



Appeal Decision

Site visit made on 28 May 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2019

Appeal Ref: APP/J3015/W/19/3222868

Land North West of Hall Gardens, Moss Drive, Bramcote, Nottingham NG9 3NF

- 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 Crampin, Barden, Scott against the decision of Broxtowe Borough Council.
 - The application Ref 17/00867/FUL, dated 19 December 2017, was refused by notice dated 15 August 2018.
 - The development proposed is the development of five apartments in a single block, incorporating three floors over a semi-basement parking level.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision pre-dates the updated National Planning Policy Framework (the Framework) (2019). However, no material changes have been made to the policies relevant to this decision.
3. Evidence submitted by the parties includes reference to the emerging Broxtowe Borough Council Part 2 Local Plan (P2LP). At the time of writing, the P2LP has been submitted for examination. I have been made aware that the Council has undertaken a review of the Green Belt which concluded that the appeal site should remain within the Green Belt. The appellant has provided a copy of representations seeking removal of the appeal site from the Green Belt. Any alterations to the Green Belt are a matter for the examination process. The Council's delegated report confirms that the Mature Landscape Area (MLA) is not proposed to be carried forward in the P2LP. In respect of both matters, I am not aware of the extent of any unresolved objections or modifications required. Given the stage of the examination process, I can only attach limited weight to the draft policies of the P2LP and I have considered the proposal against the policies of the adopted Development Plan in force and the Framework.

Main Issues

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

- (ii) The effect on the openness of the Green Belt.
- (iii) The effect of the proposal on biodiversity.
- (iv) Whether the proposed development would preserve or enhance the character or appearance of the Bramcote Conservation Area and preserve the setting of listed buildings.
- (v) The effect of the proposal on the character and appearance of the locally designated landscape.
- (vi) If the proposal is 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 the development.

Reasons

Whether inappropriate development in the Green Belt and the effect on openness

5. Policy 3 of the Broxtowe Borough Aligned Core Strategy Part 1 Local Plan (2014) (the ACS) states that the Nottingham Derby Green Belt will be retained and that Green Belt boundaries will be reviewed as part of the P2LP. Consequently, in terms of the current adopted policies the site is located within the Green Belt. I have dealt with the status of the P2LP and the status of the site's Green Belt location under the Procedural Matters above.
6. I concur with the appellant that the site is not a remote one; however, the remoteness or otherwise of a site is not a relevant consideration in terms of the 5 purposes of the Green Belt set out in the Framework. Indeed, the Framework also contemplates that settlements can be 'washed over' by Green Belt designations.
7. The site was previously part of the grounds serving Bramcote Hall and forms part of an extensive wooded area. The evidence before me suggests the Hall was demolished in the 1960's and was not positioned within the appeal site. The proposal would not therefore be a replacement building. The Framework states that the construction of new buildings within the Green Belt should be regarded as inappropriate development other than where it falls under any of the exceptions set out at paragraphs 145 and 146 of the Framework.
8. Paragraph 133 of the Framework sets out the essential characteristics of Green Belts, which are their openness and permanence. It has been held in the Courts that openness is epitomised by the lack of buildings or development and thus both the spatial and visual implications of developments are relevant to a consideration of their openness effects. Openness is a separate issue from the effect of a development on the character and appearance of an area.
9. I have had regard to the Court judgement¹ drawn to my attention by the appellant and their suggestion that more visible development in the Green Belt should be deemed more harmful than that which is less or not visible. Visual impact is part of the assessment of the impact of the proposal on openness of the Green Belt and the relatively secluded woodland setting and utilisation of the contours of the site are acknowledged. However, the proposal is quite substantial and so although less visible in longer views, it would nevertheless

¹ Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

be visible. In any case, reduced visibility does not in itself mean that there has not been a loss of openness in Green Belt terms. The substantial footprint, height and volume of the building as well as the access road, areas of hardstanding and other engineering works proposed would all cumulatively erode the openness of the appeal site. Taken together, these aspects of the proposed development would result in a permanent and substantial depletion of the appeal site's openness.

10. Consequently, were I to accept the appellant's argument that the appeal site is previously developed land for the purposes of the Framework, only very limited remnants of development are currently visible on a site that is very well-vegetated and, on the whole, free from built development. Consequently, the proposed development's effects on openness, both visually and spatially, would be considerably more marked than the elements that currently exist on site and this leads me to the view that the proposed development would not therefore benefit from the exception given in paragraph 145 (g) of the Framework.
11. There is existing residential development adjacent to the appeal site at The Lawns and to the south on Town Street. There is also a covered reservoir to the north. Nevertheless, due to its overall size and its extensively wooded nature, the appeal site constitutes a considerable gap between these buildings. Moreover, a considerable amount of space would remain between the proposed building and the nearest adjacent dwellings. The appeal site does not therefore display the characteristics of an infill site and due to its bulk, width, height and related access and hardstanding areas the proposed development could not accurately be described as limited.
12. As none of the Framework exceptions are met, these considerations lead me to the conclusion that the appeal scheme would be inappropriate development and, by definition, would be harmful to the Green Belt. Furthermore, the development would not preserve the openness of the Green Belt and would conflict with the purposes of including land within it. The development would therefore conflict with Policy E8 of the Broxtowe Local Plan (2004) (the Local Plan), which, whilst pre-dating the Framework is consistent with it insofar as it seeks to restrict inappropriate development within the Green Belt and preserve its openness. The Framework makes it clear that inappropriate development should not be approved except in very special circumstances.

