
Appeal Decision

Site visit made on 8 April 2021

by R Bartlett PGDIP URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2021

Appeal Ref: APP/J1915/W/20/3261881

Land opposite 23 Tatlers Lane, Aston End, SG2 7HL

- 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 Brad Kelly, Probuild Ltd, against the decision of East Hertfordshire District Council.
 - The application Ref 3/20/0278/FUL, dated 11 February 2020, was refused by notice dated 24 April 2020.
 - The development proposed is the erection of a single self-build bungalow and basement, with associated landscaping and parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are as follows:
 - Whether the proposal would be inappropriate development in the Green Belt;
 - The effect of the development on the openness of the Green Belt;
 - The effect of the development on the character and appearance of the area;
 - 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 the development; and
 - Whether the proposal would result in significant harm to biodiversity.

Reasons

Inappropriate development

3. Policy GBR1 of the East Herts District Plan (October 2018) (EHDP) states that planning applications within the Green Belt will be considered in line with the National Planning Policy Framework (the Framework). Paragraph 145 of the Framework states that new buildings should be regarded as inappropriate development in the Green Belt. One of the exceptions to this includes limited infilling in villages.

4. The village of Aston is some distance from the site. Aston End, is considered by the council to be a hamlet as opposed to a village. I observed on my site visit that the proposed dwelling would not be isolated and despite being located outside of any defined development limits, it would be in a sustainable location, adjacent to a built up area and with good access to a range of services and facilities. To my mind the area is more akin to a village or edge of town than a hamlet and a limited infill development in this location would not conflict with the general spirit or aims of the Framework.
5. The site comprises a long narrow parcel of land, which runs parallel to the eastern side of Tatlers Lane. There are very few dwellings on this side of the Lane and those that do exist are traditional cottages, sited with their gable ends facing the road and gardens running parallel to it. Around the bend, to the east, there are a couple of large detached dwellings, which are set well back from the road. To the rear of the site, there is a large domestic timber outbuilding with a shallow pitched roof, in what appears to be part of the garden to no. 28 Tatlers Lane. The opposite side of the road is more built up, comprising a linear frontage of bungalows and dormer bungalows, sited quite closely together, with parking at the front.
6. Although the proposal for a single dwelling would meet the test of being limited, given its siting, which would be substantially forward of no. 28 Tatlers Lane, in front of its domestic garden and outbuilding and to the end of the garden of no. 30 Tatlers Lane, it would not to my mind constitute infilling, which is commonly defined as the filling of a gap in an otherwise built up area. I concur with the appeal decision¹ referred to by the appellant, which states that what would or would not constitute limited infill, will vary on a case by case basis. In this case I find that the frontage is not built up and the gap between properties to either side of the site is substantial.
7. I therefore conclude that the proposal would not be infill and would be inappropriate development, which, according to paragraph 143 of the Framework, is by definition harmful to the Green Belt. Consequently the proposal would also be in conflict with Policy GBR1 of the EHDP.

Openness

8. Paragraph 133 of the Framework states that openness and permanence are essential characteristics of the Green Belt. The fundamental characteristic of openness is the absence of buildings. The construction of a dwelling on the site would impact on openness by introducing built development where there currently is none. Although the harm from a single dwelling would be quite modest, paragraph 144 of the Framework requires that substantial weight is given to any harm to the Green Belt.

Character and appearance

9. The appeal site comprises an undeveloped parcel of land. The appellant's Ecological Survey, the council's case and various consultation responses appear to concur with the view that the land is an orchard albeit many of the former trees have been removed and the grass appears to be mown regularly. The remaining trees and hedges within and around the site make a positive contribution to the rural character of the area.

