



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: 9th December 2021

Appeal Ref: APP/N1920/W/21/3272945

The Stables, Caldecote Lane, Bushey, Hertfordshire WD23 4EF

- 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 Shashi Shah against the decision of Hertsmere Borough Council.
 - The application Ref 20/1790/FUL, dated 5 November 2020, was refused by notice dated 8 January 2021.
 - The development proposed is described as demolition of an existing dwelling house and replacement with two detached houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. 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;
 - the effect of the proposal on the character and appearance of the area, including its effect on trees;
 - whether the proposal would provide adequate living conditions for future occupiers of the scheme, with particular reference to sunlight and the provision of private amenity space;
 - the effect of the proposal on the living conditions of neighbouring occupiers, with particular reference to privacy and outlook; 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

3. The National Planning Policy Framework (the Framework) establishes that the construction of new buildings within the Green Belt is inappropriate. There are however exceptions to this, notably in paragraph 149 of the Framework. Similarly, Policy CS13 of the Hertsmere Local Plan Core Strategy (2013) (Core Strategy) provides that, amongst other things, there is a general presumption

against inappropriate development within the Green Belt, and such development will not be permitted unless very special circumstances exist, and that development proposals, including those involving previously developed land and buildings, in the Green Belt will be assessed in relation to the Framework.

4. Reference has been made to paragraph 149 d) of the Framework which relates to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. The replacement houses would be in the same use as the existing house, thereby complying with paragraph 149 d) in that respect. Although the Council considered paragraph 149 d) in the context of the house proposed for Plot 1 ('house 1') only, the proposal relates to 2 houses and must be considered in its totality.
5. In relation to whether the proposed houses would collectively be materially larger than the house to be replaced, *Tandridge*¹ related to a group of existing buildings being replaced by a singular new house, whereas the appeal before me relates to a proposal for an existing house to be replaced by 2 houses. In other words, the appeal before me involves the reverse situation. Nevertheless, I accept the principle that the individual instances of the word 'building' in paragraph 149 d) should not be read as excluding more than one building, particularly as the proposed 2 houses can be sensibly compared with the existing house.
6. The appellant has asserted that the proposal would reduce the total footprint, floor area, and volume of built development on site, with a reduction in site coverage of approximately 65 square metres. This has not been disputed by the Council. Despite this, house 1 would have a roof that would be much wider and taller than the existing house, with respect to the north-west elevation. Moreover, the single-storey wings of the existing house would be replaced by the house proposed for Plot 2 ('house 2'), a two-storey house with a significantly higher ridge line. Accordingly, the proposed houses, when considered together, would be materially larger than the house that is proposed to be replaced. Thus, the proposal would not fall within the exception at paragraph 149 d) of the Framework.
7. Reference has also been made to paragraph 149 g) which relates to 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 the Framework does not provide a definition of 'infill', I consider that 'limited infilling' can include the demolition of an existing house and its replacement with 2 houses.
8. However, the appeal site is not within any of the 'village envelope' areas specified in Policy SADM23 of the Hertsmere Local Plan Site Allocations and Development Management Policies Plan (2016) (DMPP) where limited infilling will be permitted if it complies with Policy CS13 and other relevant plan policies. Therefore, in light of Policy SADM23, it would not be reasonable to conclude that the exception at paragraph 149 g) applies to the proposal, in relation to 'limited infilling'.

