

Appeal Decision

Site visit made on 5 September 2019

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 02 October 2019

Appeal Ref: APP/J1915/W/19/3230243

**Land adjacent to The Chestnuts, Redricks Lane, Sawbridgeworth,
Hertfordshire CM21 0RL**

- 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 John Gilligan against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/0406/FUL, dated 5 March 2019, was refused by notice dated 8 May 2019.
 - The development proposed is demolition of a swimming pool enclosure, erection of a bungalow and the creation of a new access.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of a swimming pool enclosure, erection of a bungalow and the creation of a new access at Land adjacent to The Chestnuts, Redricks Lane, Sawbridgeworth, Hertfordshire CM21 0RL in accordance with the terms of the application, Ref 3/19/0406/FUL, dated 5 March 2019, subject to the attached Schedule of Conditions.

Procedural Matter

2. I note that the description of development is different on the application form, appeal form and decision notice. I have taken the description of development from the application form in the interests of certainty.

Main Issues

3. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (Framework); and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Inappropriateness

4. New buildings in the Green Belt are inappropriate development unless they fall in one or more of the exceptions given in paragraph 145 of the Framework, one of which is limited infilling in villages.
5. The appeal site lies adjacent to a dwelling to the west known as The Chestnuts within a cluster of houses along Redricks Lane. The adjacent property to the east is known as Alston Oaks which is accessed from the adjacent highway and is a large two storey detached dwelling in extensive grounds. I acknowledge that the settlement boundary does not extend south of Redricks Lane and therefore does not include the appeal site. However, given the proximity of the appeal site to nearby dwellings, and having had regard to the appeal case¹ and Court of Appeal judgment² referred to by the appellant, I consider that in assessing built form on the ground, the appeal site forms part of the built-up area.
6. There is no definition of infilling in the East Herts District Plan October 2018 (DP) or the Framework. I note the comments of the Council and the Inspector for an appeal case relating to Alston Oaks³ regarding the definition of infilling. While the spacing between the dwellings in the group of houses along the south side of Redricks Lane is generous, the separation distance between them is such that these dwellings are visually seen as part of a cluster along the road. Therefore, given the proximity to nearby buildings and the location of the site adjacent to the highway amongst a group of dwellings, the proposed development could be considered as limited infilling and can be treated within the exceptions identified in paragraph 145 of the Framework.
7. The Inspector for the case at Alston Oaks considered that there would have been a significant gap between that proposed development and the first house within the cluster. However, the site subject of this appeal lies adjacent to Alston Oaks and closer to the host building of The Chestnuts, such that the gap between the proposal and Alston Oaks would be less than half the distance referred to by the previous Inspector. Therefore, that appeal is not directly comparable to the proposed development. In any event, each case must be determined on its own merits.
8. Consequently, the proposal would not be inappropriate development in the Green Belt having regard to the Framework as it would represent limited infilling in a village. It would not conflict with DP Policy GBR1 which relates to the Green Belt or the Framework in this respect.
9. Since the proposal constitutes limited infilling in a village, a consideration of openness is not necessary in the context of the Green Belt. The Council has also expressed a concern about visual amenity and the proposed footprint of the dwelling compared with the swimming pool enclosure but as this seems to be related to openness that too need not be considered.

