



Appeal Decision

Hearing Held on 15 September 2020

Site visit made on 16 September 2020

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/P2365/W/20/3249244

Land between 321 and 325 Mossy Lea Road, Wrightington, Lancashire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Neil Andrews against the decision of West Lancashire Borough Council.
 - The application Ref 2019/0822/OUT, dated 30 July 2019, was refused by notice dated 3 October 2019.
 - The development proposed is the erection of two detached dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Neil Andrews against West Lancashire Borough Council during the Hearing. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal development is in outline, seeking detailed approval of Access, Layout and Scale, with Appearance and Landscaping reserved matters. At the Hearing the appellant confirmed that drawing number 16/048/L01 C shows the details of the appeal development for which approval was sought.
4. The appellant sought to submit new evidence¹ on the Friday before the Hearing. After considering the late evidence and following a brief discussion at the Hearing, I was not satisfied that this evidence was directly necessary for my determination of the appeal and so I did not allow it to be submitted.

Main Issues

5. The main issues are:
 - a) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2019 (the Framework) and development plan policy
 - b) The effect of the proposal on the openness of the Green Belt
 - c) The effect of the proposal on the character and appearance of the area, including with regard to protected trees

¹ The evidence concerned a recent planning approval by the Council on nearby land.

- d) If the proposal were to be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development in the Green Belt

6. Policy GN1 (Settlement Boundaries) of the West Lancashire Local Plan October 2013 (WLLP) states that the Council will assess development proposals outside settlement boundaries and within the Green Belt against national policy and relevant local plan policies.
7. There is no dispute between the parties that Policy GN1, and the other policies in the WLLP considered relevant to the appeal development² are consistent with the Framework and so I give these policies full weight. I also give substantial weight to the Framework as a material consideration in determining this appeal.
8. The appeal site is divided into two 'parts' in terms of Planning Policy. Firstly, the western part, the land between 321 and 325 Mossy Lea Road, which is within the settlement boundary as set out in the development plan but not within the Green Belt; and secondly the much larger eastern part, the land to the rear of Nos 323, 325, 321 and 321A Mossy Lea Road and to the rear of Nos 2A, 2 and 4 Broadhurst Lane, which is outside the settlement boundary as defined in the development plan, but within the Green Belt. The two 'parts' are joined by way of a narrow area of land between Nos 321 and 325, which is partly fenced.
9. It is not disputed that the proposed dwellings/garages would be located in the eastern part of the site that is within the Green Belt. The construction of new dwellings in the Green Belt should be regarded as inappropriate development, subject to certain exceptions. The appellant contends that the proposal would not be inappropriate development in the Green Belt, because it would be *limited infilling in a village* and so one of the specified exceptions³.
10. In order to assess whether the proposal would meet this exception, I have followed a structured approach. The first assessment to be made is whether the appeal site would be in a village. It is not disputed that the eastern part of the appeal site, which would contain the proposed dwellings/garages, would be outside the settlement boundary as defined by the WLLP. However, case law⁴ requires that a decision maker must also consider the situation 'on the ground' in reaching a conclusion as to whether a site is within a village or not.
11. The settlement, as set out in the WLLP, is linear in form to the east and west of the appeal site, extending along the eastern side of Mossy Lea Road and the western side of Broadhurst Lane. This continues to the south of the appeal site although there is a somewhat denser cluster of buildings towards the junction of these two roads.

² Policies SP1; GN3 (Criteria for sustainable development); RS1 (Residential development); and, EN2 (Preserving and Enhancing West Lancashire's Natural Environment).

³ Paragraph 145 e) of the Framework.

