
Appeal Decision

Hearing Held on 25 May 2021 and 14 September 2021

Site visit made on 15 September 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2022

Appeal Ref: APP/R1038/W/20/3257059

Woodside, Hackney Lane, Barlow, Derbyshire S18 7TB

- 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 Derek Mapp against the decision of North East Derbyshire District Council.
 - The application Ref 19/01082/FL, dated 31 October 2019, was refused by notice dated 13 February 2020.
 - The development proposed is described on the application form as 'Redevelopment of large bungalow and outbuildings for five small bungalows and related infrastructure'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Prior to the hearing an application for costs was made in writing by Mr Derek Mapp against North East Derbyshire District Council. A written response from the Council to this application was also submitted prior to the hearing. An application for costs was also made in writing by North East Derbyshire District Council against Mr Derek Mapp in advance of the hearing. No further oral submissions or final comments were made by either of the main parties at the hearing in relation to these applications for costs. These applications are the subject of separate Decisions.

Preliminary and Procedural Matters

3. At the hearing the Council advised that the examination of the then emerging North East Derbyshire Local Plan (eLP) had been completed and that they had received the Inspector's Report. They also advised that the consultation on the proposed main modifications to the eLP had also been completed, details of which were provided. Subsequently, the Council adopted the new North East Derbyshire Local Plan (LP) on 29 November 2021. I therefore afford policies SS1, SS2, SS9, SS10 and SDC3 of the LP full weight.
4. On 20 July 2021 a revised version of the National Planning Policy Framework (the Framework) was published. However, as the main parties have had an opportunity to comment on this matter, I am satisfied that neither party has been prejudiced in this regard.
5. The proposal has been screened in accordance with the Environmental Impact Assessment (EIA) Regulations and is considered not to be EIA development. An Environmental Statement is therefore not required.

6. The Council has described the development as 'Application for the redevelopment of large bungalow and outbuildings for five small bungalows and related infrastructure (revised scheme of 19/00440/FL)'. I note that the appellant has also utilised this description on their appeal form. I consider that this revision provides an accurate description of the proposal and I have therefore determined the appeal on this basis.
7. At the hearing the main parties confirmed that the correct postcode for the appeal site was S18 7TB and not the one on the original application form. As a result, I have used this updated postcode in the banner heading above.

Main Issues

8. The main issues are:
 - whether the proposal would represent inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - the effect of the proposed development on the character and appearance of the area and its landscape; and
 - if the proposal is inappropriate development in the Green Belt, 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 required to justify the proposal.

Reasons

Whether inappropriate development

9. The Framework at paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy SS10 of the LP aims to protect the openness of the Green Belt which is consistent with the Framework. As a result, I afford this policy significant weight in decision making terms.
10. The construction of new buildings is regarded as inappropriate in the Green Belt save for several specified exceptions under paragraph 149 of the Framework. One of these exceptions includes limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would either: not have a greater impact on the openness of the Green Belt than the existing development or; not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
11. Annex 2 of the Framework defines previously developed land as '*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure*'. This definition excludes, amongst other things, land in built-up areas such as residential gardens.
12. It is not a matter of dispute between the main parties that the appeal site is not within a built-up area. It is also not a matter of dispute that the portion of land immediately surrounding the existing dwelling 'Woodside' i.e., that identified as 'pink land' within the Council's evidence, forms part of a residential curtilage and is therefore classed as previously developed land in accordance with the definition within Annex 2 of the Framework. However, it is a matter of dispute as to whether the rest of the appeal site i.e., those areas identified as 'yellow' and 'blue' land

