



Appeal Decision

Site visit made on 9 November 2020

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 16 December 2020

Appeal Ref: APP/C1950/W/20/3254827

5 Oakwell Drive, Northaw, Potters Bar EN6 4EZ

- 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 Andrew Marler against the decision of Welwyn Hatfield Borough Council.
 - The application Ref: 6/2020/0658/FULL, dated 6 March 2020, was refused by notice dated 4 May 2020.
 - The development proposed is a subterranean dwelling with associated parking and driveway.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The emerging Welwyn Hatfield Borough Draft Local Plan Proposed Submission (2016)(eLP) has been submitted for examination. As it is yet to be found sound and adopted, I therefore attach only very limited weight to it.

Main Issues

3. The main issues are:-
 - i) whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - ii) the effect on the openness of the Green Belt;
 - iii) whether the appeal site is a suitable location for a dwelling with particular regard to the settlement strategy and the accessibility of services and facilities;
 - iv) the effect of the proposal on the character and appearance of the surrounding area;
 - v) the effect of the proposal on the living conditions of future occupiers of the proposed dwelling with particular regard to sunlight; and
 - vi) would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

4. The appeal site lies within the Metropolitan Green Belt. Paragraph 145 of the National Planning Policy Framework (the Framework) makes it clear that the construction of new buildings within the Green Belt will be regarded as inappropriate save for certain categories of development which may be regarded as not inappropriate.
5. One such exception at paragraph 145(g) provides for limited infilling or the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use. There is dispute between the parties as to whether the proposal would amount to limited infilling. However, it is an agreed position that the appeal site can be described as PDL. Nonetheless, paragraph 145(g) is subject to the caveat that the development must not have a greater impact on the openness of the Green Belt than the existing development or not cause substantial harm to the openness of the Green Belt. As it has not been put to me that the proposal is for affordable housing, the second limb of paragraph 145(g) does not apply in this instance.
6. Openness is capable of having both spatial and visual aspects. Although largely subterranean, the proposal would introduce a sizeable two-bedroom dwelling into a largely undeveloped area of garden land to the front of No 5 Oakwell Drive (No 5). The proposed above ground element would be greater in height and almost double the footprint of the existing timber shed, albeit it would broadly replicate the dimensions of the demolished outbuilding. Nonetheless, the proposed scheme would introduce a significant amount of glazing where there is presently none and therefore it would appear more visible than the existing development. Although the glazed elements would be partly hidden from public view due to their position flush to the ground level, the proposal would not be entirely concealed. Some views of the proposed development, albeit mostly partial views, would be possible from the public domain including the highway and surrounding countryside and also from neighbouring dwellings and their gardens.
7. The use of a permeable driveway surface and a grass roof would lessen the visual appearance of the proposed scheme. However, when taken together with new fencing, an access point, driveway, planters and electric charging points, these all have some visual presence and a volume, albeit mostly limited, and an impact on the openness of the Green Belt. Nonetheless, the development would be harmful and the proposal would have a greater impact on the openness of the Green Belt.
8. Moreover, openness is not confined solely to permanent physical works. The submitted plans indicate two parking spaces, however I am mindful that the available space would be capable of accommodating a greater number of vehicles. These could be parked for considerable periods of time. Notwithstanding the presence of other parked cars within the vicinity, the comings and goings associated with the residential use of the land would be very different to the existing situation. Parked cars would add visual clutter. This is a significant change in the function of the space. Whilst reference is made to the parking of cars elsewhere on sites within the Green Belt, no detailed information has been provided to me about these instances. Therefore,

I am unable to make any meaningful comparison with the appeal scheme. I have considered the appeal before me on its individual planning merits.

9. Even taking account of the demolished outbuilding, the proposal would contribute a greater visual and spatial impact than the existing development. It would clearly have a greater impact on the openness of the Green Belt as the works would result in development over a sizeable area that has not previously been developed to any great extent. It would therefore conflict with the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open.
10. I accept that the use of the appeal site as garden land could lead to the accumulation of domestic paraphernalia accompanying a residential use, such as washing lines, refuse bins, parasols and outdoor furniture. As such, these would not give rise to a greater impact on the openness of the Green Belt.
11. Nonetheless, I find that the development does not meet the exemption set out above. The proposal would constitute inappropriate development. The Framework states that such development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. As the proposal fails the exception test for the reasons stated above, there is no need to further consider the issue of limited infilling.
12. The proposal would fail to accord with DP Policy GBSP1 of the Welwyn Hatfield District Plan (2005)(DP) insofar as this policy seeks to maintain the Green Belt.
13. The Council's reasons for refusal also cite a conflict with eLP Policy SADM34 which is permissive of development in the Green Belt subject to national policy and other policies within the eLP. However, for the reasons explained above, I attach only very limited weight to the conflict with this policy.

Openness

14. For the reasons given above, I find that the proposal would have a significant effect on openness such that it causes harm to the Green Belt and conflicts with the purposes for including land within it.
15. The Government attaches great importance to Green Belts, noting 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. The Framework establishes that substantial weight should be given to any harm to the Green Belt.

