



Appeal Decision

Site Visit made on 13 July 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2021

Appeal Ref: APP/W3005/W/21/3272503

Land Rear of 132, Main Road, Underwood, Nottingham NG16 5GN

- 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 M Anthony against the decision of Ashfield District Council.
 - The application Ref V/2020/0773, dated 15 October 2020, was refused by notice dated 14 January 2021.
 - The development proposed is dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. In the interests of natural justice both main parties have had the opportunity to make representation. In reaching my decision I have taken any resulting submissions into account.
3. I have also had regard, and in accordance with Paragraph 30 of the Framework in this appeal decision to the JUS-T Neighbourhood Plan¹ 2017-2032, adopted 7 November 2017 (JUSNP), which the Council provided as part of their appeal submission.
4. The appellant has submitted revised plans as part of the appeal, '*BE/74/202 DRG/001 Rev 4 - location plan*' and '*BE/74/202/DRG/002 Rev 3 - site plan*' and additional parking and turning drawings. This has increased the red line application site boundary to take into account the site access at the lane, footpath and proposed layout. However, such a substantial change to the application boundary would usually warrant the submission of a new planning application as this could affect constraints and the scope of statutory consultation. It may also invalidate the Ownership Certificate and subsequent statutory declaration that was made when the application was originally submitted, and in doing so could prejudice those with an interest in the land or third parties.
5. In considering whether to accept these amended plans, I have had regard to the '*Wheatcroft Principles*²'. That is to say, if I were to accept the amended plans, would my doing so deprive those who should have been consulted over the changed development the opportunity of such consultation. In this case, given the extent of the change to the application boundary and the location of

¹ Jacksdale, Underwood and Selston Neighbourhood Plan

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

the land that it would encompass, it is my view that to accept the amended plan would prejudice the interests of third parties who have not had the opportunity to comment on the revised site boundary. I have therefore proceeded to determine the appeal on the basis of the red line application as originally submitted, and upon which the Council made its determination. Moreover, the merits of any revised scheme, would if necessary, be a matter for the main parties to consider as part of a fresh proposal away from this appeal.

Main Issues

6. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- The effect of the proposal on the openness of the Green Belt;
- The effect of the proposed development on the character and appearance of the area;
- The safe and efficient operation of the highway network in the vicinity of the appeal site;
- The effect of the proposal on the living conditions of future neighbouring occupiers, with regard to privacy; and
- If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

7. The Framework sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 149 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it meets one or more of a list of exceptions. The exceptions include, (e), limited infilling in villages. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
8. Saved Policy EV1 of the Ashfield Local Plan Review, 2002 (ALPR) states that permission will not be granted for inappropriate development in the Green Belt except in very special circumstances. Appropriate development comprises, b) iv) limited infilling within the village of Bagthorpe, New Westwood, Jubilee and New Selston, so long as there is no adverse effect on the character of the village. However, it is not wholly consistent with the approach or terminology of the Framework exceptions of inappropriate development as it refers to a closed list of locations. As such, in accordance with paragraph 219 of the Framework, I afford limited weight to this policy and have assessed primarily against Green Belt policy within the Framework.

9. There is no definition in the Framework in terms of 'village', 'infilling' and 'limited' but the glossary to the ALPR defines 'infilling' as *'an area which can accommodate one or two dwellings within a small gap in existing development'*.
10. The appeal site is located within the Nottingham Derby Green Belt and lies outside the settlement boundary of Underwood. It consists of a parcel of land which is set back from the highway, accessed from a lane which is also a public footpath. It is positioned towards the rear but on the opposite side of the lane to No.132 Main Road (No.132). The appellant has referred to the existing use of the land being part of the garden curtilage to No.132. However, from site observations the site is somewhat disconnected from the curtilage and garden of No.132. The site appears to have been cleared leaving areas of rubble and other domestic paraphernalia but is free from any built form. It is enclosed by existing walls, fencing and a gate. Towards the west is the shared boundary between the garden area of No.138 Main Road.
11. The Council maintain that the site is located outside the settlement of Underwood as defined in the ALPR and does not fall within the specified villages. I have had regard to the judgement³, in considering whether a settlement is a village or whether a site is in a village as the local plan boundary of a village is not determinative for that purpose. Therefore, it is necessary to consider the situation "on the ground" as well as any relevant policies. It is a matter of judgement depending on those factors.
12. In this case, although falling outside the settlement boundary on the proposals map, Underwood contains a significant amount of residential properties. The site itself would be surrounded by residential development, that would not be seen in isolation from those further along Main Road, located within the settlement boundary. There are also several local services nearby, including a pub, recreational area/playground and bus stops. Despite, the centre of the village being some distance away for day-to-day services, it would still be accessible by other means if necessary, including walking or cycling and, even if, cars were the primary use the journeys would be a short distance.
13. I accept that there is a more apparent continuous line of development along Main Road towards the east and it becomes more sporadic towards the appeal site. However, there still appears to be built form set back from the roadway, which is also visible, and there is an extant permission in principle⁴ decision for 4-9 dwellings within the intervening agricultural field. There are also continuous footpaths towards the village centre.
14. The appeal site would form part of a cluster of dwellings which front Main Road, and those which are staggered back to the north. It is not clearly defined that one dwelling would appear or be seen in isolation to those properties which exclusively front Main Road. There is also other development within the cluster that is set back from the frontage of Main Road. The definition in the ALPR does not stipulate that the gap should be solely 'residential development'. The proposal would be for one dwelling, within an enclosed parcel of land forming a relatively small gap between existing development.
15. Furthermore, although the residential development has not been constructed to both the north and south of the appeal site, the permissions for residential

³ Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

⁴ V/2019/0824

development remain extant⁵, I consider this is a material consideration. There is a 'real prospect' of these developments being implemented and the proposed dwelling would also be sited in between those.

16. In coming to my decision, I have also had regard to the appeal decision⁶, as this is directly comparable to the appeal site, particularly as that site directly adjoins and fronts the appeal site before me. In that decision the Inspector sets out the reasons in paragraphs 10-13 in reaching his conclusion that '*the proposal would be an infill development within the village of Underwood*'. I have no reason to disagree with the Inspectors findings in regard to the locality within the village of Underwood.
17. For the reasons given above, I conclude that the proposed development would not be inappropriate development in the Green Belt, it would be limited infilling in a village. Although it would not strictly accord with Saved Policy EV1 of the ALPR, in regard to the restriction of villages specified. It would be in accordance with the criterion set out at paragraph 149 (e) of the Framework.
18. As I have found that the proposed development would not be inappropriate development in the Green Belt, there is no place for a subsequent assessment of the effect of the development on the openness of the Green Belt, or the impact on Green Belt purposes, having also regard to the judgement in the Court of Appeal⁷.
19. Moreover, given that the proposed development would not amount to inappropriate development, there is no need for me to assess other considerations, and whether very special circumstances exist in order to justify the development.

Character and Appearance

20. Saved Policy HG5(g) of the ALPR sets out that new residential development will be permitted where its design is acceptable in terms of appearance, scale and siting. Saved Policy ST1(b) permits development where it will not adversely affect the character, quality, amenity or safety of the environment.
21. The JUSNP identifies that buildings in Underwood tend to be two storeys, although some bungalows are also present in places. There are a mix of property types and styles within the vicinity of the site with the majority being sited within spacious plots and linear rear gardens. Despite, some variation in form, the properties in the area present a discreet arrangement that appreciable contributes towards the local character. The proposed dwelling would be of a single storey bungalow style with rooms within the roof space of a contemporary appearance with acceptable materials.
22. However, the appeal site is restricted in terms of its plot size and layout due to the siting and overall position along the existing lane. As such, the dwelling would appear rather oddly and contrived to fit within the confines of the appeal site and its boundaries. This would be exacerbated by the proposed access and parking provision within the site. Therefore, it would appear incongruous in comparison to the existing spacious residential development. Furthermore,

⁵ V/18/2018/0633, V/2020/0183, V/2018/0758

⁶ APP/W3005/W/19/3221793

⁷ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

- given the limited space between the boundaries, particularly to the south it would appear as a cramped dwelling resulting in over-development of the site, which would not be characteristic of properties in the area which feature enclosed spacious plots and large garden areas to both front and rear.
23. Moreover, despite the appeal site being set back from the frontage of Main Road, it would still be visible from the footpath, utilisation of the lane and existing development. Therefore, I would disagree with the appellant's contention that the orientation and siting does not need to respond to the pattern of development along the street scene.
24. Consequently, I conclude that the proposed development would be harmful to the character and appearance of the area. It would be contrary to Saved Policy HG5(g) and ST1 of the ALPR, as I have set out. It would also conflict with Policy NP2 of the JUSNP, which requires development to respect local character; and within Underwood incorporate visual connections into the wider landscape and reflect the settlement pattern with streets and blocks.
25. Additionally, the proposal would also be at odds with the guidance contained within the Council's Residential Design Guide, Supplementary Planning Document, 2014.