- within the evidence and the other 'unregistered' land also form part of the residential curtilage and therefore constitute previously developed land.
13. It has been established by caselaw that the ground used for the comfortable enjoyment of a house or other building may be regarded as being within the curtilage of the house or building and an integral part of the same even though it has not been marked off in any way. It has also been so established that it is enough that it serves the purpose of the house or building in some necessary or reasonably useful way¹.
 14. It has been similarly established that, for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building², and that whether land falls within the curtilage is a question of fact and degree and that this is primarily a matter for the decision maker³. Similarly, curtilage does not need to be confined to a small area⁴.
 15. Consequently, in the context of the above and bearing in mind the Sutcliffe & Rouse⁵ and Hampshire⁶ judgements, I shall now assess the 'yellow', 'blue' and unregistered areas of land having regard to the tests in terms of the physical layout of the land; its ownership; and its past and present use or function.
 16. In terms of their physical layout, much of the 'yellow' and 'blue' land parcels as well as a smaller portion of the unregistered land are relatively flat areas of mown grass that are, save for the existing outbuilding and the mature trees within them, open and devoid of any built development. They are also for the most part also located immediately adjacent to the driveway that currently encircles the existing dwelling. Therefore, even though they are separated from the garden area immediately adjacent to the dwelling by this driveway their proximity and physical layout suggests that most of the land within these areas could be readily used as garden space. Indeed, from what I observed on my visit, a good portion of these areas is used as garden space. Therefore, in terms of their physical layout most of the areas of these parcels of land appear to be connected to the dwelling.
 17. From what I observed on site and from what is shown on the submitted plans, there is also a portion of the 'blue' land, a smaller portion of the 'yellow' land and a sizeable portion of the unregistered land that are more densely wooded than the rest of these areas while also having a very steep gradient. On my visit I observed that in effect this gradient and the mature trees formed a linear physical barrier between this land and the more open flat driveway and garden areas around the house. Therefore, in terms of its physical layout I consider this wooded area not to be connected to the dwelling.
 18. In terms of the ownership of these pieces of land, it is reasonably clear from the evidence that the 'pink', 'yellow' and 'blue' areas are currently owned by the appellant.
 19. Regarding the past and present use or function of these areas of land, there is some ambiguity as to their historical use and the planning application from 1974 (Ref. 74/00045/FL). Notwithstanding this position, it is also clear from the evidence that most of the land within these areas has been incrementally used over time as a garden by the occupiers of 'Woodside'. Indeed, on my visit I observed that most

¹ Sinclair-Lockhart's Trustees v Central Land Board [1950] 1 P&CR 195

² Methuen-Campbell v Walters [1979] 1 QB 525

³ Burford v SSCLG & Test Valley BC [2017] EWHC 1493 (Admin)

⁴ Skerritts of Nottingham Ltd v SSETR (No. 1) [2000] EWCA Civ 60, [2001] JPL 1025

⁵ HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC [1983] JPL 310

⁶ Hampshire CC v SOSSER 2020 EWHC 159

- of the 'yellow' and 'blue' parcels of land, and some of the unregistered land appeared to be in functional use as a large garden area.
20. Consequently, and while I note that what I saw on my visit represents but a snapshot in time, I am satisfied that for the most part these areas of land serve the purpose of the existing dwelling and building in some necessary and reasonably useful way.
21. Accordingly, in the context of the above, while not all the appeal site is intimately associated with the building, most of it is, particularly the part of it where the proposal would be located. As a result, I find that as a matter of fact and degree the majority areas of the 'yellow' and 'blue' parcels of land as well as a small piece of unregistered land identified within the Council's evidence, form part of the residential curtilage of the existing dwelling. I also therefore find that most of the appeal site constitutes previously developed land as defined by Annex 2 of the Framework and that the proposal would be located on this brownfield land.
22. The proposal would demolish the existing dwelling and the associated outbuilding replacing them with five new dwellings. These new dwellings would largely cover the areas of the appeal site that are currently devoid of any built development. As a result, they would introduce new built development to areas of land which are presently open. In simple spatial terms, this would have a clear and demonstrable effect on the openness of the Green Belt by introducing development to land which is largely open. The construction of 5 dwellings on the appeal site would therefore bring about built development on parcels of land where there is presently none.
23. Furthermore, even though the existing dwelling and outbuilding would be demolished, the proposal would lead to a net increase in the spatial footprint and volume of built development on the appeal site, which according to the agreed Statement of Common Ground (SoCG) would equate to a relative increase of approximately 53% and 72% respectively, even without the inclusion of the proposed car ports. This is a matter that was agreed by the main parties at the hearing.
24. I note that the demolition of the existing buildings on the site means that some parcels of land that currently have built development on them would become open. However, given the layout and distribution of the proposed dwellings in a circular pattern, and the percentage increases both in footprint and volume, in overall terms, the proposal would cover a greater spatial area than the existing development. As a result, it would reduce the spatial openness towards the periphery of the site to a greater extent than it would increase special openness towards the centre of the site. Consequently, the proposed dwellings would lead to a clear and demonstrable spatial reduction of openness.
25. Regarding any potential visual impact on openness, the site is set within a visual context of a rural location with many mature trees in the vicinity with most of the buildings close to it being larger detached dwellings of a traditional form, design, and style. The site itself and the detached dwelling nearby are surrounded by a relatively open landscape particularly the land on the opposite side of Hackney Lane. This more open land on the opposite side of the road is at a slightly higher level than the appeal site with the gradient sloping downward towards Hackney Lane.
26. The appeal site is for the most part also relatively well screened by mature trees and vegetation on its boundary with Hackney Lane. There is however little or no screening on the part of this boundary to the front of the existing dwelling which faces the road. As a result, the existing buildings are clearly visible from the other

side of the road. Indeed, while on my visit I could clearly see these buildings through the gaps in the trees from several vantage points on the public right of way on the open land opposite the appeal site. I could also clearly see the existing buildings as well as other parts of the appeal site from certain vantage points on the pavement on the opposite side of the road.