Settlement strategy and the accessibility of services and facilities

16. DP Policy GBSP2 seeks to direct new development towards the most sustainable locations, namely defined towns and settlements. Outside of these locations, development will not be permitted unless it falls within an exceptional category, such as windfall development. In these circumstances, the proposal will be assessed against the criteria of DP Policy H2. The second criterion of this policy concerns the location and accessibility of the site to services and facilities by transport modes other than the car.
17. The appeal site lies some 2.3 miles and 3 miles from Cuffley and Potters Bar, respectively, taking the Council's measurements, which do not appear to have been disputed by the appellant. Access to these destinations is generally along

unlit single carriageway rural roads that are devoid of a continuous footway and are subject to the national speed limit. At the time of my site visit I observed that Coopers Lane Road received a constant flow of traffic including heavy goods vehicles (HGVs). Notwithstanding the presence of some grass verges to its edges, which would allow a pedestrian to seek refuge in the event of oncoming traffic, the distance and nature of the route would be such that I consider future occupants are unlikely to choose to walk there. This would be particularly the case for those with limited mobility, parents with young children or at night, or in inclement weather. In addition, I do not find that the nature of the route, given the volume of fast-moving traffic including HGVs would encourage its use by cyclists.

18. There is no detailed information before me concerning the availability of bus stops and their services. Reference is made to bus stops being well separated from the site and the bus service being infrequent. There is no detailed analysis before me regarding the days and times that the bus service operates. Therefore, the limited regularity of the service reduces its potential as an alternative mode of transport.
19. The number of daily movements which would be generated by the proposed dwelling would be modest. Whilst the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, the future occupants of the proposed dwelling would have a limited choice of transport mode to access day to day services and facilities. Therefore, I consider that future occupants would be highly dependent on travel by private motor vehicle. This is contrary to the objectives of the Framework and the overall aim of the District Plan to reduce the need to travel. This is a significant factor weighing against the scheme.
20. It is the appellant's case that the site was considered sufficiently sustainably located when planning permission was granted for the estate in 1997. There is little detailed information before me regarding the circumstances that led to the grant of that planning permission. As a result, I cannot be certain that the circumstances are comparable to the appeal proposal. I have determined the appeal before me on its individual planning merits.
21. For the reasons given above, I conclude that the appeal site is not a suitable location for a new dwelling given its inaccessibility to services and facilities and an undue reliance on the use of the private motor vehicle. Therefore, the proposal would fail to accord with DP Policies H2, SD1 and GBSP2 insofar as they require development to be sustainably located for services and facilities by transport modes other than the car.
22. It would also be contrary to the objectives of the Framework which requires patterns of growth to be actively managed and focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.

Character and appearance

23. Oakwell Drive lies within a small residential estate that is predominantly characterised by large two-storey detached dwellings that are broadly arranged to face the highway. Dwellings are typically set back from the highway and within spacious plots. Areas to the front of dwellings mainly consist of parking and well-maintained garden areas that are bordered by hedging to their front

- boundary. The presence of mature trees and verdant open space contributes an attractive, spacious and semi-rural character.
24. The appeal site is located at the end of a cul-de-sac and forms part of the front garden of No 5. It consists of a number of protected trees and is a broadly open and largely unkempt area of grassland. Despite forming part of the garden curtilage to No 5, the appeal site is physically divorced from No 5 by reason of the intervening vegetation and as such it appears more closely related to the open agricultural land and countryside that lies beyond the appeal site. I find it makes a positive contribution to the semi-rural and spacious character of the area.
25. Albeit largely hidden from public view, the presence of a dwelling would still be apparent from the provision of an access point, driveway, parking area and domestic paraphernalia. These would be significant changes that would create the appearance of a dwellinghouse on a separate plot. As a result of these factors, the largely open character of the site would be eroded if the appeal scheme were to be implemented. The site would inevitably become domesticated and urbanised. This would be the case even if additional planting or screening was provided.
26. The appeal site frontage would be broadly similar to the length of neighbouring frontages. Likewise, hedging to this front boundary would be broadly consistent with neighbouring dwellings. The proposed garden area would be of a sufficient size to satisfy amenity standards however, its limited size would result in a markedly smaller plot. This would be particularly conspicuous from public views from the highway and from neighbouring dwellings given that the appeal site would remain relatively open and due to its prominent position towards the end of the cul-de-sac. It would not be offset to any significant extent by the ratio of built development to plot size being less than neighbouring plots.
27. By reason of the majority of the proposed dwelling being below ground level, it would be a stark contrast to the prevailing type and style of dwellings within the locality. By reason of its partially sloping topography, the private amenity area would be located towards the front of the site. This would be at odds with the prevailing pattern of development. Overall, the proposed dwelling would appear incongruous and a discordant addition to the streetscene.
28. The Framework confirms that great importance should be attached to the design of the built environment. As part of this, innovation, originality and initiative should not be stifled. However, the Framework also indicates that it is proper to promote or reinforce local distinctiveness, however, the proposal would not achieve this at all.
29. Therefore, the proposal would harm rather than respect or enhance the character and appearance of the surrounding area and so would not accord with the design principles set out in DP Policies D1 and D2 nor the Framework. Whilst the Council's reasons for refusal also cite a conflict with the Council's Supplementary Design Guidance(2005)(SDG), there is little detail regarding the exact nature of the alleged conflict. As such I attach only negligible weight to this matter.

