



Appeal Decision

Site Visit made on 18 October 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2021

Appeal Ref: APP/C1950/W/21/3273644

2 Darby Drive, Rabley Heath, Welwyn AL6 9TE

- 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 Ketan Shah against the decision of Welwyn Hatfield Council.
 - The application Ref 6/2020/0310/FULL, dated 31 January 2020, was refused by notice dated 23 October 2020.
 - The development proposed is described as, "Retrospective change of use of the property from single dwelling house to 4 No. dwellings, comprising 2 No. 2-bed houses, 1 No. 2-bed flat, 1 No. 1-bed flat, erection of single storey conservatory extension (27.8 sq. m); together with installation of new external staircase; introduction of 2 No. entrance doors (both in place of existing windows); introduction of 1 No. window (in rear elevation); enlargement of 1 No. window (in front elevation); and sub-division of single garden into 4 No. gardens".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I observed that some of the proposed development had already been carried out. Nevertheless, I cannot be certain that the development that has been carried out is the exactly same in its entirety as that which has been applied for. Thus, for the avoidance of doubt, this appeal decision only relates to the proposed development as shown on the submitted appeal plans.
3. Amended plans were submitted at the appeal stage, which relate to the proposed hardstanding, parking provision, the removal of fencing, bin and bicycle storage (including a structure to contain the bins and the introduction of a bicycle store), the provision of electric vehicle charging points, and painting the proposed external staircase.
4. The 'Procedural Guide: Planning appeals – England' makes it clear that 'the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'. I have considered whether these amended plans should be accepted, and as the revised proposals would materially alter the nature of the scheme, I have considered the same plans that the Council determined the planning application on. To do otherwise would deprive those who should have been consulted on the change, the opportunity of such consultation.

Main Issues

5. 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;
- whether the proposed development would provide a suitable location for the proposed change of use, having regard to the accessibility of services and facilities;
- the effect of the proposal on the character and appearance of the surrounding area; 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

6. The Framework¹ 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. The proposal involves a change of use, as well as extensions, and therefore does not fall within the ambit of paragraph 149 c) of the Framework.
7. Emerging Policy SADM 34 of the Draft Local Plan Proposed Submission (2016) (Draft Local Plan) provides that, amongst other things, within the Green Belt planning permission will be granted for development in accordance with national policy and other policies in the plan subject to the criteria that proposals for development on previously developed sites will need to demonstrate that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. This policy, and paragraph 149 g) of the Framework, assist in safeguarding the five purposes of the Green Belt. Of particular relevance is the Green Belt's purpose in relation to its assistance in safeguarding the countryside from encroachment.
8. Emerging Policy SADM 34 is not part of the adopted development plan. In relation to the Green Belt, the Council's decision notice refers to Policies H2, RA10 and D2 of the Welwyn Hatfield District Plan (adopted 2005) (District Plan) and emerging Policy SADM 1 of the Draft Local Plan but these policies do not relate to whether a proposal represents inappropriate development in the Green Belt. Accordingly, it is unclear whether emerging Policy SADM 34 differs significantly from the adopted policies in the District Plan. In any event, whilst the text of emerging Policy SADM 34 is broadly in conformity with the Framework, the Draft Local Plan has not yet been found to be sound, and consequently emerging Policy SADM 34 has been given limited weight.

