



Appeal Decision

Site visit made on 23 June 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Appeal Ref: APP/W3005/W/20/3246755

Storage Unit, Land adjacent Hucknall Lane, Hucknall NG6 8AA

- 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 J C Ash against the decision of Ashfield District Council.
 - The application Ref V/2019/0425, dated 5 April 2019, was refused by notice dated 23 August 2019.
 - The development proposed is a change of use to C3 Dwelling from B8 Storage building.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development used in the banner heading above is taken from the appeal form submitted by the appellant. The original planning application form described the proposal as a 'change of use to C1 Dwelling from B8 Storage building'. However, the other material submitted throughout the application and appeal process refers to the proposal as being for change of use to a dwelling within the C3 Use Class, and as the 'C1' reference is clearly a typographical error I have used the corrected description above for accuracy.
3. Further evidence was submitted by the Council in respect of the flood risk status of the appeal site. The Council has indicated that this information was provided to me as soon as possible after they received it from the Environment Agency. The evidence is relevant to the proposal before me, and the appellant has been given an opportunity to comment on it. I am therefore satisfied that no party has been prejudiced, and I have determined this appeal having taken it into account.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development within the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, and its effects on the openness of the Green Belt;
 - Whether or not the proposed dwelling would provide suitable living conditions for future occupiers with regard to privacy and internal living space;

- Whether the appeal site is an appropriate location for residential development in respect of flood risk; and
- If the proposal would 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 proposal.

Reasons

5. The appeal site contains a single storey brick building, formerly an electricity substation but now in use under a 2018 planning permission for storage within the B8 Use Class. External space to the side and rear of the building is enclosed by a close-boarded timber fence approximately 1.8m high, which I understand to have been erected as permitted development.
6. The site lies within the Green Belt, at a point where it forms a relatively narrow gap clearly separating the town of Hucknall to the north and the built-up area of the City of Nottingham to the south. It is sandwiched between the busy A611 road to the west and a tram and railway line to the east. The appellant is now seeking permission for the use of the building as a dwelling, with the enclosed external space being used as a domestic garden.

Whether inappropriate development, including effect on openness and purposes of the Green Belt

7. Paragraph 133 of the Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essential characteristics of Green Belts being their openness and their permanence. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very specific circumstances. Paragraph 146 indicates that certain forms of development which do not include the construction of new buildings, such as the re-use of buildings provided that they are of permanent and substantial construction, and material changes in the use of land are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. Although it predates the introduction of the Framework by some years, Saved Policy EV1 of the 2002 Ashfield Local Plan Review (ALPR) broadly echoes, and is thus consistent with, the Framework's approach in this regard.
8. Although it is modest in size, the existing building is of permanent and substantial construction, and therefore in this regard its reuse would not be inappropriate development within the Green Belt. In its current use, the appeal building is relatively discreet and unobtrusive when travelling along the main road which passes the site, although it is more prominent when seen from the footbridge across the railway at the rear.
9. The likely intensification of the use of the site arising from its use as a dwelling, and the use of the external space as a garden with the almost inevitable intrusion of paraphernalia such as garden furniture, washing lines and the like, would lead to an unavoidable domestication and hence loss of openness of the Green Belt in both spatial and visual terms. Given the small size of the site, I consider that this would have a moderate impact on the openness of the Green Belt, but it would be harmful nonetheless. Although the appellant has

suggested that the use of the outdoor space could be controlled by a condition if the proposal was otherwise acceptable, in my view the difficulty of defining and enforcing such a condition means that it would not meet the tests set out in the Framework and the Planning Practice Guidance.

10. The more intensive use of the site which would arise from its use as a dwelling, including for example the use of the forecourt area for parking vehicles for longer periods than at present, as well as the introduction of domestic paraphernalia into the rear space, would make the already narrow gap between Hucknall and Nottingham appear more urbanised than at present. This would diminish the spatial and visual separation between the two settlements. The proposal would therefore conflict with the strategic purposes of including the land in the Green Belt, specifically of checking the unrestricted sprawl of urban areas and preventing neighbouring towns merging into one another.
11. I conclude that in line with the requirements of Paragraph 146 of the Framework the proposal would be inappropriate development in the Green Belt. By definition, it would be harmful to the Green Belt. This is a matter to which I afford substantial weight in the planning balance. The development would not preserve the openness of the Green Belt. In spatial and visual terms, this harm would be moderate but nevertheless weighs against allowing the appeal. The proposal would also conflict with the purposes of including land in the Green Belt. The proposal would fail to accord with saved ALPR Policies EV1 and ST1 which seek to prevent inappropriate development in the Green Belt.

Any other harm – living conditions

12. Although generous in size, the external rear area which it is proposed to use as a garden is next to a pedestrian footbridge which crosses tram and railway lines which run immediately to the east of the appeal site. The ramp and steps to the bridge rise to a considerable height relative to the site, and consequently afford clear views of almost all of the enclosed rear space and rear elevation of the appeal building. This would severely impinge on the privacy of future occupiers, whether in the garden or in the proposed lounge/diner and kitchen which are proposed to be located in the rear part of the building. While such a degree of overlooking is unlikely to be problematic for the appeal site's current business use, it would represent a serious and harmful lack of privacy for residential occupiers.
13. The appellant has referred to other houses close to the footbridge and suggests that these have not had problems arising from overlooking, although he did not specify which houses he was referring to. I saw at the time of my site visit that those on Millbank Place closest to the eastern side of the footbridge have private outdoor amenity space at the rear which, while modestly sized, is not overlooked from the bridge at all, and their situation therefore does not appear comparable to the appeal proposal. However, even if it were, it would not justify permitting the severely sub-standard levels of privacy in this case.
14. Turning to living space, the proposed internal layout provided shows a large double bedroom, and I consider therefore that it would function as a 1 bedroom, 2-person dwelling. The 2014 Ashfield Residential Design Guide Supplementary Planning Document (the SPD) indicates a minimum internal space standard for such dwellings of 47m². There is some disagreement between the parties between the amount of internal living space which the dwelling would provide, with the Council claiming a maximum of 41.83m² and