¹ Appeal ref: APP/T2350/W/16/3164118

² Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

³ Appeal ref: APP/J1915/W/18/3194317

Character and appearance

10. The appeal site lies within the boundary of The Chestnuts along the south side of Redricks Lane and is part of a small cluster of detached dwellings with generous spacing and countryside beyond. The boundary between the properties at The Chestnuts and the adjacent Alston Oaks with the highway consists of a tall brick wall and timber fence with tall trees immediately behind. The north side of the highway is characterised by single storey detached dwellings with closer spacing such that the character and appearance of this side is less rural. Consequently, given the moderate size of the front gardens on the north side of the highway, and the tall trees in the vicinity of the appeal site as well as the small cluster of houses with open countryside beyond, the area nevertheless has a pleasant semi-rural character and appearance.
11. The proposal would introduce a single storey dwelling to an area that is currently part of the side garden of The Chestnuts. While the proposed dwelling would reduce the gap between The Chestnuts and Alston Oaks, there would still be a reasonable separation distance between the buildings such that the semi-rural aspect would be preserved. The proposed single storey building would be set back from the road along a similar building line to The Chestnuts and would have a modest height such that the proposal would not adversely affect the semi-rural character and appearance of the area and street scene particularly given the existing tall boundary treatment along Redricks Lane.
12. Moreover, the existing swimming pool enclosure is substantial in size and given its materials, is not in keeping with the character and appearance of the area. Given the location of the swimming pool enclosure near to the rear boundary of The Chestnuts with open countryside, and its substantial footprint and height, its demolition would increase the sense of spaciousness at the rear of the site closer to open countryside, providing an improvement to the character and appearance of the area.
13. The proposal would result in an increase in the amount of hardstanding on the site and would introduce an opening in the brick wall. However, given the other driveways and vehicular accesses in the area, the proposal would not be incongruous in this respect. Since the proposal would introduce a three-bedroom dwelling on the site, it is likely that the scheme would result in some increase in domestic paraphernalia. However, since the site lies in close proximity to other residential dwellings, the proposal would not have a significant urbanising effect on the character and appearance of the area.
14. The Council has not objected to the design including proposed materials of the proposed development and from the evidence before me I see no reason to disagree. I note the Council's reference to the proposed scheme resulting in pressure to remove trees. However, having had regard to the arboricultural report⁴, there is little evidence before me to substantiate this risk.
15. Consequently, the proposed development would not conflict with DP Policy DES4 which seeks development that respects or improves upon the character of the site and the surrounding area. It would also accord with paragraph 127 of the Framework in this respect.

⁴ OMC Associates - BS 5837 Arboricultural Impacts Assessment

Other Matters

16. I acknowledge concerns that the proposal would set a precedent for future development. However, each case must be determined on its individual merits.
17. I also note concerns relating to the lawfulness of the use of outbuildings on the site, construction of an access and felling of trees on the site. I have also had regard to comments regarding the advertisement of the planning application. However, these are matters for the Council in the first instance and have not altered my overall decision.
18. Evidence has been put before me relating to permitted development rights for the existing vehicular access, however, this has little bearing on my overall decision.

Conditions

19. I have considered the conditions suggested by the Council. I have made some minor changes to these having regard to the tests set out in paragraph 55 of the Framework and the guidance contained in the Planning Practice Guidance.
20. I have attached a condition relating to time limits and a condition specifying the relevant plans as this provides certainty. Conditions relating to external materials, boundary treatment and landscaping are necessary to safeguard the character and appearance of the area. The condition relating to landscaping needs to be pre-commencement as it is likely to affect the early stages of construction.
21. The conditions relating to the access arrangement, the parking and manoeuvring areas and surface drainage are necessary to safeguard highway safety.
22. The condition requiring the demolition of the swimming pool building prior to commencement of development is necessary to safeguard the character and appearance of the area and needs to be pre-commencement in the interests of certainty of the overall proposal. A condition relating to construction hours is also necessary to safeguard the living conditions of neighbouring occupiers.
23. In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, the appellant has confirmed that they have no objection to the suggested pre-commencement conditions.

Conclusion

24. For the reasons given above the appeal should be allowed.

R Sabu

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no 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: JG/01Rev1, JG/02 and JG/03.
- 3) No development above ground shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to the first occupation or use of the development hereby approved, details of all boundary walls, fences or other means of enclosure to be erected shall be submitted to and approved in writing by the local planning authority, and thereafter the development should be implemented in accordance with the approved details.
- 5) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees 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.
- 7) Before first occupation of the approved development, the access arrangement, including visibility splays onto Redricks Lane, shall be completed in accordance with the approved in principle plan JG/01Rev1 and constructed to the specification of the Highway Authority and retained as such thereafter.
- 8) The dwelling hereby permitted shall not be occupied until the parking spaces and vehicle manoeuvring areas clear of the highway illustrated on drawing number JG/01Rev1 have been constructed.
- 9) The building shall not be occupied until the area shown for parking and vehicular access on drawing no. JG/01Rev1 has been drained and surfaced in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and that area shall thereafter be kept available at all times for the parking of vehicles.
- 10) All structures and buildings identified for demolition in the approved plans shall be demolished prior to commencement of the proposed dwelling.
- 11) Demolition or construction works shall take place only between 0730 and 1830 on Mondays to Fridays, between 0730 and 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.