



Appeal Decision

Site Visit made on 28 September 2021

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2021

Appeal Ref: APP/Y3940/W/21/3276780

Land adjacent 12 Farleigh Rise, Monkton Farleigh BA15 2QP

- 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 and Mrs Gary and Nicky Emery against the decision of Wiltshire Council.
 - The application Ref 19/08938/FUL, dated 12 September 2019, was refused by notice dated 11 December 2020.
 - The development proposed is redevelopment of existing falconry aviary buildings on site to provide two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was submitted the Government has published a new National Planning Policy Framework (the Framework). Comments were sought from the Council and the Appellant. As the main parties have had the opportunity to provide comments no injustice has been caused. I have considered the appeal on the basis of the revised Framework.

Main Issues

3. The main issues of the appeal are;
 - Whether the proposed development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - The effect on the openness of the Green Belt;
 - The effect on the character and appearance of the area, including the Cotswolds Area of Outstanding Natural Beauty (AONB);
 - Whether or not the proposed development would provide a suitable location for housing, having regard to the accessibility of services and facilities;
 - The effect of the proposal on biodiversity; and
 - 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.

Reasons

Whether Inappropriate Development

4. The appeal site is situated in the Green Belt. The National Planning Policy Framework (the Framework) outlines that the construction of new buildings, other than in connection with a number of exceptions, should be regarded as inappropriate in the Green Belt. Inappropriate development according to the Framework is harmful to the Green Belt and should not be approved except in very special circumstances. One of those exceptions is limited infilling in villages (paragraph 149 e)).
5. Another exception is the limited infilling or the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development or would not cause substantial harm to the openness of the Green Belt where the development would contribute to meeting an identified affordable housing need (paragraph 149 g)).
6. At a local policy level, I have not been presented with a specific Green Belt policy. However, the supporting text to Core Policy 51 of the Wiltshire Core Strategy (adopted January 2015) (Core Strategy) states that applications for development in the Green Belt will be determined in accordance with national planning policy. In addition, Core Policy 7 requires development to have particular regard to the constraints of the Green Belt.
7. Policy CP2 of the Core Strategy relates to the Council's housing delivery strategy. In small villages (like Monkton Farleigh) new residential development is limited to infill within the existing built area. For the purposes of the policy infill is defined as the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling. In those cases, the development must respect the existing character and form of the settlement; does not elongate the village or impose development in sensitive landscape areas and does not consolidate existing sporadic loose knit areas of development related to the settlement.
8. The Core Strategy was adopted prior to the latest version of the Framework¹, which does not specifically define villages or limited infilling. However, there is nothing in the Framework that explicitly prohibits development plans being more prescriptive in defining the extent of a village or the parameters for what might be accepted as limited infilling. Accordingly, I do not find that Policy CP2 to be inconsistent with the Framework in doing so, or in restricting limited infilling to the villages referred to in the policy.
9. The Council states that the appeal site is located over 1.5km away from the "small village" of Monkton Farley and is therefore not within a settlement where appropriate infilling may otherwise be considered acceptable with reference to Policy CP2.
10. However, I have also had regard to the *Braintree* judgement² which ruled that a "settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house, or public transport within easy reach". Furthermore,

¹ National Planning Policy Framework, 2021

² *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610

"whether, in a particular case, a group of dwellings constitutes a settlement, or a "village", for the purposes of the policy will again be a matter of fact and planning judgment for the decisionmaker". Accordingly, having regard to that court judgement, the supporting text to Core Policies 7 and 51, and to the more general reference to villages in the Framework, I have assessed the characteristics of this particular site and its surroundings based on the circumstances on the ground.