the appellant measuring 46m². However even the larger of these figures falls below the modest minimum space standard sought by the SPD, and leads me to the view that the accommodation would provide cramped internal living space for future occupiers.

15. I conclude that the proposal would fail to provide suitable internal living space for future occupiers. It would therefore conflict with ALPR Saved Policy HG5 which is consistent with the Framework and which, among other things, requires residential development to provide occupiers with a reasonable degree of privacy. It would also conflict with the requirements of Paragraph 127 of the Framework, which seeks to create places which offer a good standard of amenity for all existing and future occupants of land and buildings. I give the conflict in respect of unacceptable living conditions significant weight in the overall balance.

Any other harm – flood risk

16. The appeal site is shown on the Environment Agency (EA) flood map for planning as being within Flood Zone 3, an area with a high risk of flooding. A Flood Risk Assessment based on this classification was submitted with the original planning application. However, this was superseded by a further statement submitted by the appellant¹ which indicates that the site lies outside the modelled extents of the River Leen 1 in 100 year, 1 in 100 year plus climate change, and 1 in 1000 year events (corresponding to Flood Zones 2 and 3). This is derived from EA modelling of the River Leen channel², which shows the modelled flood extents contained to the east of the adjacent railway line. On this basis, the appellant considers that the appeal site is effectively within Flood Zone 1, and is therefore suitable for residential development without there being a requirement for additional flood alleviation measures to be put in place.
17. As well as the River Leen, there is an ordinary watercourse nearby, referred to as Farleys Brook in the appellant's evidence. This flows west to east a short distance south of the appeal site, through a culvert under the railway line and into the River Leen on the eastern side of the railway line. Information provided by the EA indicates that the River Leen modelling does not include detail relating to Farleys Brook, and as consequence the flood risk to the appeal site has been understated by the appellant. The EA also provided evidence of an observed flooding event in 1960 which affected the appeal site. Taking all of the evidence before me into account, I consider that it is correct to regard the site as being within Flood Zone 3, as indicated in the EA flood map for planning.
18. Although there is already a building on the site, the proposal represents a change from a 'less vulnerable' to a 'more vulnerable' use³. Paragraph 163 and Footnote 50 of the Framework require planning applications in these circumstances to be accompanied by a site-specific flood risk assessment. The information originally submitted in support of the application addressed the requirement for the sequential test only insofar as it indicated that there are no alternative sites within the appellant's ownership or control. However, this is not sufficient to satisfy the sequential approach in respect of flood risk, and

¹ FRA Letter Report – Michael Evans and Associates Ltd, 4 February 2020

² River Leen and Day Brook Model Update, Environment Agency, January 2017

³ Planning Practice Guidance Paragraph: 066 Reference ID: 7-066-20140306

information provided by the Council indicates that there are other sites with planning permission for a single dwelling available within the Hucknall area.

19. I am unable to conclude that the appeal site represents an appropriate location for residential development in respect of flood risk. The proposal would therefore conflict with the flood risk aims and requirements of the Framework, notably Paragraph 155 which indicates that development should be directed away from areas at highest risk of flooding, and Paragraph 158 which indicates that a sequential approach to the location of development should be taken. I give the potential for harm arising from flood risk significant weight in the overall balance.

Other considerations

20. The appellant asserts that the local planning authority cannot currently demonstrate a 5-year supply of housing sites. While no evidence of the extent of any shortfall in housing land supply has been provided, the claim has not been disputed by the Council. The proposed development would provide a new dwelling in an accessible location with existing facilities reasonably close by and, although a single unit would make only a small contribution to boosting the supply of housing, in view of the apparent housing land supply situation I give this moderate weight in favour of the proposal.
21. Any other economic, environmental or social benefits arising from the development would be limited due to the small scale of the proposal, and therefore carry minimal weight in the proposal's favour.

Planning balance and conclusion

22. Although the proposal would reuse an existing building, it would cause moderate harm to the openness of the Green Belt and would conflict with the purposes of including land within it. It would therefore be inappropriate development in the Green Belt. These are matters to which I attach substantial weight, as required by Paragraph 144 of the Framework.
23. Although it has not been shown that the local planning authority can demonstrate a five year supply of deliverable housing sites, Paragraph 11 and Footnote 6 of the Framework are clear that the 'tilted balance' in favour of 'sustainable development' is not engaged if the application of policies in the Framework to protect areas of particular importance provides a clear reason for refusing the development proposed. These areas include land designated as Green Belt and areas at risk of flooding. In this case, the harm to the Green Belt which I have identified and the risk from flooding both provide clear reasons for refusing the proposed development. The 'tilted balance' is therefore not engaged.
24. On balance, I conclude that the substantial weight to be given to the Green Belt harm, and the other identified harm above, arising from the development is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances. The appeal is therefore dismissed.

M Cryan

Inspector