



Appeal Decision

Site visit made on 11 January 2022

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal Ref: APP/J3015/W/21/3279776

Babbington Hall, Westby Lane, Babbington, Kimberley, Nottingham NG16 2SS

- 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 Tony Sanderson against the decision of Broxtowe Borough Council.
 - The application Ref 21/00049/FUL, dated 21 January 2021, was refused by notice dated 8 July 2021.
 - The development proposed is redevelopment of kennels to 5 no. dwellings including demolition, access and landscaping.
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Decision

1. The appeal is allowed, and planning permission is granted for redevelopment of kennels to 5no. dwellings including demolition, access and landscaping at Babbington Hall, Westby Lane, Babbington, Kimberley, Nottingham NG16 2SS in accordance with the terms of the application Ref 21/00049/FUL dated 21 January 2021 subject to the condition set out in Schedule to this Decision.

Procedural Matter

2. The application was originally for six dwellings, but one was deleted by agreement between the parties during the lifetime of the application process. The details of development above have been amended to reflect that change. This was also reflected in the Council's Decision Notice and the appellants Appeal Form. I am satisfied that neither party is prejudiced by this alteration and course of action.

Application for costs

3. An application for costs was made by Mr Tony Sanderson against Broxtowe Borough Council. This application will be the subject of a separate Decision.

Main Issues

4. The main issues in this appeal are:
 - Whether, according to national and local policy the development is inappropriate development in the Green Belt (GB), including the effect the development would have on the openness of the Green Belt, and other GB purposes, and any other harm.
 - The effect of the development on the character and appearance of the area; and

- Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development and openness

5. Section 13 of the National Planning Policy Framework (the Framework) sets out the Government's approach to protecting the Green Belt. It states that inappropriate development is, by definition, harmful and should not be approved except in very special circumstances. Paragraph 149 of the Framework makes it clear that new buildings are inappropriate in the Green Belt, unless one of the specific exceptions applies. The relevant exception in this case is contained in Framework paragraph 149 (g), which allow for the partial or complete redevelopment of previously developed land (PDL), which would not have a greater impact on the openness of the Green Belt than the existing development.
6. The appeal proposals would see the removal of a number of buildings that are used for various facets of the rescue kennels and would leave a single building that would be used for a reduced rescue kennel service, as well as leaving Babbington Hall, the residential premises on site. This would result in a reduction of built floorspace and built volume when assessed against the proposed dwellings.
7. The appellant contends that the proposal would not have a greater impact on the openness of the Green Belt as it would result in a significant decrease in the volume and footprint of development. The proposal would include landscaping which would benefit openness. However, I find that that the new dwellings would have a greater visibility as they would be higher in terms of overall height than the buildings they would replace, with a corresponding impact on the openness and countryside character of the Green Belt.
8. There is clearly a balance to be made between the effects of the removal of the lower kennel buildings with a greater footprint, and their replacement with buildings of a smaller footprint but of greater height. In this regard, I note that the loss of one dwelling from the original proposals means a further reduction from the floorspace and built volume in comparison to the existing situation. However, the current proposal would still result in the introduction of buildings of a height which would be materially greater than the buildings they would replace. The increased height of the dwellings in comparison to the extant buildings would be apparent and in turn would lead to visual harm to the openness of the Green Belt, albeit to a modest degree.
9. Residential use of the site may also lead to an increase in domestic paraphernalia. However, the extent and layout of curtilages of the individual dwellings as well as communal residential areas is set out in the appeal plans. Mindful of the extent of buildings and hard surfaces to be removed, I consider that these controls over the extent of domestic use of the site could ensure that this would have no greater impact on openness than the extant development.

10. Notwithstanding my conclusion on the matter of domestic curtilages, due to the relative height of the existing and proposed buildings I conclude that the proposal would have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. I acknowledge that it is not possible to compare precisely the effect on openness due to the differences between the proposal and the extant buildings. Furthermore, I am mindful that the impact on openness would be limited and that this is a finely balanced judgement due to the various elements of the proposal. However, due to the impact on openness the proposal would represent inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt. In accordance with the Framework, I must attach substantial weight to this harm.

Character and appearance

11. The proposal would lead to the removal of the unsightly buildings and infrastructure on the site. In combination with appropriate conditions, the proposed development of the site and its continued proactive management would improve the character and appearance of the site and this area of countryside.
12. I am also mindful that the removal of the buildings would be of some benefit to the openness of the Green Belt, although as stated above this benefit is marginally outweighed by the harm to openness arising from the encroachment of higher buildings on the site.
13. Notwithstanding the effects on openness, the proposal would lead to a significant improvement in the character and appearance of this site within the countryside and I give this benefit substantial weight.
14. I therefore conclude that the proposal would enhance the character and appearance of the site and the area. The proposal would not conflict with Policy 10 of the Aligned Core Strategy which expects development, amongst other matters, to make a positive contribution to public realm and sense of place.