¹ *Tandridge DC v SSCLG & Syrett* [2015] EWHC 2503

9. Of the proposed 2 detached houses, house 1 would stand entirely within the footprint of the existing house (excluding the garage of house 1), but that proposed for house 2 would not. Indeed, some of house 2 would be situated on undeveloped garden land. However, the definition of previously developed land given in Annex 2 of the Framework includes the curtilage of the developed land. Taking account of *Dyer*² and *McAlpine*³, house 2 would sit within the curtilage of the existing dwelling. Furthermore, although the definition of previously developed land excludes land in built-up areas such as residential gardens, as the majority of the proposal would be within the confines of the existing house, the proposal would comply with the definition of previously developed land given in the Framework, with respect to paragraph 149 g).
10. Turning to the effect of the proposal on openness, as the proposal would result in a reduction in the total footprint and volume of built development on site, the proposal would not have a greater impact on the openness of the Green Belt than the existing development in spatial terms.
11. Nevertheless, as mentioned above, the roof proposed for house 1 would be wider and taller than the existing house with respect to the north-west elevation, and this would be clearly visible from Caldecote Lane. House 2 would be positioned in replacement of the single-storey wings of the existing house, and at two-storeys with a greater incursion into the garden area, it would noticeably reduce the spaciousness of the site when seen above the garden wall from Caldecote Lane.
12. Any new planting, including trees, would take time to establish and in any event could be removed either by present or future occupiers. The creation of a 'communal area' to the frontage of the site is noted, as is the proposed 'L-shape' layout with adequately-sized garden areas, but overall the proposal would result in the site appearing far more built-up than is presently the case. In particular, the proposed development on-site would appear greater in terms of massing, bulk and scale, than that which exists, when viewed from Caldecote Lane.
13. Accordingly, the proposal would have a greater visual impact on the openness of the Green Belt than the existing development and in this respect it 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 Policy CS13 of the Core Strategy. Inappropriate development is, by definition, harmful to the Green Belt.

Character and Appearance

14. The site is situated in a predominantly semi-rural area and the presence of soft landscaping near the frontages of properties, including trees, provides an important contribution to the character and appearance of the area. In line with the advice given in the Arboricultural Impact Assessment, several mature trees were previously removed from the garden of the site. Whilst I have had regard to the documents provided relating to the pre-application advice given by the Council, and to the photographs taken in early 2020, it is not the purpose of this appeal decision to consider whether the Council acted correctly or reasonably in refusing planning permission on the basis of the situation at the

² *Dyer v Dorset CC* (1988)

³ *McAlpine v SSE* (14/11/94)

time the Council's decision was issued. Rather, this is an independent and impartial appeal decision, made on the basis of the currently prevailing circumstances.

15. In this regard, the proposal incorporates the planting of a number of trees around the proposed houses, and further landscaping details could be required via planning conditions. As such, although the site has a reduced amount of tree cover than that which existed previously, I am satisfied that the proposal would positively contribute to the maintenance of the verdant nature of the local area. Additionally, the architectural design of both houses would reflect the local vernacular and they would respect the predominant building line along Caldecote Lane.
16. Thus, the proposal would have an acceptable effect on the character and appearance of the area, including its effect on trees. It would comply with Policy SADM12 of the DMPP which provides that, amongst other things, planning permission will be refused for development which would result in the loss, or likely loss, of any healthy, high quality trees and/or hedgerows that make a valuable contribution to the amenity or environment of the area in which they are located.

Living Conditions for Future Occupiers

17. The proposed house 2 would be a two-storey dwelling, which would be situated in close proximity to the proposed house 1. As such, it would likely reduce the amount of sunlight received to the front windows of house 1, particularly in the morning. However, the dining / sitting room at house 1 would have a triple aspect, with 2 sets of double doors facing east, and house 2 would be situated at a right-angle to house 1 rather than directly facing house 1.
18. Hence, whilst not ideal, and taking account of drawing number A031019/DP9, the sunlight received to the front windows of house 1 during the morning would be acceptable. In this respect, the proposal would provide adequate living conditions for the future occupiers of the scheme, with particular reference to sunlight. It would comply with the Planning and Design Guide – Part D: Guidelines for Development Supplementary Planning Document (2013) (SPD) which provides that, amongst other things, new buildings should not significantly reduce sunlight to the habitable rooms of neighbouring properties.
19. The site is situated in a predominantly semi-rural location and each proposed house would have 4 bedrooms. In this respect, the SPD provides that, amongst other things, outdoor garden space should be of a size and dimension to suit the requirements of the building's occupants for informal recreation and enjoyment and that the Council will resist proposals where the amenity space is of a size or shape that are not suitable for such use and enjoyment.
20. The private amenity area to the north of house 1 would be a narrow strip of land which would resemble a passageway, and the amenity area to the south of house 2 would form an irregular triangle, which would sharply taper to a tip. As such, I consider that those individual areas are not suitable as useable private amenity areas. Rather, the primary useable private amenity areas are those shown on drawing number A031019/DP10, to the east of both of the proposed houses. These areas would be comfortably in excess of the minimum garden area requirements found in the SPD. Furthermore, their shapes would

not be so irregular as to be unusable by the future occupiers of the proposed family-sized houses.