¹ APP/B1930/W/19/3225543

10. The dwelling proposed is a very modern passivhaus. Its siting would be at odds with dwellings to the north west, which have their gable ends to the road, and with the dwellings to the east, which are significantly set back from the road frontage. In contrast the proposed dwelling would have its longest and highest elevation situated close to the front hedge, which isn't particularly high. The dwelling would therefore be visually prominent and would detract from the very rural character and appearance of the site and its immediate surroundings on what is a narrow country lane.
11. I acknowledge that the scale of the dwelling would not be significant in comparison to that of other dwellings in the area, that much of it would be hidden below ground and that it would be of commendable sustainable design and construction. It would nevertheless detract from the open and rural character of the area. Given its proximity to the site boundary it would not blend into the landscape or be well screened. It is also unclear from the submitted plans whether or not the hedgerow would need to be removed in order to achieve appropriate visibility from the access. Traffic surveys submitted with the appeal confirm that traffic speeds and volumes are low. The local highway authority has not commented on this evidence, which did not form part of the original application. I noted during my site visit that although there were very few car movements, there were many pedestrians and cyclists using the road, which is very narrow and has no footpaths or verges. Visibility therefore remains important and the removal of the hedge would further erode the rural character of the area.
12. The proposed development would therefore conflict with Policy VILL3(III) of the EHDP, which requires all development to be in keeping with the character of the village and not to result in the loss of significant open gaps that contribute to the form and/or setting of the village.

Other considerations

13. Very special circumstances to justify inappropriate development in the Green Belt will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
14. I acknowledge that the dwelling would be a self-build for the appellant and that it would be highly sustainable. I also acknowledge that there is growing demand and support for self-build plots and for more sustainable homes such as the one proposed in this case. However, there is no compelling evidence before me to demonstrate that such dwellings need to be located on greenfield sites in the Green Belt. These are not very special circumstances upon which the development could be justified and could very easily be repeated, resulting in a proliferation of sustainable and/or self-build dwellings in the Green Belt, which would undermine its purpose to keep land permanently open and undeveloped. It would also somewhat undermine other fundamental principles of sustainable development. I am advised that the appellant has added himself to the council's self-build register and consequently he will be advised of any suitable plots that become available in the future.
15. The appellant has referred me to two other appeal decisions. In each of these cases it is apparent that the appeals were allowed on the basis that they met the criteria of being limited infilling and as such were not inappropriate development in the Green Belt. They were not allowed on the grounds that

they were inappropriate and that being self-build or carbon free dwellings would outweigh the harm to the Green Belt.

Harm to biodiversity

16. The council's second reason for refusal stated that the proposed development would result in the loss of irreplaceable habitat on a site designated as a Priority Habitat of Principle Importance as a traditional orchard. I have not been provided with any evidence of the site's formal designation. Usually, such sites would be identified and designated in the council's local plan in accordance with paragraphs 171 and 174(a) of the Framework. The documents referred to by the council describe different types of priority habitats, but do not designate specific sites.
17. Whilst there is evidence that a number of fruit trees have been removed from the site in recent years, there is nothing before me to suggest that their removal was unlawful, that the trees formed part of an ancient woodland, were veteran trees or were protected. On the contrary, a previous Arboricultural Report dated 2015, confirmed that 12 of the 13 fruit trees were of low quality and value. 7 of these trees were subsequently removed.
18. I can only make my decision based upon the site as it currently exists. There is nothing before me to suggest that the proposed development, which is modest in scale, would result in the loss of any further trees that are protected or to explain what significant harm to biodiversity would result from the development that could not be mitigated by appropriate conditions. I note that there is one young tree that would be relocated and that some crown lifting would be undertaken to the group of Ash trees on the boundary. The required work would not result in the irreplaceable loss of a traditional orchard. There is no reason why appropriate mitigation and biodiversity net gains cannot be provided on adjacent land in the appellants ownership, in addition to on site. Granting permission would enable biodiversity net gains to be conditioned whereas I am very conscious that in dismissing the appeal there is no way of securing any replacement tree planting or biodiversity improvements.
19. Based upon the updated Arboricultural Impact Assessment and Ecological Statement, together with the recommended mitigation measures set out within these documents, I find that the proposal would not result in significant harm or irreplaceable loss of any designated habitat.
20. In the absence of any evidence of the site being designated as a nature conservation site or irreplaceable habitat, I find no conflict with Policy NE1 of the EHLP or with paragraph 175(c) of the Framework.

Conclusion

21. The dwelling would not constitute infilling or comply with any of the other exceptions for new buildings in the Green Belt. It would therefore be inappropriate development, which is harmful by definition. In addition I have found that the development would be harmful to the openness of the Green Belt and to the character and appearance of the area. The other considerations put forward by the appellant in support of the development do not amount to very special circumstances and do not clearly outweigh the substantial weight I must give to the harm to the Green Belt and the other harm I have identified.

22. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Rachael Bartlett

INSPECTOR