
Appeal Decision

Hearing held and site visit made on 21 January 2020

by Brendan Lyons BArch MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 31st March 2020

Appeal Ref: APP/N4205/W/19/3229616

Higher Critchley Fold Barn, Longworth Road, Egerton, Bolton BL7 9PU

- 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 David Norris against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 04798/18, dated 22 October 2018, was refused by notice dated 11 March 2019.
 - The development proposed is the erection of a dwelling and stables with associated access and landscaping together with change of use of land to outdoor learning area.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. It was agreed at the Hearing that the above description of development, which is taken from the Council's decision notice and is repeated on the appeal form, should be used in preference to that shown on the planning application form.
3. The plans submitted with the planning application show some 1.44 acres of land that lies within the neighbouring borough. Although some of the plans indicate the appellant's intentions for the landscape treatment of this land, it was confirmed at the Hearing that the planning permission sought by the application and by this appeal relates only to the land within the Bolton Metropolitan Borough area.
4. However, the appeal was accompanied by a draft planning obligation¹ in the form of a unilateral undertaking ('UU') that sets out covenants on the grant of leases for land to local schools and to the local Wildlife Trust. A copy of the executed amended form of the UU was submitted at the Hearing. The area proposed to be covenanted for transfer to the Wildlife Trust includes much of the land outside the borough boundary. The implications of the UU are considered later in this Decision.

Main Issue

5. The main issue in the appeal is whether the proposal would amount to inappropriate development in the Green Belt and, if so, whether the harm by reason of inappropriateness and any other harm would be clearly outweighed

¹ Under s106 of the Planning Act 1990 (as amended)

by other considerations, in particular the quality of the house's design and the proposal's potential environmental and social benefits, so as to amount to the very special circumstances necessary to justify the development.

Reasons

6. The appeal site comprises some 8 acres of land near the edge of the urban area of Egerton. It is a crescent-shaped pasture field that curves around the garden of the appellant's existing house in the converted Higher Critchley Fold Barn and the curtilage of the adjoining house at Higher Critchley Fold. The site slopes up from its short frontage to Longworth Road to the north and then slopes considerably down to a valley. The eastern and southern boundaries of the site are mainly formed by a lane that serves as a public footpath and gives access to an adjoining local nature reserve, but the site also wraps around the garden of Lower Critchley Fold Farm, which opens off the lane. Another public footpath runs from the lane back up to the road, just to the west of Higher Critchley Fold.
7. Permission is sought to erect a new detached house in the centre of the site, and a detached stable block close to the boundary with Higher Critchley Fold Barn, both to be served from an expansion of the existing field access. The house would have an irregular-shaped plan and would step down the slope in a split-level arrangement. It would be mainly built in stone with some of the lower parts clad in metal sheet material. The stable block would be a simple rectangle, also clad in metal. It is proposed that the upper part of the site would be laid out as an outdoor learning area, to be used by local schools. An area at the bottom of the site, together with the land outside the boundary, would be dedicated to wildlife, specifically as a nesting place for lapwings.

Green Belt: Harm

Inappropriate development

8. The site lies in the Green Belt. National policy set out in the National Policy Planning Framework ('NPPF') confirms the great importance of the Green Belt, whose fundamental aim is to prevent urban sprawl by keeping land permanently open². Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances³. The erection of new buildings is to be regarded as inappropriate but for certain limited defined exceptions, which do not include the erection of a new house.
9. A corresponding presumption against inappropriate development in the Green Belt is stated by Policy CG7AP of Bolton's Allocations Plan ('AP'), adopted in December 2014. The policy states that inappropriate development includes any development that does not maintain the openness of the Green Belt or which harms the purposes of including land in the Green Belt. The list of excepted types of new buildings echoes that of the former edition of the NPPF that was in effect at the time of the plan's adoption. Although the current NPPF (as amended in June 2019) adds some items to the list, the categories set out in the plan, including new dwellings, remain consistent.

² NPPF paragraph 133

³ NPPF paragraph 143

10. The appellant accepts that the proposal would amount to inappropriate development under both national and local policy. Although the appeal statement refers to the exception granted for development brought forward under a Community Right to Build Order or Neighbourhood Development Order⁴, there is no such Order in place in this instance. Potential community support for a proposal is a different matter, considered below in the planning balance. The appellant also regards the site as an infill location, but the only exception allowed for infilling relates to sites in villages⁵ or on previously developed land⁶, neither of which would apply here where the site comprises greenfield land outside the settlement.
11. As inappropriate development, there would by definition be harm to the Green Belt for this reason, to which substantial weight must be given.

