

Appeal Decision

Site visit made on 22 July 2019

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2019

Appeal Ref: APP/J1915/W/19/3225648

Home Farm, Brickendon Bury, Brickendon, Hertfordshire SG13 8NP

- 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 Owl Flooring against the decision of East Hertfordshire District Council.
 - The application Ref 3/18/2289/FUL, dated 9 October 2018, was refused by notice dated 17 December 2018.
 - The development proposed is the redevelopment of an existing commercial office and storage unit (Class B1/B2) and replacement with a single dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of an existing commercial office and storage unit (Class B1/B2) and replacement with a single dwelling in accordance with the terms of the application Ref 3/18/2289/FUL, dated 9 October 2018, subject to the 12 conditions in the attached Schedule.

Procedural Matters

2. The National Planning Policy Framework (the Framework) was amended after the Council refused the appeal application. I have taken the amended Framework into account as a material planning consideration as part of the determination of this appeal.
3. The appellant has submitted amended plans as part of this appeal. These plans do not propose any alterations to the proposed dwelling, but they do include a reduced car parking area and reduced garden space. The amendments are minor and I am satisfied that there would not be any significant prejudice to any of the interested parties from a public consultation point of view by determining the appeal on the basis of such amended plans. I have therefore proceeded on this basis.
4. There is a lack of clarity between the parties in terms of the lawful use of the existing building, though they do agree that there it was originally built with the intention of being used as a stable. I note the references to the various uses of the building over the years, including the appellant's declaration, but a Section 78 planning appeal like this is not an appropriate mechanism for determining the lawful use of a building. This is a matter that should be considered by means of the submission of an application for a certificate of

lawful development and, if that were to be refused, the subject of an associated appeal.

5. In any event, the lawful use of the building is not a determinative matter here. There is no dispute between the main parties that from an operational development point of view the building is lawful, that the site comprises previously developed land (PDL) and that the proposal would not amount to the replacement of a building in the same use. I have therefore determined the appeal on this basis and it has not been necessary for me to consider the lawful use of the building any further.

Main issue

6. The appeal site is in the Green Belt and so the main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt; and
 - 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 development.

Reasons

7. The appeal site includes a small, single storey brick building located within land designated as Green Belt and in close proximity to a mixed business and residential development based on the historic estate of Brickendon Bury, a grade II listed country house. The proposal is to demolish the appeal building and to replace it with a studio dwelling including a single bed mezzanine sleeping area.

Whether inappropriate development

8. The adopted East Herts District Plan 2018 (DP) Policy GBR1 states that planning applications within the Green Belt will be considered in line with the Framework. Paragraph 143 of the Framework advises that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 explains that construction of new buildings should be regarded as inappropriate in the Green Belt, unless one of the listed exceptions applies. These include: (g) the limited infilling or the partial or complete redevelopment of PDL where this would not have a greater impact on the openness of the Green Belt than the existing development. As above, there is no dispute between the parties that the proposed dwelling would be erected on PDL.
9. The key consideration is whether the proposal would have a greater impact on the openness of the Green Belt than the existing situation. The proposed building would be very similar in size, though slightly larger in that part of it would be extended downward into the slope to create enough height for the sleeping deck. In relative terms, this would be a small percentage increase in built volume - not to the extent that I could reasonably conclude that the replacement building would have a greater impact on the openness of the Green Belt.

10. I acknowledge that the amended proposal also includes a car parking space and a small garden. The intermittent parking of one vehicle in a position closely associated to the dwelling would not, however, have a significant impact on the openness of the Green Belt. In this context, I do not consider that this part of the proposal would have a greater impact on the openness of the Green Belt or indeed conflict with any of the 5 purposes of the Green Belt as outlined in paragraph 134 of the Framework. In respect of the garden area, the removal of permitted development rights for the erection of outbuildings and most extensions would ensure that there would be no greater impact on the openness of the Green Belt in this area.
11. For the collective reasons outlined above, I conclude that the proposal would not be inappropriate development in the Green Belt: the development would amount to the redevelopment of PDL and would not have a greater impact on the openness of the Green Belt than the existing development. It would therefore accord with DP Policy GBR1 and would meet exception (g) in paragraph 145 of the Framework. As the proposed development would not be inappropriate in the Green Belt, there is no need to consider the second main issue.

Other matters

12. I have also considered other points raised, including those made by the occupiers of neighbouring properties and the Parish Council. Interested parties assert that the site is not located in an accessible location. The appeal site is located in the countryside, over 1 km from Hertford and there is no safe and easy walking route to the town. Public rights of way to the town can only be reached by walking along parts of the local road which have no footways or lighting. Although I consider that the occupiers of the dwelling may on occasion be able to use a bicycle to access day to day facilities and services in nearby Hertford, the evidence before me suggests that it is very likely that the occupiers of the proposed dwelling would mainly have to rely on a private motor vehicle to reach day to day amenities and services. It is of note, however, that the Council does not raise this matter as a reason for refusal in its decision notice.
13. In the context that the appeal site falls within the countryside, that only one very small dwelling is proposed and that some bicycle use to nearby Hertford may be possible, I do not consider that a refusal of planning permission would be justified in terms of locational accessibility. Indeed, paragraph 102 of the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account in both plan-making and decision-making.
14. The proposed dwelling would not be an isolated home in the countryside because it would be closely aligned to existing buildings and people¹, so the restrictions set out in paragraph 79 of the Framework do not apply. The proposed replacement building has been sympathetically designed to complement the nearby development, which is of a mixed character. Limiting the size of the garden would also help to minimise the impact on local character. The proposed dwelling would be set well away from the nearest

¹ With reference to the judgement in *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610 "...

listed buildings and would not have an adverse impact on their settings. Furthermore, there is no evidence that the proposal would have an adverse impact on the designated area of archaeological significance.