⁴ Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

12. I am satisfied that the western part of the appeal site, between Nos 321 and 325 Mossy Lea Road, is within the village both as defined by the WLLP and from my observations on the ground. Its western boundary is formed by the footway by Mossy Lea Road, whilst the narrower eastern boundary would be a continuation of the generally straight and established rear boundaries of Nos 323 and 325 to the north and 321 and 321A to the east. Its limited size and proximity to the next door dwellings means that it is seen as part of the actual settlement.
13. The much larger eastern part of the appeal site is outside the settlement boundary as defined by the WLLP. It is bounded to its west, east and south by the rear boundaries of the curtilages of dwellings within the WLLP settlement boundary. These boundaries are clearly defined by fencing and mature hedges and trees, which partly screen the dwellings, particularly on the southern and western sides. The dwellings on the eastern side of the site are less well screened but are of a generally smaller scale than elsewhere, and do not extend as far north as the dwellings by Mossy Lea Road.
14. The curtilage of 4 Broadhurst Lane extends beyond the northern extent of the appeal site. It does contain various outbuildings, including one at the far northern end that was being constructed when I visited the site. However, these are of a significantly smaller scale than their host dwelling, single storey in height and with clear spaces between them. These spaces allow for views across the site from Broadhurst Lane, of the fields, trees and hedges to the north. Conversely, from the edge of the playing fields on Mossy Lea Road, there are views across the site to the countryside beyond.
15. The eastern part of the site, like the rough grass field within which it is located, has a flared shape, which widens from south to north. The adjacent and much larger grass field to the north continues this flared shape along its western boundary and much of its eastern boundary. It is enclosed by mature trees and hedges except to the south, where a timber and wire fence separates it from the adjacent field containing the eastern part of the appeal site; there are some agricultural-type buildings at its far northern end.
16. The outlook from the southern part of the site looking north is predominantly of open fields, hedges and trees, and has a strong rural character. Whilst the rear of the properties to the east and west are discernible, the clearly defined rear boundaries mean they are seen as distinct from the appeal site.
17. The eastern part of the appeal site is outside the settlement boundary as defined in the WLLP and from my observations on the ground is physically distinct from the settlement. It is formed from a grass field, and this, together with its predominantly open character and flared shape are synonymous with the adjacent countryside to the north, from which there is very limited physical or visual separation. In contrast, the generally mature vegetation on its southern, eastern and western boundaries, reinforced in places by fencing, forms a clear physical and visual barrier with the built form of the settlement.
18. For these reasons the eastern part of the appeal site that is within the Green Belt is not within a village. Consequently, there is no need for me to consider further whether the proposal would be infill development or limited in scale or form, with reference to paragraph 145 e) of the Framework. These considerations do not apply to sites that are not within a village.

19. Consequently, the proposal would be inappropriate development in the Green Belt. It would, therefore, conflict with Policies GN1 and RS1 in the WLLP, and with the Framework in this regard.

Openness of the Green Belt

20. Had I concluded that the proposal was *limited infilling in a village* then there would be no requirement for me to further consider its effect on the openness of the Green Belt⁵. However, as I have concluded that the proposal would not be in a village, it is not covered by this exception. Consequently, an assessment of the effect on openness, which is one of the essential characteristics of the Green Belt specified in the Framework⁶, is required.
21. The appellant does not dispute that were the proposal considered to be inappropriate development in the Green Belt that it would adversely affect its openness. The appeal site is predominantly grassland and the erection of two substantial detached dwellings with garages and associated driveways here would cause spatial and visual harm to the openness of the Green Belt.
22. For these reasons the appeal development would detract from the openness of the Green Belt. It would, therefore, conflict with Policies GN1 and RS1 in the WLLP, and with the Framework in this regard.

Character and Appearance

23. The built form of the settlement to the east and west of the appeal site comprises single dwellings of differing designs, some with ancillary buildings and set within different sized and shaped plots. There are gaps between some of these buildings affording views of and through the appeal site.
24. Whilst the built form becomes denser towards the junction of Mossy Lea Road and Broadhurst Lane, with properties at the southern end of Broadhurst Lane backing onto the side of 321A Mossy Lea Road, all of the dwellings face onto one or the other of these roads.
25. In my view, the pattern of development in this area is linear, along Mossy Lea Road and Broadhurst Lane. The proposed 'backland' development to the rear of these dwellings would, therefore, be out of keeping with the prevailing pattern of development and as such, would detract from the character and appearance of the area.
26. Whilst there is an example of 'backland' development elsewhere in the settlement, I am not fully familiar with this scheme and in any event, each proposal should be considered on its individual merits, which is what I have done in this case.
27. As previously mentioned, there are some substantial mature trees within and adjoining the appeal site. These are covered by a Tree Preservation Order (TPO) dating from 2007. As part of the development proposal, two of these protected trees would be removed⁷ to allow for vehicular access from Mossy Lea Road.
28. A further tree⁸, located in the rear garden of 325 Mossy Lea Road, is located very close to the proposed access and so would require protective measures to

⁵ *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1)* [2016] EWCA Civ 404.

⁶ Paragraph 133 of the Framework.

⁷ Identified by the appellant as T1 and T2.

⁸ Identified by the appellant as T10.

prevent damage to its roots, according to the appellant's Arboricultural Impact Assessment/Arboricultural Method Statement (AIA/AMS).