27. Therefore, even though the proposed dwellings would be set back further from the site boundary with Hackney Lane, and only be marginally higher, as evidenced by photographs E and F of the Landscape and Visual Issues Report submitted by the Council (MBLVI), the proposed dwellings on plot nos. 1, 3 and 4 would likely be visible from these and similar public vantage points. Moreover, the proposed dwelling on plot no. 5 would not be set back as far as the others meaning that it would likely be partially visible despite the vegetation on the boundary particularly during winter months.
28. I note the appellant's point that the proposal's visual receptors on Hackney Lane would primarily be people within passing vehicles. However, given its location the likely primary visual receptors for the proposal would, to my mind, be the walkers on the pavement on the opposite side of the road and those using the footpaths on the land beyond it who would likely have a fuller and clearer view given that they would be walking towards, from and past the site at a much slower pace.
29. I also note that appendix 210 of the appellant's submitted Landscape and Visual Effects Report (BCALVI) shows that there would only be partial open views of the proposed dwellings from Hackney Lane. However, this is not necessarily the same as there being no views of them at all. Furthermore, as evidenced by the photograph montage of the proposed development and contained within the submitted Visually Verified Montage Report (VVMR) many of the proposed dwellings would be clearly visible from such a vantage point at least to some degree.
30. I also acknowledge that the topography of the site, the removal of the existing buildings, the proposed landscaping works, the low-rise nature of the proposed dwellings and their high-quality design and use of sympathetic building materials would help to mitigate any potentially adverse visual impact when viewed from Hackney Lane and the footpaths on the open land beyond. However, even so, this is not the same as these factors being sufficient for the proposal to have no visual impact on openness at all. Therefore, in visual terms the height and volume of the proposed dwellings would also have a clear and demonstrable effect on the openness of the Green Belt by reducing it.
31. Consequently, I find that the proposal would fail to preserve the openness of the Green Belt. It would also therefore have a greater impact on the openness of the Green Belt than the existing development thereby clearly conflicting with the fundamental aim of national Green Belt policy.
32. For the above reasons, I conclude that the proposal does not fall within exception g) of Paragraph 149 of the Framework. Additionally, according to the evidence, the proposed development would also not provide affordable housing. I therefore consider that the second criterion of paragraph 149 g) of the Framework is not applicable in this case. Therefore, the proposal would be inappropriate development within the Green Belt and to this extent would conflict with the Framework and Policy SS10 of the LP.

Character and Appearance

33. The appeal site is next to a large, detached dwelling with a large side and rear garden area. The existing dwelling on the site and its neighbour are largely

surrounded by open countryside with an extensive open gap between them and the main built-up area of Barlow village. The land on the opposite side of Hackney Lane to these dwellings is also quite a large area of open land which slopes downwards towards the road.

34. There are also many mature trees on the boundaries of the appeal site and along the opposite side of Hackney Lane. The prevailing development pattern on this part of Hackney Lane and close to it comprises single detached dwellings which front the road in a relatively linear layout with more open land or trees surrounding them. As a result, I consider the area to be intrinsically rural in character.
35. The proposal would remove the existing buildings on the appeal site and introduce five new dwellings in a concentric development pattern within the site. All of them would be set back further from the road frontage than the existing dwelling. Consequently, the proposal would be at odds with the prevailing pattern of development on this part of Hackney Lane.
36. As set out above, the proposal would also be visible from public vantage points such as the two rights of way/footpaths on the other side of the road and from the pavement across the road. As a result, and even though the design of the proposal would use materials like other dwellings in the area and that the retained and proposed trees would screen it somewhat, I nevertheless find that the bulk, layout, and density of the proposed dwellings would appear visually discordant within their local context. Consequently, even though the site is relatively well contained it would still appear as an out of place form of development in the street-scene.
37. I note that the appellant has cited examples of developments with a similar layout to the proposal that are in settlements such as Barlow. However, as acknowledged by both main parties the proposal is not within a built-up area or part of the village of Barlow. As a result, I consider that these are not directly comparable to the appeal scheme.
38. The appeal site is also located within National Character Area 37 Yorkshire Southern Pennine Fringe (NCA). In the evidence, it is broadly described as a transitional area, lying between the pastures of the upland Pennine block to the west and the lower-lying arable land to the east. Key characteristics include that it is a transitional landscape dissected by steep-sided valleys with rivers creating a deeply dissected landscape with broadleaved woodland on steeper valley sides, giving the impression of a well-wooded landscape.
39. It is also within the Derbyshire Peak Fringe and Lower Derwent Character Area 50 which is described as an undulating, well-wooded, pastoral landscape on rising ground between the Derbyshire Coalfield and the Peak District. It summarises the landscape in this area as being a mix of pastoral farming with small irregular woodlands, many of ancient origin, on the steeper uncultivable slopes. These woodlands, along with hedgerow trees, give the landscape a distinctly wooded character. Key characteristics of this landscape include densely scattered small to medium ancient woodlands and secondary woodland on steeper slopes and along streams, and densely scattered hedgerow trees.
40. In addition, the site is situated in the Settled Coalfield Farmlands/Coalfield Village Farmlands Landscape Character Types (LCTs). It is also adjacent to the Wooded Slopes and Valleys LCT. Key characteristics of these LCTs include: a gently undulating landform of low hills and ridges, and shallow valleys with local variations; relict ancient semi-natural woodland, copses, and linear tree- belts; dense watercourse trees and scattered hedgerow trees; and scattered, small broad-leaved woodlands, copses and linear tree belts and some relict ancient semi-

