



Appeal Decision

Site visit made on 8 August 2022

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2022

Appeal Ref: APP/A1910/W/21/3282461

**Land adjacent to Heron Place, Bank Mill, Berkhamsted, Hertfordshire
HP4 2FZ**

- 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 P MacGregor of Thorne Barton Estates Ltd against the decision of Dacorum Borough Council.
 - The application Ref 20/01370/MFA, dated 5 November 2019, was refused by notice dated 24 June 2021.
 - The development proposed is described on the application form as 'development of 16 no apartments including provision for affordable units together with landscaping'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address used in the banner heading above is taken from the appeal form which is more precise than that given on the application form.
3. Following the submission of additional information and correspondence between the appellant's consultant and the Council's Environmental Health Officer, the Council has confirmed that it is not contesting the third reason for refusal concerning the effects of train noise on future occupiers of the development. I have not considered this matter further.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the development plan and the National Planning Policy Framework (the Framework);
 - The effect of the proposal on the openness of the Green Belt;
 - The effect of the proposal on designated heritage assets, with particular regard to the character and appearance of the Berkhamsted Conservation Area and the settings of Lock Keepers Cottage and Old Cottage, which are Grade II listed buildings; and
 - If it is 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 the development.

Reasons

Whether inappropriate development

5. The appeal site relates to a rectangular parcel of land on the edge of Berkhamsted to the south-east of Heron Place. It is immediately to the north of the Grand Union Canal, to the south of the West Coast Main Line and is bound by Lismere House, a canal-side dwelling, to the south-east. The site is currently of overgrown appearance and contains a number of trees. The site is within the Green Belt.
6. The Framework states that the Government attaches great importance to Green Belts, the fundamental aim of which is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence. Accordingly, the Framework says that the construction of new buildings in the Green Belt should be regarded as inappropriate with certain exceptions. Policy CS5 of Dacorum's Local Planning Framework Core Strategy September 2013 (the Core Strategy) states that the Council will apply national Green Belt policy to protect the openness and character of the Green Belt, local distinctiveness and the physical separation of settlements.
7. There is no dispute that the proposal would not fall within any of the exceptions set out in paragraphs 149 and 150 of the Framework. It would therefore constitute inappropriate development in the Green Belt. Such development is, by definition, harmful and is contrary to Policy CS5 of the Core Strategy, and the Framework, which seek, amongst other things, to protect the Green Belt. The resultant harm should be given substantial weight in determining the appeal in accordance with paragraph 148 of the Framework.

Openness and the purpose of the Green Belt

8. The appeal site is visually well contained by the existing development of Heron Place to the north-west, by Lismere House to the south-east and by the railway embankment to the north. However, it is clearly visible from the canal and the towpath to the south. The proposed development would be of substantial scale. It would be sited on land that is currently open and would lead to a loss of both spatial and visual openness. It would conflict with the fundamental aim of keeping land permanently open.
9. Paragraph 138 of the Framework indicates that the Green Belt serves five purposes. I consider that the proposal would amount to the sprawl of a built-up area and would result in countryside encroachment. The site contributes positively to the setting of the Conservation Area, the canal and nearby listed buildings and there would be some conflict with the purpose of preserving the setting and special character of historic towns. Given the distance from Hemel Hempstead, I do not consider that the proposal would significantly conflict with the purpose of preventing neighbouring towns from merging into one another. Nor do I consider that the development would conflict with the purpose of assisting in urban regeneration, by encouraging the recycling of derelict and other urban land.
10. However, for the reasons set out above, I conclude that the proposal would lead to significant harm to Green Belt openness and to the purposes of

including land in the Green Belt. This harm would be in addition to the harm arising from the inappropriate nature of the proposal.