11. Farleigh Rise comprises a planned housing estate of around 40 dwellings arranged in semi-detached pairs and short terrace clusters. It is regarded by the appellant as a satellite group of dwellings, separated from, but forming part of the small village of Monkton Farleigh. Generous communal spaces exist between the properties, which are served by a primary estate road. Although there are no public buildings or facilities such as shops or a pub serving the estate, the public bin, noticeboard and post-box, near the estate's entrance, along with the communal and recreational spaces evoke a sense of Farleigh Rise forming an organised community with some limited public amenities. In my view the combination of these physical characteristics, the number of houses and associated amenities, gives this large group of dwellings the appearance of a small settlement.
12. The appeal site's western boundary abuts the residential curtilage of No 12 Farleigh Rise (No 12), whilst the aviary buildings are in close proximity to, and visible from that dwelling. The appeal site does not share the same domestic character as the residential plots relating to the estate's dwellings, given that a large proportion of it is currently covered in scrub vegetation. Nonetheless, the former aviary buildings and the site's access off the estate road, form a continuation of development albeit confined to the eastern edge of the built-up area. I therefore consider that the appeal site is within a village for the purposes of Paragraph 149 (e) of the Framework. Moreover, and notwithstanding the tests required in assessing new homes in the Green Belt, the appeal site would not be in an isolated location in the terms of the Framework (Paragraph 80).
13. In the absence of a definition of "infill" in the Framework, I have referred to the Core Strategy's interpretation, i.e. "the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling", along with the assessment criteria in Policy CP2 of the Core Strategy, I referred to earlier.
14. The appeal site is at the eastern edge of the settlement. Its north and eastern boundaries border dense woodland, and in this regard the site does not form a gap between existing structures or dwellings in Farleigh Rise, rather, it has an undeveloped and open aspect beyond two of its sides. A small paddock containing a modest number of buildings is located to the appeal site's south, however, that land largely retains a rural appearance that does not contribute towards a continuous development frontage in relation to the appeal site.
15. The existing aviary buildings are located close together within the site's western half. In contrast, the eastern half has a natural appearance largely characterised by scrub vegetation. Although there was a parked vehicle and a mound of rubbish located in this portion of the site, the area was in the main undeveloped. The proposed dwelling at Plot 2 would encroach into that space and extend closer to the site's northern boundary. The effect of this would be

to elongate the built form of the site and the settlement further towards the undeveloped areas of mature woodland that flank the site's north and eastern boundaries, rather than infilling a small gap within the settlement. Therefore, the proposed development would not represent limited infilling.

16. The appellant states that the Council has not contested the matter of infilling. However, in the supporting information that accompanied its statement of case, I note that the Council also considers that the proposal would fail the infilling test in Policy CP2 of the Core Strategy.
17. Accordingly, when judged against the wording of national and local policy the proposal would not represent limited infilling within a village or any of the Frameworks' other exceptions. It would thus be inappropriate development in the Green Belt which, according to the Framework, is harmful by definition. It would therefore conflict with the criteria in paragraph 149 e) of the Framework and Policies CP2, CP7 and CP51 of the Core Strategy.

Effect on Openness

18. In light of the above, there is a need to consider the effect of the proposal on the openness of the Green Belt. The Framework indicates that openness is an essential characteristic of the Green Belt. My attention has also been drawn to the *Turner*³ and *Euro Garages Ltd*⁴ High Court judgements. In broad terms those rulings recognise that openness has both a visual and spatial aspect and that the degree of activity likely to be generated may also be a consideration. Moreover, whether there is harm might depend on a variety of factors including the scale of the development, its locational context, and its spatial and/or visual implications. Therefore, for the purposes of this appeal, I have considered both the visual and spatial aspects of openness.
19. The existing aviary buildings are grouped close together. They would be replaced by two dwellings with a similar combined floor area. However, the dwellings have a more spacious arrangement within the site, with Plot 2 specifically extending into the existing undeveloped space to the east of the aviary buildings. The intervening spaces between the dwellings would also be more intensively used with parked cars, driveways and residential paraphernalia (e.g. washing lines and outdoor seating) likely to occupy those areas. This would be in stark contrast to the spaces around the existing aviary buildings, which I saw during my site visit, to be largely consisting of scrub vegetation. Consequently, the more intensively occupied residential plots combined with their expansive layout across a greater portion of the site would reduce the openness of the Green Belt in spatial terms.
20. There are tall trees surrounding the appeal site that would screen the proposed dwellings from long range views when approaching from the west along the Farleigh Rise estate road. Nonetheless, the dwellings would be seen through gaps in the trees from within the gardens and upper floor windows of Nos 12 and 14 Farleigh Rise. In this respect the proposal's greater coverage within the site, associated domestic appearance and encroachment into the currently vacant and undeveloped space at its eastern half would result in it having a more pronounced visual impact upon the site's openness, compared to the existing buildings, when viewed from surrounding properties.

³ *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466

⁴ *Euro Garages Ltd v SSCLG & Anor* [2018] EWHC 1753 (Admin)

21. Therefore, in both spatial and visual terms the proposal would have a greater impact on the openness of the Green Belt than the existing situation. While the harm would be moderate, this would be contrary to the Framework where it states an essential characteristic of Green Belts are their openness. Although judged, for the purposes of the Framework, to be in a village, the development would not comply with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open.