¹ National Planning Policy Framework

9. The planning history for the appeal property indicates that the property has benefited from a number of planning permissions for extensions, prior to 2000. The house was occupied as a family dwelling, between 2007 to 2010. Subsequently, in 2012 the property was divided into 2, 4 bedroom semi-detached dwellings, without planning permission. In 2019 a further conversion was completed which split the converted the property into 4 dwellings, which was again undertaken without planning permission.
10. This appeal relates to the proposed change of use of the property from a single dwelling house to 4 dwellings, and to various external works, including, amongst other works, the erection of a single storey conservatory extension and the installation of a new external staircase. The detached garages on site do not form part of this appeal.
11. The principal dispute between the parties on this main issue is whether the proposal would preserve the openness of the Green Belt, which is an essential characteristic of the Green Belt. In doing so, I note that the appellant has referred to permitted development rights. However, in assessing the effect of the proposal on the openness of the Green Belt through the lens of paragraph 149 g) I must assess the proposal against the existing development, and not against the existing development plus development potentially allowed via permitted development rights. The potential exercise of permitted development rights is a matter that is covered under 'Other Considerations', below, however. The appellant has already removed some fencing and posts on site, but my consideration is based on the plans before me.
12. In this respect, the site is situated in a fairly secluded location, at the end of a private road, is heavily screened by trees, and is already in residential use. As such, whilst the change of use would result in greater comings and goings and associated residential paraphernalia, and the external works would augment the bulk and massing of the property, all these aspects would have a limited visual impact on the openness of the Green Belt.
13. Nevertheless, the openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm. On this basis, the amount of physical works proposed would not be immaterial, and in particular the proposed conservatory, although it would be adjoined to an existing rear extension, would materially reduce the openness of the Green Belt in spatial terms.
14. Although this reducing effect on the openness of the Green Belt would not be excessive it is clear that the proposal as a whole would have a greater impact on the openness of the Green Belt than the existing development. For the same reasons, the proposal would conflict with the purpose of including land in the Green Belt in terms of its assistance in safeguarding the countryside from encroachment.
15. The appellant has suggested planning conditions in relation to removing fences, reducing the size of the proposed hard standing, placing a limit on the number of parking spaces, changing the bin storage arrangements, and painting the external staircase. All these changes, whilst having some effect, would not sufficiently reduce the harmful impacts to the openness of the Green Belt to the extent that the proposal would not have a greater impact on the openness of the Green Belt than the existing development.

16. Accordingly, the proposal would conflict with paragraph 149 g) of the Framework. Therefore, the proposal would constitute inappropriate development in the Green Belt for the purposes of the Framework and emerging Policy SADM 34 of the Draft Local Plan. Inappropriate development is, by definition, harmful to the Green Belt.

Location

17. The appeal site lies at the end of a narrow unmade road. Due to its rural location, many of the nearby roads are also narrow, with no street lighting, cycle lanes, or footway. Indeed, the images presented by the appellant demonstrate the lack of some or all of these features along parts of the routes identified. Furthermore, apart from a public house, the site is not near shops or other facilities required for day-to-day living.
18. The proposal has provision for cycle parking. The appellant has suggested that this could be augmented, and that electric vehicle charging points could be installed, via the use of planning conditions. Nevertheless, the use of electric vehicles cannot be mandated and the quality of the local road network is not particularly favourable to cycling. Taking all this into account, it is likely that the future occupiers of the proposal would choose to travel to nearby services and facilities by private vehicles. This would also be the case if modes of transport were split, by the future residents taking buses running from nearby villages, for example. The site cannot therefore be considered to be in a location which would promote sustainable transport, as required by the Framework.
19. Reference has been made to a planning permission at 10 Hawkshead Lane², including by way of a comparison with the appeal site in terms of proximity to services and facilities. I note the similarities with the proposal in these respects but the fact that the Council granted planning permission for that development does not change the fact that, for the reasons given above, the proposal before me would require future occupiers to have a heavy reliance on private vehicles to access day-to-day services and facilities.
20. The appellant has referred to the Lytton Heights³ development, but this was a development of a much larger scale than the proposal before me and it is clear from the Officer's Report that despite the site being described as 'relatively unsustainable in terms of the social aspect of sustainable development' the application of the so-called 'tilted balance' was instrumental in planning permission being granted. Moreover, in contrast to the appeal proposal, that development was found to not represent inappropriate development in the Green Belt. For these reasons, that example is not comparable with the proposal before me and it does not change my findings on this main issue.
21. I therefore find that the proposed development would not provide a suitable location for the proposed change of use, having regard to the accessibility of services and facilities. As such, it would conflict with Policies SD1, H1, H2, GBSP1 and GBSP2 of the District Plan which collectively seek to direct development towards sustainable locations. It would also conflict with the Framework, which seeks to promote sustainable transport.