Designated heritage assets

11. The definition of a designated heritage asset, as outlined in the glossary of the Framework, includes listed buildings and conservation areas. The appeal site is located within the extended part of the Berkhamsted Conservation area (CA). There are two listed buildings on the south side of the canal. Insofar as the appeal is concerned, and having regard to the Berkhamsted Conservation Area Character Appraisal and Management Proposals 2014, the significance of the CA is partly derived from its historic setting which is influenced by the Grand Union Canal with meadows on both sides, well preserved canal bridges, and historic buildings such as the Lock Keepers Cottage and the Old Cottage, both Grade II listed buildings. The appeal site is an undeveloped area of land which, in combination with other areas of open land on both sides of the canal and scattered development, contributes positively to the rural character of this stretch of the canal and the setting of the CA more generally.
12. The appeal proposal would comprise of four separate two storey blocks, which would be set back from the canal and have reasonably large gaps between them. The development would be clearly visible from the canal and towpath. From here the proposal would be seen as a development of significant scale and as an extension of the built form of this part of the settlement into the countryside. It would be harmful to the rural character of this stretch of the canal and the sense of openness in this part of the CA, which would detract from its setting.
13. I acknowledge that conservation area policies do not prohibit sympathetic development within them. I also accept that the design of the development and landscaping would be generally sympathetic to the area. However, the siting and scale of the proposal would have an urbanising effect on the rural character of the site and its surroundings, the effects of which would be exacerbated by the provision of new areas of hardstanding, parked vehicles and gardens with domestic paraphernalia associated with residential occupation.
14. There appears to be little certainty that the land to the southern side of Bank Mill Lane will be allocated for development as part of the emerging Local Plan. That land is further away from the canal and is not comparable to the appeal site in terms of its relationship to the canal and setting of the CA. As such, it does not alter my conclusions about the effect of the proposal on the CA and does not provide justification for the appeal proposal.
15. There are two nearby Grade II listed buildings, the Old Cottage to the west and Lock Keepers Cottage to the south-east. The Council also consider Lismere House, beyond the south-eastern boundary of the site, to be a non-designated heritage asset. All three are characterised by their canal side location and open meadow setting. The Council is concerned that there would be harm to the setting of Lock Keepers Cottage, and to the setting of the Old Cottage to a lesser degree, as some of the open meadow character would be lost as a result of the development.
16. I have a statutory duty under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to have special regard to the

desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. Whilst the spacious meadows form part of the setting of Lock Keepers Cottage, I consider that the setting of the property is chiefly derived from its historic association with the canal. The building is not on the same side of the canal as the appeal site and it is not directly opposite it being a reasonable distance away to the south-east. Due to the separation distance, intervening tree cover and change in levels, there would not be any significant intervisibility between the proposed development and the listed building. There are fields to both sides of the listed building, as well as to the south of Bank Mill Lane and on the north bank of the canal. The relationship of the Lock Keepers Cottage to the canal and its open meadow setting would be maintained. The Old Cottage is also on the opposite side of the canal opposite to the existing development at Heron Place and further away from the appeal site. I am satisfied that the setting of the Old Cottage would also not be adversely affected.

17. For these reasons, I consider that the proposed development would have a neutral effect on the settings of the Lock Keepers Cottage and the Old Cottage and it would therefore accord with the duty under Section 66 (1) of the Act. I find no conflict with Policy 119 of the Dacorum Borough Local Plan 1991-2011, April 2004 (the Local Plan), which seeks to preserve the special character of listed buildings.
18. Notwithstanding this, for the above reasons, I conclude that the proposal would result in significant harm to the setting of the CA and it would therefore fail to preserve or enhance the character or appearance of the CA. It would not comply with the statutory duty under Section 72(1) of the Act concerning the desirability of preserving or enhancing the character or appearance of the CA. The proposal would also be contrary to Policy CS27 of the Core Strategy which, amongst other matters, seeks developments that enhance the spaces between buildings and integrate with the character of the area as well as conserve the historic environment. Furthermore, the proposal would conflict with saved Policy 120 of the Local Plan, which seeks to protect the character and appearance of conservation areas. The proposal would fail to comply with the Framework, where it seeks to sustain the significance of heritage assets.

