
Appeal Decision

Site visit made on 22 February 2022

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal Ref: APP/B3030/W/21/3280203

Boundary House, Main Street, Hoveringham NG14 7JR

- 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 Ms Joanne Connors against the decision of Newark & Sherwood District Council.
 - The application Ref: 21/00638/FUL, dated 26 February 2021, was refused by notice dated 24 June 2021.
 - The development proposed is the erection of a two bedroom dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The revised National Planning Policy Framework (Framework) was published after the Council made its decision but prior to the appeal being submitted. The parties have thus had the opportunity to comment on this document during the course of the usual appeal timetable. I have considered it in my decision.

Main Issues

3. The main issues are a) whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the Framework and the development plan policy, b) the effect on the amenity value of trees, c) the effect on the living conditions of its future occupiers by way of noise and privacy, d) the effect on flood risk in particular with regard to the application of the sequential test, and e) the effect on the living conditions of the occupiers of neighbouring properties, in particular Boundary House by way of privacy.

Reasons

4. The appeal site comprises the majority of the rear garden area of a property known as Boundary House. It also includes a flat roofed single storey extension on that property which would be demolished to provide access. The boundaries of the site are well contained. To the south, there is a public house, whilst to the rear there is a cricket pitch which is separated from the site by most notably a hedgerow. The northern boundary is defined by close boarded fencing, beyond which is open land up to another property. A further property lies adjacent to the site boundary along the proposed access. The site lies in the Green Belt and also in the Hoveringham Conservation Area.

Green Belt

5. Paragraph 149 of the Framework sets out that the construction of new buildings is inappropriate in the Green Belt unless, amongst other exceptions, it involves limited infilling in villages. Spatial Policy 4B of the Newark & Sherwood Local Development Framework (LDF) Amended Core Strategy (2019) (Core Strategy) states that no villages 'washed over' by the Green Belt have been identified for limited infilling. This includes Hoveringham.
6. The term 'limited infilling in villages' is not defined by the Framework and so its application is a matter of planning judgment. This needs to have regard to the nature and size of the development itself, the location of the application site and its relationship to other, existing development adjoining and adjacent to it. It is also broader than simply a small gap within an otherwise built-up frontage or a development between existing buildings. Development to the rear is thus not excluded.
7. The proposal would be limited in the sense that it would constitute a single new dwelling. It would also be located to the rear of the host property and to the side of the public house. It would be less enclosed on the opposite side boundary, although still reasonably close to other development in the village. The hedgerow and the cricket pitch also enclose the site to the rear, and there is built development beyond, by way of the associated pavilion. With this relationship to the existing development, the proposal would reasonably constitute infilling.
8. Whether or not the proposal reflects the spacing of other development to the rear in its surroundings has only a limited bearing on this matter as this is an issue of character, not Green Belt. That it would be close to the existing development simply reinforces that it would be infilling.
9. The proposal would also lie in the village, given its proximity to other buildings that make up the settlement. It would be set back a comparable distance from Main Street as other development, such as the adjacent public house.
10. In taking these considerations together, the proposal would involve limited infilling in villages for the purposes of the Framework. As such, I conclude that it would not constitute inappropriate development in the Green Belt. Where a proposal is found to be not inappropriate, it should not be regarded as harmful to openness as this matter is implicitly taken into account under the exception.
11. The proposal would not comply with Spatial Policy 4B because this policy does not permit limited infilling in Hoveringham. However, I attach limited weight to the conflict with this policy because it is inconsistent with how the Framework deals with limited infilling in the Green Belt.

Trees

12. There are a small number of trees in close proximity to the northern boundary of the site. They include an attractive specimen that is substantial in size and visible from Main Street, even though it is well set back. It makes a significant and positive contribution to the visual amenity of the area and there is also some group value with the other trees that are close to this boundary.
13. The driveway area for the proposed dwelling would run alongside this boundary. Movement of vehicles would thus be taking place in very close

proximity to the trees, as would the construction activities associated with the driveway itself.