natural woodlands. The site is also in an area of secondary landscape sensitivity based on visual unity.

41. In the context of the above and given its proximity to the linear tree belt running along the course of the Sud Brook, and the presence of the mature trees within it, I consider the landscape character of the appeal site, in combination with the land near to it on that side of Hackney Lane, as being more reflective of a woodland landscape rather than a pastoral landscape such as the one on the opposite side of the road. In addition, I also consider that the mature trees on the boundaries of the appeal site visually link it to the wider belt of woodland that runs along the course of the Sud Brook. Furthermore, I consider that these trees cumulatively make a significant positive contribution to the visual amenity of the local landscape in this regard.
42. The proposal would lead to the loss of mature trees located on the boundary with Hackney Lane. Therefore, while I acknowledge that these trees are not subject to a tree preservation order, given the above, their removal would likely have an adverse impact on the visual unity of the local landscape. The loss of the trees on the boundary would also make the proposed development more visible which would, due to its discordant layout and pattern of development, have an adverse visual impact.
43. I also note that new trees would be planted on the boundary of the site. However, it would be some time before these trees reached the same level of maturity as those on the boundary with the Sud Brook woodland meaning that their contribution to the visual unity of the landscape in this location would be lesser when compared to that of the existing mature trees that would be removed.
44. As a result, and for the reasons outlined above, I conclude that the proposal would materially harm the character and appearance of the area, including landscape character. As a result, it would fail to meet the landscape character requirements of policies SS1, SS9 and SDC3 of the LP. It would also conflict with paragraphs 130 and 174 of the Framework which aim to ensure that developments are sympathetic to local character and recognise the intrinsic character and beauty of the countryside.

Other considerations

45. The appellant has cited the fact that the proposal would have much less of a visual impact on openness and the character of the area than what could be built under permitted development rights (PD). Based on the submitted plans, if the appellant were to exercise PD rights, it would also be likely to cause a degree of visual and spatial harm to the openness of the Green Belt much like the proposal would.
46. That being said, I consider that the visual impact on the character and appearance of the area arising from the PD scheme would likely be more harmful than that of the proposal given that it would increase the amount of visible built development at the front of the existing dwelling next to the road. It is also clear from the appellant's evidence that it would be their intention to implement these rights should the appeal scheme be refused planning permission. I therefore consider it reasonably likely that the PD scheme would go ahead as a fallback position and not just be a theoretical possibility.
47. However, if the proposal was implemented it would result in five new dwellings which would each have their own PD rights. Consequently, if these PD rights were similarly carried out the cumulative effect would potentially be at least equal to if not greater than the appellant's fallback position. Furthermore, as set out in the Planning Practice Guidance it would not likely be reasonable to impose a condition

that would result in the blanket removal of such PD rights from these new dwellings. As a result, I afford this consideration limited weight.