21. Therefore, whilst the wider area is generally characterised by houses with large gardens, the proposal would provide adequate living conditions for the future occupiers of the scheme, with particular reference to the provision of private amenity space. Accordingly, the proposal would comply with the SPD, summarised above, and with paragraph 130 of the Framework which provides that, amongst other things, planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Living Conditions of Neighbouring Occupiers

22. The existing property contains windows which overlook the rear garden and patio of the adjacent property known as 'Red Roofs'. However, the window at the end of the southern wing is at an oblique angle to the garden area, and the first-floor bedroom windows are situated well-behind the rear perimeter of the garden at Red Roofs. Hence, currently there is only a slight perception of being overlooked in the rear garden and patio area at Red Roofs.
23. The 2 rooflights serving bedroom 1 of the proposed house 2 would be situated fairly low on the roof slope, and the property would be located close to the rear garden of Red Roofs. Considering this, and the angle of the roof of the proposed house, and that these windows would be directly facing the rear garden and patio of Red Roofs, I consider that the proposal would result in a materially harmful level of overlooking. The rear garden and patio area at Red Roofs would be less enjoyable to use, as a result. Thus, I find that the proposal would have an unacceptable and harmful effect on the living conditions of the occupiers of Red Roofs, with particular reference to privacy.
24. The rear garden and patio at Red Roofs currently enjoys a fairly open outlook, although this is constrained somewhat by the presence of the southern single-storey wing and the main part of the existing house at the appeal site. In particular, the southern wing is situated close to the boundary of the garden at Red Roofs.
25. The proposed house 2 would have a sloping roof and it would be situated further away from the rear garden at Red Roofs than the existing southern wing. Due to the shape of the appeal site the gap between house 2 and the rear garden at Red Roofs would widen towards the north-east. Nevertheless, house 2 would be two-storey in height and it would be positioned close enough to appear dominant in views from the rear garden and patio at Red Roofs. Moreover, it would be positioned such that it would be directly in view from those areas. As such, the combination of its large scale, its close proximity and its prominent positioning relative to the rear garden and patio of Red Roofs would mean that it would have an overbearing presence. Hence, those areas would become much less pleasant to use.
26. Thus, I find that the proposal would have an unacceptable and harmful effect on the living conditions of the occupiers of Red Roofs, with particular reference to outlook. Therefore, the proposal would conflict with Policy SADM30 of the DMPP which provides that, amongst other things, in order to achieve a high quality design, a development must have limited impact on the amenity of the site's neighbours in terms of outlook and privacy.

Other Considerations

27. The appeal proposal has attempted to respond to the issues raised in the pre-application advice, provided by the Council. It is common ground that the proposal would not affect the setting or significance of any nearby listed buildings (including locally listed buildings). I have no evidence before me that points to a different conclusion. However, these are neutral matters, which do not weigh in favour of the proposal, as is the lack of harm to character and appearance and the lack of adverse effect on the living conditions of future occupiers.
28. The site is located close to the services and facilities found at Bushey, meaning that the future occupiers of the proposed houses would not be likely to be dependent on private vehicles. The proposal would provide adequate car parking, and each proposed house would contain a sufficient amount of internal space. The proposal incorporates adequate provision for drainage. The proposed houses would meet a minimum of Code 4 under the Code for Sustainable Homes, with sustainable and renewable technologies being employed, recyclable and long-lasting materials used, and measures taken to ensure energy efficiency. The proposal would also meet the Lifetimes Homes Standards, with specific provision for disabled access. As all these matters merely denote compliance with the development plan and are a function of the site's location, collectively they have been given limited weight.
29. The proposal would contribute to housing choice and mix locally. As the proposal would replace an existing house with 2 new market houses, I afford this matter moderate weight.

Balancing of Considerations

30. 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.
31. For the above reasons I attach no more than moderate weight to the benefits of the proposed development which make up the other considerations. As such, the other considerations do not clearly outweigh the harm to the Green Belt and the harm to the living conditions of the occupiers of Red Roofs. Consequently, the very special circumstances necessary to justify the development do not exist. The proposed development would not therefore accord with the Green Belt aims of both Policy CS13 of the Core Strategy, or the Framework, as set out above.

Conclusion

32. 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