



Appeal Decision

Site Visit made on 13 September 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2021

Appeal Ref: APP/B1930/W/21/3273759

Builder's Yard and Shop, R/O Wexhams, Lye Lane, Bricket Wood, St Albans AL2 3RR

- 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 David Lane (DLA Town Planning Ltd) against the decision of St Albans City Council.
 - The application Ref 5/20/3113, dated 19 December 2020, was refused by notice dated 19 April 2021.
 - The development proposed is described as, "Erection of bungalow to replace 3 existing buildings with passing bay to existing access".
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. The main parties were provided with an opportunity to comment. I have had regard to the 2021 version of the Framework in my decision.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt, and the effect on the openness of the Green Belt;
 - irrespective of any effect on the Green Belt's openness whether the proposal would give rise to other harm; and
 - if the proposal would be inappropriate development, 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 it.

Reasons

Whether Inappropriate Development

4. The Framework establishes that the construction of new buildings within the Green Belt is inappropriate. There are however a limited number of exceptions to this, notably in paragraph 149 of the Framework. The relevant one to this proposal is g) limited infilling or the partial or complete redevelopment of

previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development. Although certain aspects of Policy 1 of the Local Plan¹ are consistent with the Framework, the exceptions to inappropriate development in the Green Belt listed within it are not. Accordingly, Policy 1 has been given limited weight.

5. The appeal site is located beyond the rear boundary of a detached dwelling known as Wexhams, and contains a builder's yard and a former shop. Two Certificates of Lawfulness² have recently been refused in relation to the builder's yard. Hence, although the buildings on site may have been in-situ for at least 4 years, I have not been provided with evidence which confirms that they have planning permission. The lack of evidence pertaining to a lawful use means that the exception at paragraph 149 g), which refers to previously developed land, is not applicable.
6. The appellant has referred to a statutory declaration, copies of business rates demands, and a representation from an objector to a Certificate of Lawfulness, but all this evidence was considered by the Council when considering whether to grant the Certificates, and accordingly this does not change my findings. Any lack of conflict with paragraph 149 g) with respect to the definition of previously developed land provided at Annex 2 of the Framework, specifically in relation to whether the site constitutes land that is or was last occupied by agricultural or forestry buildings, also cannot change my findings.
7. Similarly, even if I were to find that the proposal would not lead to encroachment or cause harm to the openness of the Green Belt, as it has not been demonstrated that the buildings on site are lawful, the conflict with paragraph 149 g) remains. With respect to the planning permission referred to³, in that case the Council considered the buildings on site to be lawful, whereas in this case the refusal of the Certificates of Lawfulness does not demonstrate the same.
8. Therefore, taking account of my findings with respect to openness, given above, the proposal would constitute inappropriate development in the Green Belt for the purposes of the Framework and Policy 1 of the Local Plan. Inappropriate development is, by definition, harmful to the Green Belt.

Any other harm

9. It is common ground between the main parties that the proposal would be acceptable with respect to its effect on the character and appearance of the area. I concur with this assessment.

Other considerations

10. The Framework makes it clear at paragraph 148 that substantial weight is given to any harm to the Green Belt. It establishes that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

¹ St Albans District Local Plan Review (adopted 1994)

² 5/2020/1418, 5/2021/1598

³ 5/19/3030

11. I have taken account of the grant of planning permission at the adjacent site⁴, but in that case the lawfulness of the relevant buildings was established, in contrast to the appeal before me. The proposal would maintain the character and the appearance of the area, in compliance Policy 70 of the Local Plan, which relates to the design and layout of new housing. Nevertheless, these are neutral factors, which do not weigh in favour of the proposal.
12. The proposal would result in a reduction in commercial traffic, and would provide a passing bay to the existing access to Spielplatz thereby potentially assisting with highway safety, but as little information has been provided to quantify the contributions in these respects collectively these matters have been given limited weight.
13. It is clear that the proposal would result in a decrease in floorspace, volume, built area, and height when compared to the existing buildings, and would reduce the number of buildings on-site from 3 to 1, which would align with paragraph 138 c) of the Framework. The parties disagree on the exact figures, but based on the appellant's calculations of a reduction of approximately 25% in volume and approximately 38% in floorspace, the proposal would offer fairly modest benefits in these respects, and accordingly these factors collectively have been given moderate weight.

Balancing of considerations

14. It is common ground that the Council is currently unable to demonstrate the supply of housing sites as required by the Framework. As such, and following my finding on the first main issue, paragraph 11 d) i) of the Framework applies. That is to say that whilst the most important policies may be considered out-of-date, a footnote 7 thereto refers to the application of the Framework's policies which protect areas or assets of particular importance providing a clear reason for refusing the development proposed. Residential development in the Green Belt which is deemed inappropriate for the purposes of the Framework is a case in point.
15. As I have found the proposal to be inappropriate development in the Green Belt, this is an indication of harm and it carries substantial weight. Although the appellant has highlighted a number of benefits arising from the proposed scheme these would be outweighed by the resultant adverse impact. Not only does this indicate a clear reason for refusing the development proposed under paragraph 11 d) i), it also means that the very special circumstances necessary to justify the proposal do not exist. Therefore, the proposal would not comply with the Green Belt aims of both Policy 1 of the Local Plan, or the Framework, and consequently would be unacceptable.

Conclusion

16. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal is dismissed.

Alexander O'Doherty

INSPECTOR

⁴ 5/19/3030