29. In views from Mossy Lea Road all three trees are readily visible, with tree T1, which is located closest to the highway, the most visually prominent, despite being somewhat smaller in height than the others. Trees T2 and T10 are located away from the highway along the settlement boundary identified in the WLLP, with further mature trees along the boundary to the north and east. Nevertheless, they are still largely visible from Mossy Lea Road, close to the site.
30. These three trees are identified in the AIA as mature Sycamore trees of moderate quality, all with an estimated life expectancy of more than 20 years. All three trees are considerably taller than the nearby dwellings and have substantial canopies, parts of which can be seen above the roofs of nearby dwellings in more distant views.
31. The trees currently make a positive contribution to the character and appearance of the area, complementing the trees and bushes in the front gardens along Mossy Lea Road, and softening the urban form of the settlement somewhat. T2 and T10 are also seen in views from the north and east alongside other TPO protected trees, in and adjoining the appeal site.
32. Consequently, the loss of trees T1 and T2 would detract from the character and appearance of the area, especially, although not exclusively, in views from Mossy Lea Road.
33. I note from Policy EN2 (preserving and enhancing West Lancashire's natural environment) of the WLLP that the loss of trees of *significant amenity, screening, wildlife or historical value* would only be permitted in a limited number of circumstances. Where permitted, the planting of replacement trees of equivalent value would be required to mitigate the loss, controlled by conditions or legal agreements.
34. Landscaping is a reserved matter and so the provision of replacement trees and other planting to mitigate these losses is not a matter before me. The appellant considers a legal agreement or conditions could be used to control replacement tree planting satisfactorily, consistent with Policy EN2.
35. However, the appellant's AIA addresses replacement trees to only a very limited extent. No direct references are made to planting replacement trees near Mossy Lea Road, or in the vicinity of tree T2 where there is very limited space, given the proposed access and layout arrangements.
36. The Council's Arboricultural officer suggested a number of measures that could potentially mitigate the loss of tree T1 in their written evidence, including, 'if the space between the proposed access drive and 321 Mossy Lea Road could accommodate the planting of a sizable tree, then this may mitigate the loss of amenity to an acceptable degree.'
37. At the Hearing there was some discussion as to what size and species replacement trees could be and where they could be planted within the site. I note that replacement tree species of greater biodiversity value than Sycamores could be planted. However, even with an Extra Heavy Standard (EHS) size of tree of some 6 metres in height, it was estimated that it would take 10-15 years to reach a similar scale as tree T1.

38. Any replacement trees would need to be located in the vicinity of the trees to be removed, in order to mitigate the harm caused by their loss to the character and appearance of the area. However, there is no clear evidence that there is sufficient space to plant replacement trees of sufficient size to mitigate the visual harm that has been identified in these locations, including between the proposed access drive and 321 Mossy Lea Road.
39. There is no compelling evidence that even EHS replacement trees, which would not satisfactorily mitigate any loss for a considerable time, could be planted without adversely affecting the proposed layout or access arrangements.
40. I note the Council's suggested condition 8, to be attached to the grant of planning permission in the event the appeal were to be allowed. However, in these circumstances I am not satisfied that it would be possible to adequately control replacement tree planting by way of a condition or a legal agreement linked to the Landscaping reserved matter, given the proposed development and the constraints of the site.
41. The Arboricultural officer also states that the 'planting of hedging each side of the access drive would make an attractive feature'. However, hedging, which would be of a different scale and form to the trees to be removed, would not acceptably mitigate the visual harm caused by their loss.
42. Furthermore, I am not satisfied that the proposed development would not cause significant harm to tree T10. The proposed drainage layout for the site⁹ shows a subterranean surface water outfall pipe beneath the proposed access drive and through the Root Protection Area of tree T10, identified in the AMS. Such a pipe would conflict with the guidance contained in the AMS¹⁰ and would be very likely to be harmful to tree T10, with consequent impacts upon the character and appearance of the area.
43. For these reasons, the proposed development would adversely affect the character and appearance of the area, including with regard to protected trees. It would, therefore, conflict with Policies GN3 and EN2 of the WLLP.

Conclusion

44. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. No other considerations have been put forward in this case to outweigh the totality of the harm that I have identified, bearing in mind the great importance the Government attaches to the Green Belt.
45. Consequently, the very special circumstances necessary to justify the development do not exist. The proposed development would therefore conflict with Policies GN1 and RS1 of the WLLP and with the Framework, in this regard.
46. For the reasons given above and taking into account all matters raised, I conclude that the appeal is dismissed.

Andrew Parkin

INSPECTOR

⁹ Shown on drawing 18-121-1 revision B.

¹⁰ Paragraph 17 of the AMS – Below ground constraints.

APPEARANCES - 15 September 2020

FOR THE APPELLANT:

- Miss Sarah Clover, Counsel
- Mr Chris Weetman BA (HONS) DMS MRTPI, Chartered Town Planner
- Mr Gary Marsden, Tree Consultant

FOR THE LOCAL PLANNING AUTHORITY:

- Mrs Nicola Cook, Senior Planning Officer
- Ms Therese Maguire MRTPI, Principal Planning Officer
- Mr David Thornber, Arboricultural Officer

THIRD PARTIES:

- Mr Mike Carpenter, local resident
- Mrs Louise Lee, local resident

DOCUMENTS SUBMITTED WHILE THE HEARING SAT

Extract from the WLLP proposals map showing the Green Belt and Settlement boundary in the vicinity of the appeal site.

DOCUMENTS SUBMITTED AFTER THE HEARING HAD CLOSED

Policy SP1 (A sustainable development framework for West Lancashire) from the WLLP.

Various documents referenced in the Council's suggested conditions and a suggested highways condition from the appellant.