



Appeal Decision

Site visit made on 15 September 2021

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2021

Appeal Ref: APP/B1930/W/20/3261865

Land at East Lodge, East Drive, Oaklands Lane, Smallford, St Albans, Hertfordshire, AL4 0HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr G. Concialdi (GC Construction) against the decision of St Albans City & District Council.
 - The application Ref 5/20/1262 dated 10 June 2020, was refused by notice dated 13 October 2020.
 - The development proposed is described on the application form as "Outline Application with all matters reserved for the construction of a new detached dwelling and detached garage with new access."
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Decision

1. The appeal is dismissed.

Procedural matters

2. The proposal seeks outline planning permission, with all matters reserved for future consideration.
3. Since the appeal was submitted, a revised version of the Framework¹ has been published. Both main parties have been given the opportunity to comment on this and where applicable, I have taken their responses into account.

Main issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt, and if so, the effect of the development on the openness of the Green Belt;
 - 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.

¹ National Planning Policy Framework, Ministry for Housing, Communities and Local Government, July 2021.

Reasons

Appeal site context

5. The appeal site is a large undeveloped plot of land of an irregular shape that previously formed part of the private garden to East Lodge, a recently constructed dwelling that replaced a fire-damaged 2-storey building at the site. It consists of overgrown grassland, shrubs and mature trees and is enclosed by a circa 2-metre high close boarded fence.
6. The appeal site falls within the Metropolitan Green Belt and is subject to an Area Tree Preservation Order that protects all broadleaved and coniferous tree species within the grounds of Oaklands College².

Whether the proposal would be inappropriate development in the Green Belt

7. Policy 1 of the Local Plan³ states, amongst other things, that within the Green Belt, except for development referred to in Policy 2, or in very special circumstances, permission will not be given for purposes other than mineral extraction, agriculture, small scale sport facilities, other uses appropriate to a rural area, and the conversion of buildings.
8. Paragraphs 149 and 150 of the Framework state that the construction of new buildings and other forms of development in the Green Belt are inappropriate unless they fall within a number of exceptions.
9. There is no substantive evidence before me that the proposed development falls within any of the specified exceptions identified in Policy 1 of the Local Plan, or those in Paragraph 150 of the Framework, or Parts (a), (b), (c), (d) and (f) of Paragraph 149. The appellant asserts that the scheme constitutes limited infilling in villages in accordance with Part (e) of Paragraph 149 and it is to this that I shall now turn.
10. The Framework does not define what constitutes a village and the submitted evidence reveals that Smallford does not have any defined boundaries on the Local Plan Proposals Map. However, case law⁴ has determined that whether or not a proposed development constitutes limited infilling in a village for the purpose of the Framework is a question of planning judgment for the inspector, and that this would depend upon their assessment of the position on the ground.
11. At my site visit, I undertook a wider inspection of the area and concluded that the appeal site, including the recently constructed adjacent dwelling known as East Lodge, is located outside the village, in a location characterised by open parkland, agricultural land and playing fields, interspersed with mature trees, hedgerows, shrubs and occasional small clusters of built-development. Overall, I found it to have an open countryside & parkland character, quite different to the built-up nature of Smallford village to the east of Oaklands Lane. As a consequence, it is my view that the Oaklands Lane vehicular highway provides a clear and distinct boundary to the village of Smallford. The appeal site is not

² Area A1 of Tree Preservation Order No. 1474, dated 13 June 2008, Oaklands College, Smallford Campus, Hatfield Road, St Albans.

³ St Albans District Plan, City and District of St Albans District Local Plan Review, Adopted 30 November 1994, Written Statement.

⁴ *Wood v Secretary of State for Communities and Local Government, Gravesham Borough Council* [2014] EWHC 683 (Admin) and *Julian Wood v The Secretary of State for Communities and Local Government, Gravesham Borough Council* [2015] EWCA Civ 195

therefore within a village and does not therefore fall to be considered against part (e) of Paragraph 149.

12. Part (g) of Paragraph 149 of the Framework sets out a further exception to new development being inappropriate in the Green Belt, that of limited infilling or the partial or complete redevelopment of previously developed land. This is subject to it not having a greater impact on the openness of the Green Belt than the existing development, or not causing substantial harm to the openness of the Green Belt where the development would contribute to meeting an affordable housing need.
13. Based on its historic use, site ownership, boundaries, appearance and character, I am satisfied that the appeal site falls within the curtilage of a permanent structure and that this is not within a built-up area for the reasons stated above. As a consequence, it constitutes previously developed land in accordance with the definition provided by the Framework.
14. There is no evidence before me that the scheme would contribute to meeting an affordable housing need. I recognise that the site is dominated by tall mature trees with limited intervisibility through it to the parkland and agricultural fields beyond, but these are nonetheless a natural feature which make a significant contribution to the character and appearance of the area and help to fulfil the Green Belt purpose of safeguarding the countryside from encroachment. The development's scale, form and large footprint would dominate the plot when viewed from East Drive and have a greater impact upon the openness of the area than retaining the site in its present natural undeveloped form. As a consequence, I conclude that the scheme's built-form encroachment into an established undeveloped piece of land containing mature trees would be harmful to the Green Belt purpose of safeguarding the countryside. This harmful impact would be intensified by the scheme's public visibility on East Drive.
15. In view of the above, I conclude that the proposal constitutes inappropriate development in the Green Belt. I have assessed the scheme's impact upon the openness of the Green Belt and concluded that it would cause moderate harm to the openness and purpose of including the land within the Green Belt.