48. The appellant has also stated that the proposed dwellings would meet a local need for small adaptable bungalows. However, whilst I acknowledge the importance of planning for the needs of older people and that bungalows are often occupied by more elderly residents, I have no substantive evidence to show that the properties would be occupied by such individuals. I also have no substantive evidence before me to show that there is an identified need for such accommodation in the area. Moreover, given that the evidence also indicates that the proposed dwellings are likely to be sold on the open market it would be beyond the control of the appellant to ensure that these properties would be occupied by elderly residents. Therefore, and in the absence of a legally binding agreement to ensure that this would be the case, I afford this consideration limited weight.
49. I also note that due to its scale and location the degree of activity the proposal would likely create, such as any increased traffic generation, would be limited. However, even so it would still be likely to be a greater level of activity than what exists currently. As a result, I afford this consideration limited weight.
50. The appellant has also stated that the proposal would provide a net increase of 4 dwellings which would contribute towards housing supply in the District. However, the evidence before me indicates that the Council can currently demonstrate a deliverable supply of housing land equating to approximately 8.3 years. In this context, the contribution to the supply of houses from a net 4 dwellings would be modest when considered in the overall planning balance. Consequently, I afford this consideration limited weight.
51. In support of the appeal proposal the appellant has cited several appeal decisions⁷. However, I do not have all the details of these cases before me or the circumstances which led to those decisions being taken. In addition, given that these decisions were for development proposals that were either: not similar to the appeal scheme; or considered not to be inappropriate development in the Green Belt; or that they would lead to a net reduction of floorspace or volume; or that very special circumstances were found to exist due to differing potential PD fallback positions; I find that the circumstances relating to these schemes are not directly analogous to those presented in this case. Furthermore, I have determined this appeal on its individual planning merits.

Any other harm

52. It is a matter of dispute as to whether the appeal site is in an isolated location. Paragraph 80 of the Framework states that planning decisions should avoid the development of an isolated home in the countryside unless it meets certain specified exception tests. The Braintree Judgement⁸ has held that the word "*isolated*" in the phrase "*isolated homes in the countryside*" simply connotes a dwelling that is physically separate or remote from a settlement. It has also held that the issue of 'isolated' in this regard must always be a matter of fact and planning judgment.
53. I note that there are other dwellings near to the one at the appeal site and its adjacent neighbour. However, these are dispersed and typically separated by

⁷ (Refs: APP/R1038/W/16/3152305; APP/C0630/C/07/2062547; APP/B1225/C/09/2103138; APP/P0119/A/09/2103318; APP/V3120/A/10/2125140; APP/U1240/A/10/2141372; APP/B1550/A/11/2158665; APP/K0425/C/10/2129179; APP/T2215/C/12/2168182; APP/V3120/A/12/2179200; APP/V3120/A/12/2188869; APP/Q4625/D/18/3206368; APP/L3625/W/18/3208424; and APP/Y3425/W/18/3197933).

⁸ Braintree District Council v SSCLG Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

notable gaps, such that they could not be regarded as forming a residential hamlet or 'settlement'.

54. In any event, in planning terms, the appeal site is situated outside any settlement boundary defined by the development plan and therefore falls within the open countryside.
55. As a result, even though services in Barlow could be reached from the appeal site by private car, in my judgement due to its location the proposed dwellings would, as a matter of fact and degree, be physically separate and remote from a settlement and other surrounding buildings.
56. Consequently, and being mindful of paragraph 105 of the Framework, I find that the proposed development would be in an isolated rural location. Accordingly, it would conflict with paragraph 80 of the Framework which weighs against the appeal scheme.

Planning Balance and Conclusion

57. I have found that the proposal would amount to inappropriate development in the Green Belt. I afford this harm substantial weight in the planning balance. Material harm would be caused to the character and appearance of the countryside, including to landscape character. Furthermore, the proposal would result in a net increase in isolated dwellings in the countryside contrary to paragraph 80 of the Framework.
58. Overall, I conclude that the aforementioned harm by reason of inappropriateness, and the other identified harm, is not clearly outweighed by the identified other considerations so as to amount to the very special circumstances required to justify the proposal. I therefore conclude that the appeal should be dismissed.

C Coyne

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Derek Mapp, appellant.

David Manley QC.

Steven H Abbott BSc (Hons) MRTPI, Partner, Steven Abbott Associates LLP – Chartered Town Planners.

Tom Hollick BA (Hons) Dip LD CMLI, Consultant, BCA Landscape Limited.

Keven Lester BA (Hons) (Liverpool) BArch (Hons) ADPPA RIBA Chartered Architect, Director/Principal Architect, cb3 design architects Limited.

FOR THE LOCAL PLANNING AUTHORITY:

Susan Wraith Dip URP MRTPI, Director, 4 Planning Delivery Limited.

Michelle Bolger CMLI, Dip. LA, BA (Hons) LA, PGCE, BA (Hons) Eng, Director, Michelle Bolger Expert Landscape Consultancy Limited.

Ken Huckle, Planning Technician/Administrator at North East Derbyshire District Council.