Biodiversity

13. Part of the site is located within the Bluebell Wood Local Wildlife Site (LWS). An updated Preliminary Ecological Appraisal (PEA) accompanied the application and a further Bat Survey (dated April 2019) has been submitted with this appeal. I note the Council's concerns that the latest bat survey results cannot guarantee bats will not roost in the inspected features in the future and that the presence or absence of a bat roost within the tree identified as T6 in the survey could not be confidently established. Equally, I acknowledge the appellant's response that no survey can be completely conclusive whether a feature has ever been used by a bat and that disclaimers in the survey are there to protect ecologists and reiterate continued legal duties beyond any planning decision. The appellant has also confirmed that, if necessary, no trees need to be removed for the proposed development to proceed.

14. Given the latest survey work indicates that there would be little or no risk to bat roosts and that a condition could be attached for a method statement to demonstrate how T6 could be retained as part of the development, I consider that there is sufficient certainty that the development could be implemented without harm to bats. The appellant has confirmed that they would be willing to accept conditions protecting trees during the bird nesting season. I also note that Nottinghamshire Wildlife Trust also supported the other recommendations in the PEA which could be secured by condition in the event that planning permission were to be granted. On this basis, I am satisfied that there would be no harm to protected species and consequently that the ecological value of the site could be suitably protected.
15. There are a number of single and group Tree Preservation Orders on the site. The building would utilise a clearing in the woodland and the Council's Tree Officer is content that any tree removal would only remove those trees that are in poor condition and that overall the development would improve the quality of tree stock on the site. The appellant has also confirmed that they would be accepting of conditions requiring the submission and implementation of mitigation measures to ensure a neutral or positive impact.
16. I am therefore content that the proposal would not conflict with Policy 17 of the ACS which amongst other things seeks to protect biodiversity interest and supports appropriate management and maintenance of existing habitats through the use of planning conditions.

Conservation Area and Listed Buildings

17. The site is situated within the Bramcote Conservation Area (CA). The appeal site is an important contributor to the character and appearance of the Conservation Area, the significance of which derives to some degree from the relationship of its constituent buildings to the historic street pattern, and wider landscape. I also note the findings of the Bramcote Conservation Area Character Appraisal (CAA), which identify the extensively wooded grounds of the former Bramcote Hall and the sense of enclosure that it provides as being part of the special character of the CA. On the basis of my observations, I concur with this assessment. Similarly, the overall leafiness of the appeal site forms part of the wider landscape setting of the Grade II Listed Buildings at Southfield House along with its associated stables and coach house and at the Tower of the Church of St Michael, and contributes albeit to a limited degree to their significance as high-status buildings within the settlement.
18. The appellant's Landscape and Visual Impact Assessment (LVIA) anticipates that any views of the development would be likely to be from The Lawns residences and garden, upper floor windows at Bramcote House Nursing Home and from views from the southern access gate to the site and upper storey windows of Harley House along the south west arm of Town Street. These private views would still be in the context of the CA. However, whilst this suggests glimpses of the development would be available, appreciation of the building within the CA would be considerably reduced by the surrounding woodland. The sense of enclosure the woodland currently provides, would remain largely intact and moreover considerable intervening distance would be achieved between the proposed building and the Grade II Listed structures I have mentioned.

19. Consequently, mindful of the duties imposed by ss.72(1) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude on this main issue that the character and appearance of the Conservation Area, and the setting of the Listed Buildings would be preserved. For these reasons too, the proposed development would not conflict with Policy 11 (The Historic Environment) of the ACS, which amongst other things requires that the settings of heritage assets are conserved and/or enhanced in line with their interest and significance.

Locally designated landscape

20. The site sits within the 'Burnt Hill' Prominent Area for Special Protection (PASP). Part of the northern section of the site also sits within a Mature Landscape Area (MLA) although this is limited to a part of the site where no operational development is proposed.
21. The appellant's LVIA assesses that the magnitude of change on the PASP would be negligible with little to no adverse effect. With regards to the MLA the main area of built development would be outside the MLA and the LVIA considers the magnitude of change and significance of effect would be negligible. I have nothing before me in terms of any detailed counter assessment to dispute these conclusions. However, from what I observed on site, I would agree with the conclusions of the LVIA that the appeal site could accommodate the development without material harm to the character and appearance of the landscape. The impact of the proposal on these landscape designations would be largely mitigated by the siting of the proposal in a clearing within woodland which would largely remain intact, with only those trees in poor condition being removed, and the design of the development which seeks to minimise the height of the building through its contemporary design utilising the contours of the site.
22. On the basis of the above, the proposal is of a siting, scale and design that would ensure that any harm to the MLA would be minimised to the point that any residual harm on the MLA would be hardly discernible and the proposal would not adversely affect the character or appearance of the PASP. For these reasons I therefore find the proposal would be in general conformity with Saved Policies E13 and E14.

