



Appeal Decision

Site visit made on 11 November 2019

by J Hunter BA (Hons) Msc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2020

Appeal Ref: APP/N1025/W/19/3236297

Land at Cole Lane, Ockbrook DE72 3RD

- 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 Green 4 Developments against the decision of Erewash Borough Council.
 - The application Ref ERE/0218/0061, dated 27 February 2018, was refused by notice dated 8 March 2019.
 - The development proposed is the erection of one detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt;
 - the effect upon the openness of the Green Belt and the purposes of including land within it;
 - the effect of the proposal upon the character and appearance of the area;
 - the effect of the proposal on protected species;
 - the effect of the proposal on the living conditions of the occupiers of no 7 Cole Lane with particular reference to outlook and daylight; 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

Site and Surroundings

3. The appeal site lies to the south of No. 7 Cole Lane and is an undeveloped, overgrown parcel of land bounded by a number of trees. To the south of the site there is an unmade access, a small watercourse and a further area of open land. The main parties agree that the site sits within the Green Belt.

4. It is proposed to erect a detached dwelling with an attached single storey garage and new driveway off Cole Lane.

Whether or not the proposed development would represent inappropriate development in the Green Belt

5. Paragraph 145 of the National Planning Policy Framework (the Framework) states that the construction of new buildings should be regarded as inappropriate in the Green Belt. However, there are exceptions to this, including "*limited infilling within villages.*" The Council state that the appeal site is outside of the village settlement as defined by saved Policy H3 of the Erewash Borough Local Plan 2005 (LP). Whilst I have been provided with the wording of Policy H3 I have not been provided with the proposals map. Nevertheless, I would concur with the appellant's submission that the site is visually and functionally within the built form of the village and is thereby part of the settlement.
6. Even though I concur that the site is within the village, I do not consider that the proposal would constitute infilling. Infilling is not defined in the Framework and hence it remains a matter for the decision maker. Saved Policy GB2 (2) of the LP requires that development within settlements in the Green Belt meet a range of criteria including "*either consolidation within the existing built up framework without intruding into the open countryside or the infilling of a small gap in an otherwise substantially built up frontage.*" In this case, the land immediately to the south of the appeal site includes an access track, a watercourse and another area of open land before the built form begins. I consider that these elements are read as one and therefore the total gap is approximately 30 metres which I would not consider to be small.
7. Furthermore, I do not consider that the frontage along this side of Cole Lane is substantially built up. The appeal site sits at the southern end of a row of 4 properties, to the south, there is a gap of approximately 30 metres which includes the appeal site, to the north, there is a further gap of around 40 metres before All Saints Church and then a further gap of around 25 metres before residential development commences. Whilst I do appreciate that the cemetery surrounding All Saints Church is part of the Church plot, it is essentially open land and punctuates the built form, as does the gap which contains the appeal site. Hence, when taken as a whole the proposal would not amount to the infilling of a small gap within a substantially built up frontage.
8. For the reasons outlined above, I therefore conclude that the proposal would amount to inappropriate development in the Green Belt. Paragraph 143 of the Framework states that "*inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*"

Openness

9. The Government attaches great importance to Green Belts. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

10. The proposal would see the development of an open area of land where there is currently an absence of built form. Consequently, the proposal would cause harm to the openness of the site and the Green Belt.

Character and Appearance

11. The central core of the village of Ockbrook to the north of the site is relatively densely developed and predominantly residential in character. At the junction where Cole Lane meets Collier Lane, the prevailing character alters to one that is more rural in nature. The plots are generally larger, less densely development and there is just a single ribbon of linear built form that runs southward to the point where Cole Lane meets the A52.
12. The appeal site sits at the end of a row of 4 detached but close knit properties and sits juxtaposed between denser core built form and the more sparsely developed ribbon development to the south. Consequently, the development of the appeal site would extend the denser development further south.
13. There is however, a wide range of property styles, types and sizes within the immediate vicinity of the appeal site and whilst it would essentially extend denser development southward, the introduction of a new detached property of the scale and design proposed would not appear out of place in the context of the immediate area. Consequently, I do not find conflict with the requirements of Policies H4 and LP1 of the LP which collectively seek to protect the character and appearance of the local area. Similarly, I do not find conflict with Paragraph 170 of the Framework which seeks to preserve and enhance the natural environment.