15. I am not aware of any reason why utilities and drainage could not be provided. Safe and acceptable access would be available to the highway and there is no objective evidence before me to indicate that the proposal would have any significant effect on the operation of any nearby commercial enterprise. Finally, although I note that in the past some trees have been removed from the site, the Council has confirmed that such trees were not the subject of a Tree Preservation Order. It has been necessary for me to determine this appeal on the basis of the site conditions that exist now.
16. None of the other matters raised alter or outweigh my conclusion on the main issue or my overall conclusion that planning permission should be granted for the proposed development.

Conditions

17. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary, I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.
18. Planning permission is granted subject to the standard 3 year time limit condition. It is necessary to impose a condition specifying the relevant plans for the avoidance of doubt and in the interests of certainty. Two pre-commencement conditions are exceptionally justified to ensure that adequate attention is paid to the recovery, recycling and proper disposal of materials and to the siting of the construction compound and parking areas. In part this is required to ensure that thought is given to the potential harm to the remaining trees at the site from construction vehicles and storage.
19. Approval of external building materials and hard surfacing plus restrictions on additional vehicular accesses and external lighting are all necessary to protect the rural character and appearance of the area. It is necessary that foul and surface water drainage details are submitted for approval in the interests of public health and the living conditions of the occupiers of the appeal dwelling and surrounding buildings. Conditions regarding garden size and the removal of some permitted development rights are exceptionally needed and justified in order to protect the openness of the Green Belt and the character and appearance of the rural area. Lastly, a condition requiring the laying out of a parking space is needed to ensure adequate car parking, in the interest of highway safety.

Conclusion

20. For the reasons set out above, I conclude that the appeal should succeed.

Les Greenwood

INSPECTOR

[Schedule of conditions follows]

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 18-115-101, amended proposed site plan 18-115-102D, 18-115-103, 18-115-104A, 18-115-105, 18-115-106A and survey plan BBS-BB-EGL-SU-00.
- 3) Prior to the commencement of the development hereby permitted, details shall be submitted to and approved in writing by the Local Planning Authority of the measures to be taken in the design, construction decommissioning and demolition of the development to: re-use existing materials within the new development; recycle waste materials for use on site and off; minimise the amount of waste generated; minimise the pollution potential of unavoidable waste; treat and dispose of the remaining waste in an environmentally acceptable manner; and to utilise secondary aggregates and construction and other materials with a recycled content. These measures shall be implemented in accordance with the approved details.
- 4) Prior to the commencement of the development hereby permitted, plans shall be submitted to and approved in writing by the Local Planning Authority indicating the provision of space within the site to provide for the parking of construction workers' vehicles and for the delivery and storage of materials. Such space shall be maintained for the duration of construction works in accordance with the approved plans.
- 5) Prior to any above ground construction works being commenced as part of the development hereby permitted, a schedule of the external materials of construction for the building and hardsurfacing hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 6) Prior to any above ground construction works being commenced as part of the development hereby permitted, a detailed scheme for foul water and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The dwelling shall not be occupied until this scheme has been implemented in full and the approved drainage facilities shall thereafter be maintained operational.
- 7) Prior to first occupation of the dwelling hereby permitted, facilities for the storage and removal of refuse and recycling from the site shall be provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be maintained thereafter.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015, (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), no works or development as described in Schedule 2, Part 1, Classes A or E of the Order shall be undertaken without the grant of express planning permission.

- 9) The area marked in green as 'retained paddock land' on approved plan 18-115-102D shall be fenced or otherwise physically enclosed from the curtilage of the dwelling hereby permitted in accordance with details first submitted to and approved in writing by the Local Planning Authority and shall not be used as residential garden land or for any other domestic purpose in association with the dwelling hereby permitted.
- 10) No external lighting shall be installed in connection with the development hereby permitted other than in accordance with details first submitted to and approved in writing by the Local Planning Authority.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), no vehicular access shall be formed into the site other than as shown on the approved plan 18-115-102D, unless otherwise agreed in writing by the Local Planning Authority.
- 12) Prior to first occupation of the dwelling hereby permitted, one off-street car parking space with a minimum dimension of 2.4m by 4.8m shall be provided in accordance with the details shown on approved plan 18-115-102D. Arrangements shall be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge into the highway. The approved space shall thereafter be maintained available for the parking of vehicles.