Character and Appearance

22. The appeal site lies within the Cotswolds AONB. In accordance with paragraph 176 of the Framework, great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. The scale and extent of development within AONBs should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
23. Despite the presence of the aviary buildings on the appeal site the spaces around them have regenerated somewhat and primarily incorporate low level scrub. These areas, particularly the larger undeveloped space to the east of the aviaries extend up to the site's mature wooded edge, blending gently and sympathetically with the woodland beyond. I therefore consider that the site's setting contributes positively to its character, and to a minor extent the natural qualities of the AONB. This contrasts to the more closely arranged dwellings and engineered spaces of Farleigh Rise to the appeal site's west.
24. The proposed dwellings would incorporate a layout that would follow the curvature of the access road and continue the sequence of dwellings lining Farleigh Rise's northern road frontage. However, the dwellings would significantly urbanise the soft undeveloped spaces and have a negative impact on the site's positive attributes that contribute to the area's character. In the case of Plot 2, that dwelling would extend closer to the site's wooded edge, and in doing so have a discordant and urbanising impact upon the context of that attractive natural backdrop. Other domestic paraphernalia located in and around the proposed units, such as the vehicle hardstandings, parked vehicles and outdoor seating, would also appear discordant and incongruous upon the surroundings. These impacts would be most noticeable from the site's entrance, along with the gardens and upper floor windows of Nos 12 and 14.
25. The appeal dwellings would be timber clad and covered in a sedum roof. These finishes would relate well to the site's verdant surroundings. Yet, this material pallet would not sufficiently obscure or screen the angular L-shape form of the dwellings which would appear more perceptible and expansive when viewed from neighbouring properties, compared to the existing aviary buildings.
26. I acknowledge that the aviary buildings are somewhat run down in terms of their appearance, whilst the presence of a rubbish pile and an old vehicle to the site's north eastern corner have an unkempt appearance. Nonetheless, large portions of the site convey a natural appearance that associates well with the dense woodland to the north and east. Moreover, the fact that parts of the site are currently dilapidated and untidy does not provide sufficient justification to allow the development of the scale proposed.

27. For the foregoing reasons, I conclude that the proposal would have a detrimental effect on the character and appearance of the area, which would fail to conserve the landscape and scenic beauty of the Cotswolds AONB contrary to the Framework. It would also not accord with Core Policy 51 of the Core Strategy, which in part, requires development to protect, conserve and where possible enhance landscape character, conserve the transition between man-made and natural landscape at the urban fringe and conserve and enhance AONBs.
28. In concluding on this matter, I have not applied the Framework's exceptional circumstances test in respect to AONBs (Paragraph 177) as this relates to major developments only.

Location of Proposed Development

29. During my inspection of the surrounding area, I noted that the appeal site is roughly equidistant from the centres of Monkton Farleigh and Bathford. The latter settlement has the greater number of local shops and services as well as a regular bus service, that connects to larger centres, some 700m from the appeal site. I concur with the appellant that Bathford would likely be more frequently used by future occupiers of the proposal for its services and amenities than Monkton Farleigh, which is limited in its number and range of facilities. Moreover, Bathford's amenities would be within the preferred maximum walking distance range considered acceptable by the Institute of Highways and Transportation⁵.
30. The route that future residents would have to walk to Bathford would likely, in my view, be along Prospect Place. This is a narrow, unlit road for most of its length, whilst there are no pedestrian footways along it. This is not an attractive pedestrian route, especially in poor light, which would discourage walking to the bus stop and therefore access to the services and facilities at nearby settlements. Future residents would be further put-off by its steep gradients, which would prove physically challenging for some, especially up its steep incline when walking back to the appeal site from Bathford. Therefore, occupiers of the proposed dwellings would be heavily reliant on the use of a car or other vehicle.
31. The Appellant's case refers to precedents established by the Council in approving the housing estate at Farleigh Rise. Yet, I have no specific details of the reasons that led to the development's approval, nor whether the planning policies that persisted at the time required accessibility of the site's location to be considered. A further case relating to a nearby cattery was approved by the Council. Again, I cannot be certain on the policies that were used to determine that scheme, given that the decision predates the Core Strategy's publication. In addition, that scheme would be materially different in nature to the proposal before me for residential development. Accordingly, I have given those cases limited weight in favour of the appeal. In any event I have considered the current appeal scheme on its own planning merits.
32. Comparisons have been made between the proposal and the historical movements associated with the comings and goings by car to and from the site for the purposes of tending to the birds within the aviaries. But, I have no specific details on the volume of those previous and existing journeys and how they would compare to the proposal. Despite this, I would typically expect that

⁵ Guidelines for Providing Journeys by Foot (Institute of Highways and Transportation)

vehicle journeys associated with the proposed dwellings would be greater, involving daily, if not multiple, trips to and from places of employment, local schools, shops and services.

33. While not determinative of whether the proposal is inappropriate development or not, and notwithstanding my finding on the extent of the village for the purposes of the Green Belt assessment, the proposal would not provide a suitable location for housing, having regard to the accessibility of services and facilities. As such the proposal would be contrary to Core Policies 60 and 61 of the Core Strategy, which, amongst other things, require new development to be located to reduce the need to travel by private car and to encourage the sustainable, safe and efficient movement of people.