² 6/2017/2346/MAJ

³ 16/02967/1

Character and Appearance

22. The appeal site is a large roughly rectangular-shaped plot which is located at the end of a private road in a rural area. It contains a large property and 2 detached garages. The area is notable for its large detached dwellings situated within expansive plots. Generous separation distances between properties are common in the locality, and this, together with the presence of open fields nearby, gives the local area a particularly spacious character.
23. The proposal would allow up to 4 independent units of accommodation on site, including 2 separate houses. As such, due to the independent nature of each household, there would likely be a far greater number of comings and goings than that associated with a single dwelling, including from the parking of private vehicles and from the coming and going of delivery vehicles. Hence, the proposal would involve a much more intensive use of the site than that associated with a single dwelling, with a corresponding uplift in the urbanisation of the site.
24. Notwithstanding this, I have been provided with minimal information with respect to the prevailing character of the area in terms of the usage of nearby residential properties, including whether flatted development is common in the locality. Additionally, the site is significantly set-back from the main run of residential development on Spinney Lane and it is heavily screened by mature vegetation. Taking all this into account, based on the evidence before me, I find that the proposed intensification of the use of the site at the scale proposed, including flatted development, would not unduly conflict with the character of the area.
25. Moreover, the proposed conservatory and the external staircase would be discretely located within the grounds. The proposed increase in the use of hardstanding for parking and the bin storage arrangements would also have a minimal visual impact on the appearance of the area, due to the heavily screened nature of the site. Additionally, conditions could be imposed to require the submission of further details for these matters, thereby enabling the Council to secure a satisfactory outcome in relation to the visual effect of the proposal on the appearance of the surrounding area.
26. I therefore find that the proposal would have an acceptable effect on the character and appearance of the surrounding area. It would comply with Policies D1, D2 and RA10 of the District Plan which collectively seek to, amongst other things, ensure that new development respects and relates to the character and context of the area. It would also comply with the Supplementary Design Guidance (adopted 2005) which provides that, amongst other things, development must be sensitive to local character and not detrimentally affect the townscape and landscape, and with paragraph 130 c) of the Framework which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character.

Other Considerations

27. 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.

28. The preservation of the character and appearance of the area is a neutral factor, which does not weigh in favour of the proposal.
29. As mentioned under the first main issue, the appellant has referred to permitted development rights, including for the construction of fences, which would naturally entail some impact on the openness of the Green Belt. The appellant has also demonstrated that the proposed conservatory would likely benefit from permitted development rights. As mentioned on the first main issue, above, the conservatory would have a materially reducing effect on the openness of the Green Belt. Taking all these factors into account, I have given this matter moderate weight.
30. Due to the small scale of the proposal, the future occupiers would likely only provide a minimal amount of support for services in nearby villages, in terms of paragraph 79 of the Framework. The proposal would entail a more efficient use of the site in strict land-use terms, in line with paragraph 119 of the Framework, although considering my findings on the second main issue, above, it would not comprise a suitable site for the use of brownfield land with respect to paragraph 120 c) of the Framework.
31. The proposal would contribute to housing choice and mix locally, which would accord with the Housing Need Forecasts found in the Draft Local Plan. In particular, I note the benefit in terms of the potential for the units to be placed within the rental market, which would contribute to the diversity of tenure in the locality, and potentially provide greater choice for certain demographic groups that might otherwise have difficulty accessing housing within the Green Belt.

Balancing of Considerations

32. Whilst I have found the proposal to be acceptable in terms of character and appearance, this does not overcome the planning policy conflict in relation to matters of location and the proposal constituting inappropriate development in the Green Belt.
33. It is noted that the District Plan is over 15 years old. However, paragraph 219 of the Framework provides that, amongst other things, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Moreover, taking account of the *Gladman* court judgment⁴ referred to by the appellant, I have not been able to detect any specific inconsistencies with the Framework and in this respect I am mindful of paragraph 12 of the Framework which provides that, amongst other things, where a planning application conflicts with an up-to-date development plan permission should not usually be granted.
34. Notwithstanding this, it is common ground that the Council is currently unable to demonstrate the supply of housing sites as required by the Framework. Indeed, the Inspector's Round Up Notes⁵ relating to the Draft Local Plan highlight the Inspector's concerns in this respect. 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, footnote 7 thereto refers to the application of the Framework's policies which protect areas or assets of particular importance providing a clear reason

⁴ *Gladman Developments Ltd v Secretary of State for Housing, Communities and Local Government* [2020]

⁵ 17th March 2021

for refusing the development proposed. Development in the Green Belt which is deemed inappropriate for the purposes of the Framework is a case in point.

35. 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 emerging Policy SADM 34 of the Draft Local Plan, or the Framework, and consequently would be unacceptable.

Conclusion

36. 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