Other considerations

23. The Council acknowledges that it has a shortfall in terms of being able to demonstrate a 5-year housing land supply and I also note the evidence that the appellant has drawn to my attention in these regards². In the circumstances the development plan is not up-to-date and paragraph 11d of the Framework is engaged. Permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The policies referred to include those relating to Green Belts.
24. Moreover, my attention has also been drawn to the Written Ministerial Statement of December 2015 which made clear that most development in the

² (1) Extract titled 'A Better Defence Estate' 28th February 2019 (2) Draft Part 2 Local Plan Extracts – Map 7 Chetwynd Barracks, Policy 3.1 Chetwynd Barracks and Table 4 Housing Trajectory (3) Broxtowe Borough Council Strategic Housing Land Availability Assessment (SHLAA) 2017/18 'Conclusion' (4) Representations to Draft Part 2 Local Plan

Green Belt is inappropriate and unmet need is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

25. The appellant contends that the P2LP will not be adopted soon and a major site at Chilwell (Chetwynd) Barracks has been delayed by several years. Consequently, they argue the shortfall in housing will still remain and that this represents very special circumstances. I also note the third-party comments suggesting the development would add to the housing mix in the area. The proposal would therefore make a relatively small but important contribution towards meeting the Council's housing requirements. A minor economic benefit would be generated through the development of the site and expenditure in local services by any future occupants. There would also be a modest social contribution if occupants were to use local facilities.
26. I note the appellant's intention to create permissive footpaths through site and the Unilateral Undertaking submitted with the appeal to enable this to be secured. My attention has also been drawn to an unconnected application for a permissive path currently being considered by Nottinghamshire County Council on the basis that it was previously available to members of the public for many years. Regardless of whether or not a permissive path may be adopted by other means, if it were to come forward as part of the scheme before me, this would assist the Council in planning positively to enhance the beneficial use of the Green Belt and exploring opportunities to provide access as referred to in Paragraph 141 of the Framework.
27. The appellant also considers the site to be wasteland with a host of related problems. Whilst I note the photographic evidence provided to illustrate anti-social behaviour issues, I have no substantive evidence before me to suggest that the proposed development is necessary to address these matters. However, public benefit would result from improved management of the woodland, the provision of permissive footpaths through the site and increased surveillance of the woodland.
28. A draft statement of common ground, produced by the appellant, but not signed by the Council picks up on some of these points. Overall, and taken together, I attach moderate weight to these clear benefits of the proposal.
29. My attention has been drawn to potential allocations for development currently in the Green Belt that whilst having the potential to deliver more dwellings would come at greater cost to openness according to the appellant. I am not aware of the full detail of these sites, and they would in any event have to be considered as part of the examination process for the P2LP. Moreover, I am unaware of any unresolved objections to the potential allocations. For these reasons these potential allocations do not weigh materially in favour of the proposal before me.
30. The appellant has highlighted the fact that the development has not been refused on the grounds of its design and that no harm has been identified in terms of the relationship of the proposal with neighbouring living conditions or highway safety. This only serves to demonstrate that the development would meet the expected requirements of other aspects of national and local planning policy rather than any added benefit to be considered. They thus weigh neither for nor against the proposal in the overall balance.

Planning Balance and Conclusion

31. The Framework states that inappropriate development is by definition harmful to the Green Belt and should only be approved in very special circumstances. Moreover, I have found that the proposal would be harmful to the openness of the Green Belt. 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. This is a high hurdle for a development proposal to overcome.
32. The development constitutes inappropriate development in the Green Belt. It is by definition harmful to the Green Belt. Moreover, the openness of the appeal site would be substantially and permanently depleted. This Green Belt harm is a matter to which I accord substantial weight in decision making terms in line with Paragraph 143 of the Framework.
33. I have found there would be no material harm to biodiversity, heritage assets or landscape. However, a lack of harm does not equate to these matters being a benefit, and accordingly these matters have only a neutral effect on the overall planning balance.
34. For the reasons set out above, I have found that other considerations advanced in favour of the proposal would carry moderate weight in its favour. In conclusion and on balance, the substantial weight to be given to Green Belt harm is not clearly outweighed by these other considerations and therefore the very special circumstances needed to justify the proposed development do not exist.
35. Consequently, the proposed development would conflict with the Framework insofar as, amongst other things, it seeks to ensure that Green Belts keep land permanently open, and this provides a clear reason for refusing the development proposed in line with paragraph 11(d) (i) of the Framework. For these reasons too, no considerations have been advanced that would justify a decision other than in accordance with the development plan, with which in terms of Policy E8 of the Local Plan the appeal scheme would clearly conflict.
36. For the reasons given the overall conclusion is therefore that the appeal should be dismissed.

Martin Russell

INSPECTOR