Biodiversity

34. The appeal site is located within an area of High Ecological Value and within 250m of Brown's Folly Site of Special Scientific Interest (SSSI), which is also designated as part of the Bath and Bradford on Avon Bat Special Area of Conservation (SAC).
35. The Council is satisfied with the findings and recommendations of the submitted ecological surveys relating to trees, bats, dormouse and reptile. Yet, it required prior to the application's determination, details of how the identified reptile receptor area would be retained in the long term. Also, drawing details were requested showing both the reptile receptor area and a woodland edge habitat created at the north boundary of the site, to provide continued bat foraging/ commuting habitat and continued provision of scrub type habitat at the site.
36. The appellant considers that those details can be secured through planning conditions and therefore the Council was wrong to request them prior to determination of the application. But, without those details it is not known how the reptile receptor and foraging areas would relate to each other. Moreover, their combined size, habitat composition and proximity to the adjacent woodland would not be clear. As these measures would form part of a mitigation package it is important to establish whether they would be acceptable in principle in the first instance. Consequently, without the information requested by the Council I cannot be certain whether those measures would effectively address the appeal scheme's biodiversity impacts at the site. Given this degree of uncertainty the use of conditions would not be reasonable in this case.
37. The appellant has questioned the need for further information relating to reptile mitigation as this is not a feature of the adjacent SAC. However, that information would be required in conjunction with details of a bat foraging habitat. Given that bats, according to the information before me, are a feature of the SAC, that information would be required in advance of a determination to be certain that the mitigatory measures would lead to a positive Habitats Regulations Assessment (HRA).
38. Therefore, the absence of sufficient information means I cannot rule out potentially significant harm to biodiversity. As such, the proposal would be contrary to the Framework (Paragraph 174), where it requires developments to protect and enhance sites of biodiversity value and to minimise the impact on

these by establishing coherent ecological networks that are more resilient to current and future pressures.

39. In concluding on this main issue, I have referred to the provisions of the Framework as no development plan policies were given in the Council's refusal notice.

Other Considerations

40. As part of my assessment, the Framework requires me to come to a view as to whether or not, in Green Belt terms, there are other considerations that clearly outweigh the totality of the identified harm so as to amount to very special circumstances.
41. In this regard, the proposal would provide 2 dwelling units. These would provide a small contribution to the overall local and district wide housing supply as well as addressing the current shortfall in the housing stock. I therefore attribute minor weight to this benefit.
42. There would be some local economic uplift resulting from the scheme's construction and an increase in local expenditure. I attach minor weight to these economic benefits.
43. The intention of this proposal, according to the appellant, is to seek to release profit on the development of the appeal site which can then be re-invested back into the operations of a charity relating to a local Zoo, and to continue to operate and develop that enterprise in the interests of the local and wider community. Whilst, I do not doubt those aspirations, nor the important social and educational role the zoo performs, there would likely be other less harmful ways in which to generate income for that enterprise. I have therefore attributed limited weight to this consideration.

Other Matters

44. The Council cannot currently demonstrate a five-year land housing supply when assessed against local housing need (LHN) for Wiltshire as a whole. Thus, the presumption in favour of sustainable development set out in Paragraph 11 d) of the Framework is engaged. However, despite the deficiency in the housing land supply, Footnote 6 of the Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The Green Belt is an example of such areas/assets and the proposal is contrary to the relevant policies of the Framework in regard to these.
45. The appellant considers the site to be PDL, given the presence of the permanent structures (aviary buildings), which in its view, have not blended into the landscape. Even if I was to consider the site to be PDL, as the appellant suggests, my conclusions on the effect of the development on the openness and purposes of the Green Belt conclude that there would be harm and consequently it would not be considered as not inappropriate development in the Framework's terms. Furthermore, there is no detailed information before me to suggest the proposed dwellings contribute to meeting an identified affordable housing need within the area.

46. A number of examples of appeal decisions on sites relating to PDL have been referred to by the appellant. However, given my findings above, none of those would be directly comparable to the appeal scheme, which I have considered on its own merits. I therefore give those decisions limited weight.

Green Belt Balance and Conclusion

47. The proposal would be inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. Moreover, it would lead to a moderate loss of openness to the Green Belt. I have also found that the proposed development would harm the character and appearance of the area including the Cotswolds AONB and would not constitute a suitable location for housing, having regard to the accessibility of services and facilities. Finally, the absence of sufficient information means I cannot rule out potentially significant harm to biodiversity.
48. The other considerations in this case have attracted limited and minor weight in favour of the proposal and these do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal would be contrary to Core Policies 1, 2, 7, 51, 60 and 61 of the Core Strategy and the provisions of the Framework.
49. Therefore, for the reasons given I conclude that the appeal is dismissed.

R E Jones

INSPECTOR