14. Despite the presence of trees and their juxtaposition to the proposal, there is no arboricultural impact assessment or similar before me. Hence, the evidence on how the proposal may impact on these natural features of importance is limited, including the effect on their root systems. Whilst the appellant has set out the potential use of a cellular confinement system if roots are found, it is not apparent what this approach is based upon as there is not a survey which indicates the extent of any likely incursion into the root system.
15. Hence, it is not a matter that could be addressed through the use of a planning condition without having the potential to nullify a permission if it is not possible to address the root systems without causing undue harm to the health of the trees. It has not been adequately demonstrated that the root protection systems of the trees and consequently their visual amenity would not be indirectly harmed by the proposal. Nor would additional planting address this concern.
16. The Council's related reason for refusal also refers to hedgerows that are proposed for retention. Much of the hedgerow along the site frontage would in any event be removed and there would be some separation between where the proposed dwelling would be sited and the retained hedgerow on the boundary with the cricket pitch. The reason also refers to biodiversity matters, but there is not substantive evidence before me on what this relates to. Nonetheless, these matters do not address my arboricultural concerns.
17. I conclude that the proposal would have an unacceptable effect on the amenity value of trees. Therefore, it would not comply with Core Policy 12 of the Core Strategy and in this regard with Policies DM5 and DM7 of the LDF Allocations & Development Management Development Plan Document (2013) (Allocations & Development Management DPD) where they are concerned with supporting, protecting, promoting and enhancing green infrastructure, and that natural features of importance within or adjacent to development sites, including trees, should wherever possible be protected and enhanced. It would also not accord with the Framework where it involves conserving and enhancing the natural environment.

Living Conditions – Future Occupiers

18. The side of the public house building is located directly adjacent to the boundary with the appeal site. It contains a raised balcony area at first floor level, which relates to residential accommodation connected with the public house. To the front of the building and also adjacent to the boundary is a hardstanding area that provides access for the patrons of the establishment. Associated plant is also found close to the boundary. There is a close juxtaposition between the public house and the appeal site.
19. Noise sources typically associated with a public house use would be found in close proximity to the boundary, including from patrons, access and from plant. Such noise would be near to the proposed garden areas associated with the new dwelling, as well as to the dwelling itself, and therefore have the potential to be of detriment to its residential use.

20. There is not a noise survey or similar before me, in order to gauge what such impacts could be and whether they could be made acceptable through mitigation. With regard to the use of glazing and boundary treatments through the use of planning conditions, there is not the assurance that such measures would be effective in order to discharge such conditions, in the absence of a noise survey to inform what measures might be required. Again, this would have the potential to nullify a permission if mitigation cannot satisfactorily address noise matters.
21. I am less persuaded that noise from the cricket pitch would have the potential to cause untoward harm due to the nature of that use and as the proposed dwelling and its rear garden would be located closest to the outfield. However, this does not deal with my primary concern in relation to the public house, due to its proximity.
22. The balcony on the public house area would also allow for direct overlooking of the proposed rear garden. Such a detrimental impact would be significant. It would not be substantially screened by the public house building itself in this direction. That the balcony overlooks the cricket pitch does not change that it also has an orientation over the rear garden area. Nor would this be addressed by the limited overlooking that would result from the proposed dwelling itself towards the public house.
23. Whilst buildings in the village, including Boundary House itself, are located near to the public house, the proximity of the proposed dwelling and the associated garden area would be marked. The size of the existing rear garden of Boundary House results in only the rear extremity of the garden that is overlooked from the balcony, and this property itself is located away from the public house building. In contrast, the proposed dwelling and most of its garden would be considerably closer.
24. I conclude that the proposal would have an unacceptable effect on the living conditions of its future occupiers by way of noise and privacy. Hence, it would not comply in this regard with Policy DM5 of the LDF Allocations & Development Management Development Plan Document where it states that the layout of development within sites and separation distances from neighbouring development should be sufficient to ensure that neither suffers from an unacceptable reduction in amenity including privacy, amongst other considerations. It would also not comply with the Framework where it concerns a high standard of amenity for future users.