Other harm

12. The Council accept that the change of use of the part of the site nearest the road to an outdoor learning area would not have an unacceptable impact on openness. It is also accepted that the dedication of part of the land for nature conservation purposes would not in itself require planning permission. But the main components of the proposal would significantly alter the currently open and undeveloped character of the site. In addition to the erection of a substantial house in the middle of the currently undeveloped field, there would also be the erection of the stable block and the formation of the twin access drive serving the two buildings.
13. The proposal's impact on the open site would be perceptible from sections of Longworth Road, where the upper part of the dwelling and the stable would be seen, from the lane to the east, where there would be some limited views, and from the public footpath to the west, where there would be a clear impression of the scale of the dwelling. The house would also be seen in long range views from the southern side of the valley, including by the users of the golf course, where there is also a public footpath. As noted by the Council, the effects of glazing and of artificial lighting, together with domestic paraphernalia, would all help to draw attention to the development, despite some potential screening by proposed landscaping.
14. There would a marked adverse effect on the openness of the Green Belt as a result of the introduction of the proposed development, in both spatial and visual terms.
15. The site clearly forms part of the countryside, beyond the urban edge. The existing buildings at Higher Critchley Fold and Lower Critchley Fold are typical of individual former farm groups found in the countryside. Contrary to the appellant's interpretation, they do not form any continuous pattern of development that would identify the open land between them as an infill opportunity. Neither the presence of these existing dwellings nor the appeal site's limited agricultural value would mitigate the incursion into the countryside. Although it appears that the Council has contemplated release of land at the urban edge from Green Belt control in other locations, that is not the case here. The development of the site would be contrary to the purpose of

⁴ NPPF paragraph 146(f)

⁵ NPPF paragraph 146(e)

⁶ NPPF paragraph 146(g)

including the land within the Green Belt to assist in safeguarding the countryside from encroachment⁷.

16. While the proposed form of development would not be urban in character, the extension of incremental development beyond the urban edge would be contrary to the purpose of checking unrestricted sprawl of large built-up areas⁸. The parties are agreed that the proposed dwelling would not be 'isolated' in policy terms⁹, being within reach of facilities at the nearby settlement. But that does not imply any policy support for the proposition that a site near the urban edge would be sequentially preferable to a more remote site.
17. Similarly, the appellant has not provided evidence to support the suggestion that the dwelling is a unique proposal that could not be accommodated on a site within the urban area. The design of the dwelling should follow from the constraints and opportunities of a particular site, as has happened in this case, rather than seek a site that would fit a particular design. There is no evidence of comparison with sites within the urban area suitable for a large dwelling or that the proposal's generous size would be an inappropriate use of urban land.
18. It was confirmed at the Hearing that the appellant intends the proposal to be a self-build scheme. National policy support for self-build housing refers to the statutory duty to have regard to the needs of different groups and to issue enough planning permissions to meet identified demand. The Council has provided evidence of how it is complying with the statutory duty to maintain a register of those interested in potential self-build plots. The appellant has not registered any such interest. The policy support for self-build does not provide any preferential treatment for land in the Green Belt or for land near the urban edge over that within the urban area. I agree with the Council that the appeal proposal would also be contrary to the Green Belt purpose of assisting urban regeneration by encouraging the recycling of urban land¹⁰.
19. The Council now state that concern was raised by its specialist adviser in the consideration of a subsequent planning application¹¹ about potential adverse impact on wildlife from artificial lighting. There is insufficient evidence to show that this concern should translate back to the assessment of the appeal proposal or could not be resolved by means of a planning condition.

Conclusion on harm

20. For the reasons set out above, I conclude that there would be significant harm to the Green Belt by reason of inappropriate development, and also to the openness of the Green Belt and the purposes of including land within it. Cumulatively, these are matters of very substantial weight.

Green Belt: Other considerations

Design quality

21. The NPPF advises that the development of isolated new homes in the countryside should be avoided unless one or more specified circumstances

⁷ NPPF paragraph 134(c)

⁸ NPPF paragraph 134(a)

⁹ NPPF paragraph 79

¹⁰ NPPF paragraph 134(e)

¹¹ Ref 06257/19

- apply, among them that the design is of exceptional quality¹². But since it is agreed that the proposal would not be 'isolated', this segment of the NPPF is not directly relevant to the appeal proposal. However, both parties have sought to test the proposal against policy's requirement for design to be truly outstanding or innovative.
22. Irrespective of location, the NPPF advises that 'great weight' should be given to outstanding or innovative designs that promote high levels of sustainability or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings¹³.
23. The proposed design involves an assemblage of elements over two main levels, with the mainly metal-clad forms at the lower level, and stone above. The design intention is said by the submitted Design and Access Statement ('DAS') to be a modern interpretation of a traditional farmstead. The various iterations of design development are explained in the DAS. The Council acknowledge that the design has undergone a well-considered approach to creating a contemporary dwelling with high quality architectural features, but they do not consider the design to be of outstanding quality.
24. Support for this view is derived from the feedback provided by the local design review panel, Places Matter, who have been involved at several different phases throughout the design process. The NPPF advises that regard should be had to the recommendations of design review panels¹⁴. The summary of the review panel's final assessment suggests a design that has improved in response to earlier comment, and that is starting to address the issues, but there is no suggestion that the design has evolved to the point where issues have been fully resolved, and would result in a totally convincing work of architecture that could be described as outstanding. I endorse that view and find the Council's assessment of design quality to be reasonable.
25. The appellant disputes the Council's judgement of what is necessary to be 'innovative'. I accept that application of previously tried techniques to evolve understanding of their potential could be regarded as innovative, but there must be some element of a uniquely novel approach to the resolution of design and sustainability issues. The proposal would be unique in its design, but would involve an assemblage of forms and materials that are well tried and tested. In terms of its construction, it is not disputed that the 'insulated concrete formwork' method has already been used several times within the borough alone. There is limited evidence of the combination of earlier techniques to produce new insights or performance. The Places Matter review explicitly concludes that the technologies proposed would not be new or innovative. I agree with the Council that the design of individual dwellings to achieve very high standards of sustainable performance should now be regarded more as the norm rather than the exception. The proposal would be commendable in seeking to achieve high standards but should not be regarded as innovative for doing so.
26. The proposal has been designed to sit well in its context in order to reduce its impact on the character and appearance of the area. But despite additional planting and landscaping, there would still be a strongly perceived change to

¹² NPPF paragraph 79(e)

¹³ NPPF paragraph 131

¹⁴ NPPF paragraph 129

the open rural character of the field through the introduction of significant built development that would not represent an overall improvement.

27. For these reasons, despite the acknowledged merits of the proposed design and sustainability measures, it has not been shown that the proposal would reach the standards required to secure the great weight advised by the NPPF for outstanding or innovative designs.

Outdoor learning area

28. The proposed outdoor learning area would occupy some 1.5 acres at the top of the site next to Longworth Road. As well as a food growing area, the area would include an outdoor classroom space, informal play facilities and a wildlife pond. It is intended that the land would be leased or licensed to a local primary school to co-ordinate use by other local schools, but that future maintenance would be carried out by the appellant. Letters from some of the schools and from an educational expert attest to the value placed on outdoor learning opportunities.
29. The Council does not dispute that this facility would have environmental and social benefits, but considers that these would apply to a limited section of the community.
30. The appellant sees the benefit as spread throughout the community, noting that over 20 schools could potentially make use of the facility. There is limited evidence to establish the precise level of interest, and it seems most likely that if the learning area were to be established, it would be of greatest interest to a smaller group of schools in the immediate area. The scale of the facility would not lend itself to access by large numbers, either at any one time or periodically.
31. I agree with the Council that the undoubted value of the facility, if properly established, would inevitably be specialised and availed of by a restricted sector of the community. This somewhat limits the weight to be given to the benefit that it should receive in any planning balance.
32. There is also some lack of certainty over delivery of the benefit over the lifetime of the development. The UU commits the owners of the site¹⁵ to offer a lease/licence to four local schools on peppercorn terms for a period that could be up to 99 years, but could also be less. The letters from three of these schools all express support for the principle of the facility, but none confirms that they are in a position to enter a lease or licence, or would be willing to be the 'master school'¹⁶ that would co-ordinate use of the site. There is an accompanying draft licence agreement, but in the absence of any completed agreement with any school, there is a question mark over the initiation of the project. The draft agreement would also allow the tenancy to be ended by the school after giving 6 months' notice. While the owners would then have to try to find another school, there would be no guarantee that the project would persist in the longer term.
33. The addition of the outdoor learning area could enhance education provision in the borough, although it is not suggested that the appeal proposal would generate any requirement to contribute to education provision in accordance

¹⁵ The appellant and a company to which much of the site is being transferred

¹⁶ Identified by the UU as Walmsley CE School

with Policy A1 of Bolton's Core Strategy, adopted in 2011. But for the above reasons, I consider that the only moderate weight can be given to the anticipated environmental and social benefits of this element of the proposal.

Nature area

34. The Wildlife Trust manage the adjoining nature reserve, which comprises woodland along the valley floor. Specialist advice on the application confirms that potential addition of wet grassland on the appeal site could enhance local biodiversity interest, particularly if managed to support identified species such as lapwing. There could be a net environmental benefit, and this is acknowledged by the Council.
35. However, while the Wildlife Trust are said to have been involved in the development of the scheme, the actual level of their current and future involvement is not clear. The UU commits the owners to offer a lease on peppercorn terms, but there is no agreement in place or any written evidence from the Trust of their commitment to take on the site.
36. Furthermore, only less than half of the intended area would be within Bolton Borough. I share the Councils' concern that there would be legal obstacles to the enforcement of the obligation on land outside the administrative area.
37. Thus, while there is no reason to doubt the appellant's positive intentions in offering the land, there is a lack of certainty over delivery. This together with the more limited benefit offered by the restricted area of land within the borough means that limited weight can be given to the environmental benefit.