Living conditions of future occupants

30. In support of their case, the appellant has provided an updated Sunlight Assessment report dated 4 May 2020. The Council have had opportunity to comment but have not provided any response. The report confirms that daylight quality has been evaluated against the standards and recommendations set out in The Building Research Establishment BR 209 Sight Layout Planning for daylight and Sunlight – A Guide to Good Practice and British Standards BS EN 17037:2018 Daylight in Buildings.
31. BS EN 17037:2018 recognises that exposure to sunlight is an important quality criterion of an interior space and can contribute to human well-being. Minimum exposure to sunlight should be provided, amongst others, in at least one habitable space in dwellings. As a habitable space, the living area is assessed to receive direct sunlight for more than the minimum number of hours on a clear cloudless reference day. As such, the requirement of BRE 209 is satisfied.
32. Accordingly, I find that the proposal would provide a satisfactory level of sunlight such that the proposal would provide acceptable living conditions for future occupants. The proposal would accord with DP Policy D1 and the guidance of the SDG insofar as these require high quality design and satisfactory levels of sunlight and daylight. It would also accord with the provisions of the Framework which requires a high standard of amenity for existing and future users.

Other Considerations

33. Planning permission¹ for the demolition of an outbuilding and the erection of a pool house was granted at appeal² in March 2019. This planning permission has been implemented by reason of the demolition of the outbuilding. It is the appellant's case that the appeal proposal would have a similar effect as the consented development. It would be open to the appellant to construct the consented scheme, however, I am informed that a change in personal and financial circumstances has prompted pursuance of the appeal scheme for a new dwelling. Consequently, whilst it is theoretically possible that the consented development may take place, there is little evidence before me to demonstrate the likelihood of the alternative scheme being carried out.
34. In any event, even if a genuine fall-back position were to exist, I find that the appeal proposal is significantly different and considerably more harmful than the consented scheme for the reasons set out above.
35. The Council cannot demonstrate a five-year supply of deliverable housing land. In such circumstances, the Framework states that policies which are the most important for determining the application should not be considered up-to-date. However, paragraph 11(d)(i) goes on to state that planning permission will be granted unless there are relevant policies within the Framework that protect areas or assets of particular importance. Footnote 6 provides examples of such policies which include those relating to land designated Green Belt. Given my findings in relation to harm to the Green Belt, relevant policies within the Framework indicate that the development should be restricted. The 'tilted balance' is therefore not engaged.

¹ Planning Ref: 6/2018/1808/HOUSE

² Appeal Ref : APP/C1950/D/18/3217775

36. Whilst paragraph 59 of the Framework refers to boosting significantly the supply of housing, the provision of one additional dwelling would make only a negligible difference. Future occupants of the proposed dwelling would be likely to contribute spending to local services and facilities. However, given the scale of the proposal such economic benefit would be very limited. Economic benefits generated during construction would be temporary.
37. I have had regard to the appellant's sustainability report. The proposed carbon friendly eco-dwelling would include insulation elements that outperform Passivhaus standards. There may be very few energy efficient buildings of this nature. These environmental benefits attract weight but I do not consider that they would outweigh the harm and the conflict with local and national planning policy. The adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
38. My attention has been drawn to the proposal making use of existing infrastructure and having no adverse impact on the living conditions of neighbouring occupants, highway safety and protected trees. However, the absence of harm is a neutral factor that weighs neither for nor against the proposal.
39. I have had regard to the appellant's desire to downsize to a smaller property and release a larger family sized dwelling. However, personal circumstances can seldom outweigh general planning considerations and do not outweigh the harm I have identified above.
40. The appellant has drawn my attention to various caselaw which I have had regard to when reaching my decision.

Conclusion

41. The proposal would be inappropriate development in the Green Belt and paragraph 144 of the Framework states that substantial weight is to be given to any harm to the Green Belt. In addition, there would be a significantly harmful effect on openness. The proposal would ensure adequate living conditions with regard to sunlight would be available for future occupants. However, there would be environmental harm to the character and appearance of the surrounding area and due to the location of the appeal site and an undue reliance on the use the private motor vehicle.
42. I find that the other considerations in this case do not clearly outweigh the harm I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal would be contrary to DP Policies GBSP1, H2, SD1, GBSP2, D1 and D2 and the development plan, as a whole.
43. There are no material considerations of sufficient weight or importance that determine that the decision should be taken otherwise than in accordance with the development plan and therefore planning permission should be refused.
44. For the above reasons, having regard to all other matters raised, I conclude that the appeal should be dismissed.

E Brownless

INSPECTOR