Flood Risk

25. The site lies within Flood Zone 2 (medium probability of flooding). The Framework seeks to avoid, where possible, flood risk to people and property. Part of this approach is the application of the sequential test, the aim of which is to steer new development to areas with the lowest risk of flooding. Development is not to be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
26. The Planning Practice Guidance: Flood Risk and Coastal Change (PPG) further advises that the aim is to steer new development to Flood Zone 1 (low probability of flooding). It goes on to set out that where there are no

reasonably available sites in Flood Zone 1, reasonably available sites in Flood Zone 2 should be considered.

27. The appellant's sequential test of sites is restricted to Hoveringham where sites are either also in Flood Zone 2 or alternatively in Flood Zone 3 (high probability of flooding). The PPG states that the area the test should be applied to will be defined by local circumstances relating to the catchment area for the type of development.
28. The appellant considers the site is the only realistic option for the proposal. However, if this was to attract significant weight it would severely limit the application of the sequential test in combating flood risk because it would be effectively restricted by a very modest sized catchment area and land ownership considerations. Downsizing as a justification would also seem largely to be a personal matter. Nor is there a mechanism before me to ensure that it would be occupied by the appellant or compelling reasons why this should be the case. Accordingly, I see no substantive reason why the catchment area should be so constrained.
29. As a consequence, there is insufficient evidence to demonstrate that the sequential test has been passed. Whilst the proposal would incorporate mitigation measures that are set out in the appellant's Flood Risk Assessment, these do not negate the need to first pass the sequential test under the Framework. The same applies to where I have been referred to meeting Environment Agency requirements on a different site on flood risk mitigation.
30. I conclude that the proposal would have an unacceptable effect on flood risk in particular with regard to the application of the sequential test. As a result, it would not comply with Core Policies 9 and 10 of the Core Strategy and in this regard with Policy DM5 of the Allocations & Development Management DPD where they are concerned with the application of the sequential test and the need to demonstrate that there are no reasonably available sites in lower risk Flood Zones, as well as climate change resilience matters, amongst other considerations.
31. The proposal would also not accord with the Framework and the PPG because it has not been adequately demonstrated that there are not reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

Living Conditions – Existing Occupiers

32. The spacious nature of the appeal site would allow for a sufficient separation distance to be maintained between the proposed dwelling and Boundary House. The distance to the defined boundary that would be created would be around 10 metres. Such a distance would not be unacceptable as to the degree of overlooking from the proposed first floor windows on the facing elevation towards Boundary House's remaining rear garden.
33. There would also be a defined boundary, by way of a new fence and hedgerow. This would further provide a sense of privacy in relation to the enjoyment of Boundary House. Concerning other neighbouring properties, whilst a degree of overlooking towards the rear of Clematis Cottage would occur, this would be at an angle and so would not be unacceptable.

34. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of neighbouring properties, in particular Boundary House by way of privacy. Thus, it would comply in this regard with Policy DM5 and the Framework where they concern the protection of amenity and privacy.

Other Matters

35. This part of the conservation area is characterised by traditional buildings set out on lengthened plots. There are examples of built development found to the rear along Main Street, whether as separate development or ancillary outbuildings. When the proportions of the proposed dwelling are also considered, it would not erode this aspect of the significance of the conservation area. Boundary House itself is a more modern building compared to its surroundings and so the alterations to accommodate the proposed access would also not detract from the significance. The proposal would preserve or enhance the character or appearance of the conservation area.
36. As an additional dwelling, the proposal would support the Government's objective of significantly boosting the supply of homes, as is set out in the Framework. It would also create a family home, whether it be the larger existing or the smaller proposed dwelling. It would also be within walking distances of what services there are in the settlement, support rural services and rural viability, and provide related economic benefits.
37. Whilst I appreciate why the appellant considers that the land is surplus, it clearly performs part of the garden function for the existing dwelling, as well as being part of the dwelling itself. Nor does the presumption in favour of sustainable development apply because the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, namely related to areas at risk of flooding.
38. Set against what would be the modest benefits is the harm that would arise. This concerns the effect on the amenity value of trees, the living conditions of the future occupiers and flood risk. Such harm attracts significant weight in my decision. All other matters attract neutral weight. Overall, the benefits would not outweigh the harm.

Conclusion

39. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. It conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR