of the carriageway, though there are a few houses on the northern side at the far end. The appeal site is roughly halfway along the Lane. There are further houses to the west and to the south there is a significant area of land given over to greenhouses. East of the appeal site is a large field apparently used as a paddock and additional dwellings, warehouses and greenhouses. North of the site is a relatively narrow open area of land that sits between the Lane and the A565.
12. The appeal site comprises a large and untidy corrugated shed with gable ends facing north and south, occupying a small plot of land similar in size to the neighbouring plot at No. 337 that sits immediately to its east. The ground consists of a tarmac and concrete hardstanding, though this is in a poor state of repair. The northern boundary is delineated by a small wall topped with six approximately one-metre high close boarded fence panels sitting between approximately 1.8 metre high concrete fence posts. There is also a one metre or so high double gate in the middle of the fence. The eastern boundary comprises a low fence of close boarded panels topped with an arched wooden mesh, and to the west and south the boundary is marked by a high hedge.
13. To the west of the site lies a narrow road giving access to No. 341 and to the greenhouses south of the site. The shed was formerly used for storage in connection with a central heating business based in Preston and there are some smaller timber buildings to the rear. There is no evidence before me of any previous agricultural or forestry use.
14. Paragraph 80 of the National Planning Policy Framework (the Framework) identifies five purposes that Green Belt land serves, including assisting in safeguarding the countryside from encroachment. Paragraph 87 of the Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There are exceptions to this general restriction and paragraph 89

provides, amongst other things, that the construction of new buildings should not be considered inappropriate development in the Green Belt if it comprises limited infilling or the partial or complete redevelopment of previously developed land (brownfield land), whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

15. The appeal site is not currently in use for commercial storage and therefore constitutes a redundant brownfield site. The proposal is for the complete redevelopment of the site thereby potentially falling within an exception pursuant to paragraph 89 of the Framework subject to the effect on openness and the relevant Green Belt purposes. The Council has identified safeguarding the countryside from encroachment as the relevant purpose.

Openness and Encroachment

16. The visual impact arising from the proposed construction of a dwelling would have an effect on openness. The existing shed has a larger footprint than the proposed structure and while it does not rise to the height of the dwelling at No. 337, its significantly larger bulk creates a visual impression of a more obtrusive building. The roof ridge of the proposed building would rise three metres or so above the line of the existing ridge and the Council calculates that the volume of the proposed building would be approximately 18% larger than the existing building. However, the reduction in the building's footprint is likely to result in a neutral and therefore preserving effect on the openness of the Green Belt. As the site is already developed and already occupied by a building not used for agriculture or forestry, the proposal would not result in encroachment into the countryside.
17. Because the scheme would preserve the openness of the Green Belt and would not conflict with the purposes of Green Belt policy while redeveloping previously developed brownfield land, I conclude that the proposal would not be inappropriate development. Because the proposal would not be inappropriate development there is no requirement to show very special circumstances exist that could permit the development to proceed.

Character and Appearance

18. The area surrounding the appeal site is a largely rural in character as the business premises are predominantly concerned with horticulture. However, these buildings are interspersed with some apparently industrial premises, such as the appeal site, together with a number of dwellings. The mixture of dwellings, industrial and agricultural premises of different scale and design gives the area an eclectic character and appearance.
19. The shed has a bland, industrial character that detracts from the appearance of the locality and the dwellings either side. The poorly maintained building and hardstanding currently detract from the appearance of the area and the proposed building and the attendant landscaping together represent an opportunity to enhance this appearance.
20. The proposed building would be constructed with a similar orientation to neighbouring properties and I consider that the design, scale and relationship to those other properties satisfy the requirements of the Council's Design Guide Supplementary Planning Document 2008 (the SPD). Given the eclectic nature of

buildings in the locality the proposed building would respect the overall landscape character of the area.

21. Therefore I consider that the proposed development would preserve and enhance the character and appearance of the area and would accord with Policies GN1, GN3 and SP1 of the West Lancashire Local Plan 2013 (the Local Plan) and the guidance in the SPD, which together seek to ensure that development in the Green Belt complies with national policy and protects the character and appearance of the area.

Rural Employment Site

22. The existing building was used as a storage facility in connection with a central heating business in Preston. It appears that no person was actively employed at the site and it is currently in use for the storage of a motor vehicle. The Council's description of the site as an active employment site therefore appears to be incorrect. However, the site is apparently designated for commercial and industrial storage under Use Class B8 of the Town and Country Planning (Use Classes) (Order) 1987 and the proposed development would remove that use.
23. The site is small and the current designation as a storage unit is not a Use Class likely to be difficult to locate elsewhere. Other industrial uses could adversely impact on the living conditions of the occupiers of neighbouring dwellings and therefore the scope for commercial or industrial use of the site is likely to be very limited. The building and the site are in a poor state of repair. While the site could be renovated, the use merely as a storage facility is unlikely to make that a commercially viable option, especially given that the associated business is located some distance away in Preston.
24. Given its condition and current use effectively as a garage, coupled with the likelihood that the scale of the building would not provide any realistic opportunity for on-site store-keeping employment I conclude that the site's continued use for commercial purposes is not viable. Therefore, the change of use of the site from commercial storage to residential use would accord with Policies EC1, EC2 and GN4 of the Local Plan, which together seek to ensure that changes of use from employment sites occur only where employment use is no longer viable.

Living Conditions

25. The western flank of the building at No. 337 has two windows serving habitable rooms and these are approximately ten metres from the eastern elevation of the existing building at the appeal site. The proposed building would be erected closer to the boundary and would be approximately five metres from the western flank of No. 337. The eastern wall of the proposed development would be a large brick gable with one door at ground level and one small window serving an *en suite* bathroom four metres or so above ground level. The proposed building would sit slightly north of its neighbour so the southernmost window in the flank wall at No. 337 would look out over the rear of the appeal site. However, the northernmost of the flank windows would look out onto the gable end of the proposed building, albeit more closely aligned with the eaves and roughly opposite the door and window.
26. The appellant states that a two-metre high fence could be erected on the boundary between No. 337 and appeal site under permitted development rights and this would have a greater negative impact on the outlook from the former's

west facing windows. While the gable-end would be significantly taller than such a fence, it would also be three metres or so further away. The proposal would have an impact on the outlook from No. 337 but because of the distance between the proposed gable and the west flank at No. 337 the impact would be marginal and on balance I consider it more likely to have a neutral rather than negative effect. Therefore, I conclude that the proposal would accord with Policy GN3 of the Local Plan, which seeks to ensure that developments do not have any unacceptable adverse impact on the living conditions of the occupiers of neighbouring dwellings.

Isolated Location

27. The Council asserts that the appeal site is in an isolated location for the purposes of paragraph 55 of the Framework, which provides that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances.
28. The parties were invited to comment on a recent Court decision¹ that clarified the meaning of isolated dwellings and I have taken those comments into account. For the purposes of paragraph 55 of the Framework the word 'isolated' should be given its ordinary, objective meaning 'far away from other places, buildings or people; remote'².
29. There are other dwellings and buildings close to the appeal site and therefore it cannot be characterised as isolated and there is no requirement to show special circumstances for the purposes of paragraph 55 of the Framework.

Planning Balance

30. I have found the proposal would not be not inappropriate development in the Green Belt and would preserve and enhance the character of the area, and that development of the appeal site would not result in the loss of a viable employment site. In terms of the impact on the outlook from No. 337 although the effect is marginal I have concluded it is likely to be neutral rather than negative. However, the need to provide a satisfactory FRA and demonstrate that the sequential test and, if necessary, the exception test are met as well as an appropriate scheme for foul and surface water disposal are fundamental prerequisites for the consideration of a planning application. The absence of these assessments significantly outweighs the positive and neutral factors in favour of the proposal, as well as rendering the proposal not in accordance with the development plan and the advice in paragraph 101 of the Framework.

Conclusion

31. For the reasons given above, and taking into account all other matters, I therefore conclude that the appeal should be dismissed and planning permission be refused.

D Guiver

INSPECTOR

¹ Braintree District Council v. Secretary of State for Communities and Local Government, Greyread Limited and Granville Developments Limited [2017] EWHC 2743 (Admin)

² Ibid at paragraph 24