Other considerations

16. My attention has been drawn by the appellant to three appeal decisions in support of the scheme⁵. However, I see no difference between the approach I have taken as to what constitutes 'limited infilling in villages', and that by both Inspectors in the Cheshire East and Ribble Valley appeals. The only difference is that all of the sites are contextually different and I have concluded in this case that the scheme before me does not fall within a village. I have also considered the Guildford appeal and whilst I see no reason to disagree with the Inspector's conclusions in that case as to whether a backland development could constitute an infill, it is of limited relevance to the current appeal given my conclusions above in respect of parts (e) and (g) of Paragraph 149.
17. The appellant also asserts that a fallback position could be adopted by demolishing the recently constructed East Lodge dwelling and constructing 2 dwellings in its place. However, I have given this fallback little weight in my

⁵ Planning appeals APP/T2350/W/16/3164118 dated 5 May 2017, APP/R0660/W/17/3170279 dated 14 July 2017 and APP/Y3615/A/12/2184747 dated 15 April 2013.

assessment as Planning Permission does not exist for such a scheme and hence there is no substantive evidence to indicate that there is a significant probability that it would be constructed.

18. The appellant further states that the Council has not considered the application in a positive and creative way in accordance with Paragraph 38 of the Framework. However, the remainder of this Paragraph goes on to clarify this objective as local planning authorities needing to use the full range of tools available, such as brownfield registers and permission in principle, and working proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. It does not require local planning authorities to consider schemes favourably irrespective of their conflict with the development plan; other material planning considerations, such as the Framework; or if they harm the economic, social and environmental conditions of the area.
19. Policy 1 of the Local Plan states that development falling outside the permitted criteria may be allowed in very special circumstances. Paragraph 147 of the Framework states that inappropriate development is by definition harmful to the Green Belt, and should not be approved except in very special circumstances. Paragraph 148 states 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.
20. I have concluded that the proposal would constitute inappropriate development and therefore be, by definition, harmful to the Green Belt. I have also concluded that the proposal would cause moderate harm to the openness of the Green Belt. In accordance with Paragraph 148 of the Framework, I have given substantial weight to this harm in my assessment.
21. I recognise that the scheme would result in benefits from; - (a) a quickly-deliverable contribution towards the Council's housing land supply; (b) future occupiers contributing to the vitality and viability of shops, services, facilities, businesses and community organisations in the wider surrounding area; and (c) local employment during construction. However, given that only 1 dwelling is proposed, I consider these benefits to be of limited value, and not clearly outweigh the development's moderate harm to the openness of the Green Belt, which I have given substantial weight to in my assessment.
22. In view of the above, I find that there are no very special circumstances that clearly outweigh the scheme's harm to the Green Belt by reason of inappropriateness, and the moderate harm to its character, openness and permanence. As a consequence, I conclude that the scheme would conflict with Policy 1 of the Local Plan, and also find that it would not accord with Paragraphs 147, 148, 149 and 150 of the Framework.
23. Although the Local Plan is over 5 years old, Paragraph 219 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework and that due weight should be given to them according to their degree of consistency with the Framework.
24. Policy 1 of the Local Plan does not accord with the more comprehensive and balanced approach of the Framework and is out of date. I have as a

consequence attached only limited weight to the scheme's conflict with this policy. In such circumstances, this would normally mean that the Framework's presumption in favour of sustainable development applies.

25. Furthermore, the appellant has referred to a severe shortfall in the District's 5-year housing land supply and I have also noted that the delivery of housing was substantially below the housing requirement over the previous three years⁶. In such circumstances, this would mean that the policies which are most important for determining the application are out of date and that the Framework's presumption in favour of sustainable development applies.
26. However, the presumption in favour of sustainable development does not apply where policies in the Framework protect areas of particular importance, such as Green Belt, and provide a clear reason for refusal. I have concluded that the scheme conflicts with Paragraphs 147, 148, 149 and 150 of the Framework in relation to Green Belt, which as a consequence means that the presumption in favour of sustainable development is not engaged in accordance with Paragraph 11(d)(i) Footnote 7.
27. In view of the above, I conclude that the proposal does not accord with the development plan and that other material considerations do not indicate that the proposal should be determined other than in accordance with this.

Conclusion

28. All representations have been taken into account, but no matters, including the scope of possible planning conditions, have been found to outweigh the identified failures, harm and policy conflict. For the reasons above, the appeal scheme should be dismissed.

Robert Fallon

INSPECTOR

⁶ 2020 Housing Delivery Test.