Highway Safety

26. Vehicle access for the proposed development would be taken from the existing public footpath / shared access lane. The access lane serves existing plots to the north. Two parking spaces are proposed within the appeal site. It would appear from the evidence before me that with the extant permissions granted for residential development the use of the access lane would be for 4 dwellings.
27. The Council have indicated that it has not been demonstrated that the proposed access width is in accordance with Nottinghamshire County Council Highway Design Guide, albeit I have not been provided with a copy of this. Nonetheless, from the plans of which the Council determined the red line identifies a shortfall within the width, would not allow 2 vehicles to pass within the location and the red line excludes the public footpath within the lane.
28. Given that the appellant has acknowledged that the red line is incorrectly drawn on the location and site plan. I consider that there are significant inconsistencies with the proposed access width, turning and passing places. Furthermore, the Council have expressed concerns over the depth of the site from the highway and previous approved permission to the south. Although, this is not a matter for consideration in this appeal and one for the Council to investigate, if approved plans are inconsistent it raises some concern over the clarity of the depth being some 70m from Main Road as set out on the proposed site plan.
29. As such, I must find that the proposed development would not provide adequate access, parking and vehicle manoeuvring space to clearly demonstrate that safe and efficient operation of the highway network in the vicinity of the appeal site could be achieved. It would therefore be contrary to Saved Policies HG5(e) and ST1 of the ALPR, which amongst other things only permits residential development where access for vehicles, pedestrians and cyclists where appropriate, is safe and convenient and integrated with existing provision, and it would not adversely affect highway safety.

Living Conditions

30. The Council contend that the proposal would cause harm to the living conditions of future occupiers of the proposed dwellings both to the north and south under the extant permissions. As part of the appellant's evidence, I have been provided with a copy of those approved plans. The proposed dwelling incorporates 2 dormer windows to the front roof slope. Given the distance and siting of the approved dwelling to the north, in comparison, it would be unlikely that there would be any significant direct overlooking or loss of privacy. This would be minimal, particularly with the proposed landscaping, boundary treatments and that any views from these roof windows would only be likely to the front driveway. As such, I consider that there would be no loss of privacy to the future occupiers of that dwelling.
31. Nevertheless, the proposed dwelling would be sited in close proximity to the boundary to the south. It would consist of 3 dormer windows, with 2 serving habitable rooms within the roof space of the rear elevation. Given the proximity and siting of the dwelling, the windows would directly look over the garden area of the proposed dwelling (extant) towards the south to an unacceptable degree. I do not consider that a condition for obscure glazing would be acceptable. This would negatively impact on the living conditions of the future occupiers of the appeal proposal in terms of natural light within habitable rooms and that there are no other openings on the rear elevation.
32. For the reasons given above, I conclude that the proposed development would cause harm to the living conditions of future neighbouring occupiers to the south, with regard to privacy. It would be contrary to Saved Policies HG5(a), (b) and ST1 of the ALPR, which protects the amenity of neighbouring properties and the design and layout of dwellings minimises potential overlooking and provides a reasonable degree of privacy.

Other considerations

33. The Council cannot demonstrate a five-year supply of deliverable housing sites and the shortfall is described as 'substantial'. Consequently because of the provisions of footnote 8, paragraph 11 d) ii of the Framework should be applied.
34. The Local Plan dates from 2002 but the weight to be attached does not hinge on its age. Rather paragraph 219 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework.
35. Although, I have found the development to not be inappropriate development in the Green Belt, I have identified that there would be significant harm caused to the character and appearance of the area, living conditions of future neighbouring occupiers and that it does not demonstrate safe and efficient operation of the highway network.
36. As set out in the Framework, the creation of high-quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development. Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design. Development should have a high standard of amenity for

existing and future users. Furthermore, where a planning application conflicts with any neighbourhood plans that form part of the development plan, permission should not usually be granted.

37. Therefore, even taking account of the objective of boosting the supply of housing and the housing land supply position, the conflict between the proposal, the JSNP and Saved Policies HG5 and ST1 of the ALPR, which is consistent with the design principles of the Framework should be given significant weight in this appeal. It would therefore conflict with the development plan as a whole.
38. Set against the harm identified there would be limited social and economic benefits associated with the proposal. An additional unit would make little difference to the overall supply of housing and the support one extra household would provide to the local economy would also be insignificant. Consequently, the adverse impacts on the character and appearance of the area, living conditions and highway safety concerns would significantly and demonstrably outweigh the identified benefits, when assessed against the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

39. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

KA Taylor

INSPECTOR