Protected Species

14. The appellant has submitted a Phase One Preliminary Ecological Survey (ES) which relies on the results of two elements of research, a walk over survey of the site to identify the major habitat types, plant, bird, reptile, mammal and any other species using the site and a desktop study which gathers ecological data on the site and surrounding area. The study concludes that the appeal site is unlikely to provide a suitable habitat for protected species although does recommend the protection of retained trees through any construction period. This recommendation is echoed by the Council's Tree Officer.
15. The Council submit that the ES omits more detailed information on protected species that is held by Derbyshire Biological Records Centre in respect of Great Crested Newts and Grass Snakes which have, in the past been recorded within close proximity of the site. Consequently, the Council concludes that there is insufficient information in which to determine whether or not the proposal would or would not have an adverse effect on protected species.
16. Nevertheless, the Council has not provided me with any objective evidence that would lead me to an alternative conclusion than that provided by the submitted ES.
17. I conclude, on the basis of the evidence before me, that the site is unlikely to provide suitable habitat for protected species, and in this regard, I do not consider that there is a risk or probability that the development would adversely affect protected species. I am satisfied that the appellant has provided sufficient information in terms of protected species and that there is

no conflict with the biodiversity aims of saved Policy EV11 of the LP or the Framework.

Living Conditions

18. The proposal would see the construction of a two-storey detached dwelling immediately to the south of an existing detached property at No. 7 Cole Lane. This property has a number of large windows that currently overlook the open land that makes up the appeal site.
19. The appellant submits that they have altered the design and siting of the proposed dwelling so that any impact on the living conditions of the occupiers at No. 7 Cole Lane is minimised. I do not dispute this. Nonetheless, whilst I accept that a boundary wall or fence could be constructed under permitted development rights, the introduction of a two-storey building approximately 6 metres from the south facing elevation of No. 7 would undoubtedly have some impact on the occupiers in terms of outlook. There would likely be a reduction of light into the windows on the facing elevations however, acknowledging the gable to gable separation and the positioning of the proposed dwelling set back from the building line of the neighbouring property, I do not consider that the impact would be of such significance to cause material harm to the living conditions of the occupiers of No. 7 Cole Lane. Accordingly, I do not find conflict with Policy 10 of the Erewash Core Strategy 2014 (CS) which amongst other things, requires new development to have regard to the amenity of nearby residents or occupiers.

Other Considerations

20. The appellant raises the point that since the dismissal of a previous appeal on the site in 2005, the Government has placed more emphasis on the delivery of new housing. I accept that the provision of one additional dwelling would make some, albeit a very limited contribution, to the supply of dwellings in the area and that this is a matter which weighs in favour of the proposal.
21. I acknowledge that there are no objections to the proposed access from the Highway Authority and that despite issues in relation to flooding that have been raised by third parties, there is no objection to the scheme in this regard. Therefore, in land use terms there appear to be no other technical barriers to the development of the proposed dwelling. However, these are neutral matters to weigh in the planning balance.

Planning Balance

22. I have found that the proposed development would constitute inappropriate development in the Green Belt and that it would have a harmful impact on the openness of the Green Belt. Collectively, these matters carry very significant weight in the overall planning balance. Against this has to be balanced the other considerations as outlined above, including the small contribution that the proposal would make to the supply of houses in the area. However, the substantial weight to be given to Green Belt harm arising from the development is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances. For these reasons, I conclude that the proposal would not accord with the Green Belt aims of the Framework or Saved Policies GB1 and GB2 of the LP.

Conclusion

23. In light of the above reasons, and having regard to all other matters raised, I conclude the appeal should be dismissed.

J Hunter

INSPECTOR