Other considerations

15. The use of the kennels is ongoing, and the revised rescue kennels will be kept running, albeit on a smaller scale than at present, via a single outbuilding. Any environmental benefits from the removal of the majority of the buildings would rely upon the approval of the appeal scheme. However, if development did not take place, then a commercial kennel operator could take up the site without the need for planning permission, which could continue the potentially unneighbourly use in the locality. In this regard I am mindful of the comments with regard to the premises which refer to the history of operations at the site and the ability for the use to continue and potentially expand if a commercial kennels became involved. At present the potential for the use to be downgraded would lead to the reduction of a potentially unneighbourly use of the site and I give this benefit substantial weight.

16. The proposal would also contribute to the number and mix of dwellings in the area, although due to the scale of the development, the benefit to housing supply would be limited. Similarly, the benefits arising from the sustainable design of the proposal in comparison to the current development would also be positive, despite the low numbers of potential properties concerned due to the small scale of the proposal, as would the economic benefits of the construction phase and new residents spending money in the locality. These benefits do weigh in favour of the proposal.

Very Special Circumstances

17. Paragraph 147 and 148 of the Framework set out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
18. The benefits identified above should be balanced against the harm that would arise from the limited effect on the openness of the Green Belt and the purposes of including land within it. Notwithstanding the requirement of the Framework that substantial weight should be given to any harm to the Green Belt, I find that the harm resulting from the proposal would clearly be outweighed by the benefits when taken as a whole. Therefore, I find that the very special circumstances for the development have been demonstrated. Accordingly, I find no conflict with Policy 8 of the Broxtowe Borough Council Part 2 Local Plan (2019) or the guidance given in relation to the Green Belt in the Framework.

Other Matters

19. I have noted the comments of local residents in relation to the scheme and I find that many of their objections were dealt with in the Officer Report. I have taken these into consideration but find that the benefits of the scheme clearly outweigh the limited effect on the openness of the Green Belt. This decision is based on the specific characteristics of the site and does not give a blanket exemption for inappropriate development in the Green Belt.

Conditions

20. The Council has suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance and retained Annex A (model conditions) of former Circular 11/95: Use of Conditions in Planning Permission. All of the suggested conditions meet the tests set out in the Framework.
21. Conditions 1 and 2 are to provide certainty and in the interests of proper planning. Conditions 3 and 4 are in the interests of visual amenity. Condition 5 protects the existing TPO tree on site.
22. Conditions 6 and 7 are in the interests of minerals and mining safety, whilst conditions 8 through 11 are in the interests of Biodiversity. Condition 12 is imposed to protect the living conditions of local residents post development.

Conclusion

23. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be allowed.

Paul Cooper

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be commenced before the expiration of three years beginning with the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the drawings numbered: -
 - 7445 (08) 01 – Site Location Plan
 - 7445 (08) 10 Revision N – Proposed Site Plan
 - 7445 (08) 11 Revision C – Proposed Site Sections
 - 7445 (08) 12 Revision B – Proposed Landscape Plan
 - 7445 (08) 20 Revision E – House Type 4.1
 - 7445 (08) 21 Revision G – House Type 5.1
 - 7445 (08) 23 Revision C – House Type 5.3
- 3) No above ground building operations shall be carried out until details of the manufacturer, type and colour of the bricks and tiles; to be used in facing elevations and roofs of the dwellings hereby approved; have been submitted to and approved in writing by the Local Planning Authority, and the development shall be constructed only in accordance with those details.
- 4) The approved landscaping shall be carried out not later than the first planting season following the substantial completion of the development or occupation of the building(s), whichever is the sooner and any trees or plants which, within a period of 5 years, die, are removed or have become seriously damaged or diseased shall be replaced in the next planting season with ones of similar size and species to the satisfaction of the Local Planning Authority, unless written consent has been obtained from the Local Planning Authority for a variation.
- 5) During the construction works, no materials, equipment, machinery, temporary buildings or surplus soil shall be placed or stored beneath the branches of the trees protected by a Tree Preservation Order, and no oil, bitumen, cement or other materials likely to be injurious to a tree shall be discharged within 10 metres of the trunk. If any trenches for services are required within the canopy areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 25mm (1 inch) or more shall be left unsevered.

- 6) No development shall commence until: a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and; b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed. The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.
- 7) Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
- 8) Prior to any above ground works being carried out, a scheme showing the positioning and details for the provision of bat roosting boxes, swallow nesting boxes, and swift nesting boxes shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with Page 11 of 13 the approved scheme, which shall remain in place for the lifetime of the development.
- 9) No development shall commence until an additional bat survey has been undertaken which follows a substantively similar format to that submitted with this application. The development shall then be carried out in accordance with the recommendations of the survey subject to prior written approval from the Local Planning Authority.
- 10) The development hereby permitted shall be carried out in a manner that minimises ecological impacts. Notably, any steep-sided excavations created during construction should be covered/filled/provided with ramps to prevent mammals becoming trapped and any pipes over 150mm in diameter should be capped off at night.
- 11) Any operations which may disturb nesting habitat should be conducted outside the main bird nesting season (usually taking place at the beginning of March to the end of August). If this is unavoidable, a preclearance inspection by a suitably experienced ornithologist will be required immediately prior to construction works to identify whether any nests are present, and ensure appropriate action is taken.

- 12) The outbuilding to be retained to the north of the existing dwelling at Babbington Hall shall be used for the keeping of rescue dogs only. No more than 6 dogs shall be kept in these kennels at any one time.

END OF SCHEDULE