Other benefits

38. The addition of an extra dwelling to the housing supply would be a benefit, albeit very limited in scale, particularly as the Council's deliverable five-year supply, as required by NPPF policy¹⁷, is significantly lacking. The appellant sees the lack of supply as triggering the NPPF presumption in favour of sustainable development¹⁸, but in this case the most important policies for the determining the appeal are those protecting the Green Belt, and these provide potential reasons for refusal¹⁹, so that the normal development plan balance should apply.
39. Although the self-build nature of the proposal has been subject to some uncertainty in the submitted documentation, and is not underpinned in the UU, the provision of a self-build development opportunity would also be a benefit of limited scale.
40. The provision of a zero-carbon home would have modest sustainability benefits in terms of its own use of resources, but potentially more wide-ranging if the development were to be publicised as an exemplar project that would foster future projects.
41. The erection of the house would have modest economic benefits through the employment of labour and resources during its construction and in the demand for local services following its occupation.

¹⁷ NPPF paragraph 67

¹⁸ NPPF paragraph 11

¹⁹ NPPF paragraph 11(d)i

Balance of considerations

42. The Council's reason for refusal of the application refers to conflict with both AP and NPPF policy.
43. The appellant argues that reduced weight should be given to AP Policy CG7AP because of inconsistency with the NPPF. As outlined above, the types of new buildings classed by this policy as not inappropriate development in the Green Belt remain fully consistent with the NPPF. The policy does not refer to approval of development in very special circumstances, but this is stated in the supporting text. The policy wording might have been more complete had the test of very special circumstances been explicitly set out, but the omission does not undermine the policy, whose thrust is clear. Any development plan policy can be outweighed by other material considerations. The NPPF states that its policies have the status of material considerations²⁰. The AP supporting text's explanation of the need for very special circumstances to allow development to be approved gives assurance that other considerations are to be taken into account and on the weight of such considerations required to outweigh the policy presumption. The AP will have been examined prior to its adoption for consistency with the original NPPF. It predates the current NPPF, but that does not render its policies out-of-date, and due weight must be given to its policies according to their degree of consistency with the NPPF²¹. In respect of the erection of new dwellings in the Green Belt there is no significant inconsistency.
44. The AP also pre-dates legislation to promote self-build housing, which is now reflected by NPPF support for this type of development. But this support has not been extended to the identification of self-build as an additional category of new building that would not be inappropriate in the Green Belt. If it had been, or if the appeal proposal belonged in any of the other categories added to the NPPF since the AP was adopted, then the weight to the AP policy would have to be reduced accordingly until the plan could be reviewed. But that is not the case here and the policy can be given full weight.
45. I have taken account of all submissions made in writing and at the Hearing, including several previous appeal decisions²² and examples of other houses granted permission in the borough. However, none of the appeal decisions relates to a site in the Green Belt or with a comparable degree of policy restraint, while the approval of other dwellings appears very dependent on their particular circumstances at the time. No additional weight is added to the balance.
46. Similarly, local support for the proposal as shown by the letters from the schools and an elected member of the Council does not in itself add weight to the planning balance.
47. As outlined above, the harm to the Green Belt in this case merits very substantial weight. The other considerations in favour of the proposal would not merit a comparable degree of weight, either individually or cumulatively. The harm would not be clearly outweighed by the other considerations. The very special circumstances necessary to justify the proposal would not arise.

²⁰ NPPF paragraph 2; paragraph 212

²¹ NPPF paragraph 213

²² APP/D0480/A/14/2221558; APP/N4205/W/18/3193664; APP/N4205/W/18/3197086

Conclusion

48. The proposal would be contrary to NPPF policy and to AP Policy CG7AP. There are no other material considerations that would indicate a decision other than in accordance with the development plan.

49. I conclude that the appeal should be dismissed.

Brendan Lyons

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Robin Hooper	HEAL Associates
John Dickinson	The Intelligent Design Centre
David Norris	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Franc Genley	Development Officer
Alex Allen	Development manager
Alan Evans	Barrister

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Letter from Councillor Nadim Muslim
- 2 Plans of Rimmer residence
- 3 Intelligent Design email to Council
- 4 Copy of executed Unilateral Undertaking
- 5 Appeal decision ref APP/D0480/A/14/2221558
- 6 Core Strategy Policy A1
- 7 Appeal decision Ref APP/N4205/W/18/3193664
- 8 Council webpage: Self and custom build register
- 9 Revised schedule of proposed conditions