Other considerations

19. The appellant has referred to studies, including the 2016 Strategic Housing Land Availability Assessment (SHLAA), which support the acceptability of the site for housing (under site BC/4). It is also put to me that the Green Belt Review supports consideration of future boundary changes (under sub-area Bk-A9a). The SHLAA is now several years old and would have only been likely to have assessed the merits of the site at a broad level. Moreover, the Council says that the review of the 2016 SHLAA as part of its Regulation 18 consultation concentrated on potential site allocations in the Local Plan and has not identified land in the immediate location of the site as a preferred housing site. With regard to the Green Belt boundary, it is clear that the Green Belt Review document does not in itself determine future amendments to the Green Belt boundary. Paragraph 140 of the Framework says that Green Belt boundaries should only be altered through the preparation or updating of local plans. Without such alterations the appeal site remains in the Green Belt. The SHLAA and Green Belt Review are intended to inform local plan preparation and are not binding on the Council insofar as allocation of sites or changes to the

Green Belt boundary are concerned. Therefore, these considerations do not provide justification for the proposal.

20. It is asserted that the Council has on occasions had to release Green Belt land for residential development. However, the planning history and substantive details of other developments within the Green Belt have not been provided and so I cannot be sure that they represent a direct parallel to the appeal proposal. In any event, I have considered the appeal on its own merits based on the specific site circumstances. I therefore give this matter no weight.
21. The development would offer social and economic benefits in terms of providing new dwellings to the Council's housing stock in an accessible location, which weighs positively in favour of the proposal and aligns with the objective of significantly boosting the supply of homes, as set out in the Framework. The appellant refers to the results of the 2020 Housing Delivery Test which indicate an under delivery of housing in the borough. The appellant has also referred to the failure of the Lidl scheme¹, which includes the provision of 32 homes, to come forward in Berkhamsted. However, there is no firm evidence before me to suggest that the scheme will not be implemented. In any event, the Council acknowledges that it cannot demonstrate a 5 year supply of deliverable housing sites.
22. However, the presumption in favour of sustainable development and the 'tilted balance' addressed by paragraph 11 of the Framework, would not be engaged in this instance. This is because footnote 7 of the Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The Green Belt and designated heritage assets are examples of such areas/assets and the proposal is contrary to the relevant policies of the Framework in regard to these. Given my findings in relation to the Green Belt and designated heritage assets, there is a clear reason for refusing the development proposed, albeit that the delivery of housing when there is evidence of under delivery, as is the case here, is a benefit to which I moderate weight.
23. Reference has been made to the lack of data in the borough relating to the number of applicant households on the Housing Register. The appellant claims that there can be no doubt as to the severity of the need for affordable housing in the borough. The proposal would provide 6 affordable housing units (35% of the total number of units) in accordance with Policy CS19 of the Core Strategy and the signed S106 agreement would secure this provision. The appellant states that these units would be made available to key workers, which is a further benefit of the scheme. Whilst the proposal would not provide affordable housing over and above what would be expected for a development of this scale in the borough, nevertheless the provision of affordable units would contribute towards meeting the local housing need and would be a benefit of the proposal to which I attach moderate weight.
24. The evidence indicates that the site is deliverable immediately because it would follow on from the first phase of development at Heron Place, where the necessary infrastructure is already in place. The development would also result in the creation of employment opportunities during the construction phase and

¹ Council ref 4/01317/14/MFA

spending in the local area by future residents. I attribute moderate weight to these matters.

25. It is put to me that the proposal would enable repair works to the canal bank and the risk of degradation of the canal walls would be mitigated in the future. However, there is no substantive details before me as to the extent of erosion of the canal banks or firm evidence to demonstrate that the proposed repairs are dependent on the proposed development taking place. I therefore attribute limited weight to this consideration.
26. It is argued that the development would reduce noise experienced from the canal and the towpath as a result of high-speed trains. However, there are large gaps between the proposed apartment blocks. Therefore, any reduction in noise would be unlikely to be significant. Moreover, the noise of passing trains is likely to have been a feature of the area for a significant period of time and forms part of the character of the CA. It is also suggested that the embankment itself would be protected from potential fire hazard. However, it has not been explained to me to what extent this has been issue in the past or how the proposal would mitigate it. Consequently, I give these matters limited weight in favour of the development.
27. I have found that the site serves some of the purposes of Green Belt and it contributes to the rural setting of the canal and the CA. The appellant considers that the development would be an improvement to the unkempt appearance of the site. However, I have found that it would be harmful to the setting of the CA. The perceived quality of the land itself does not change my view on openness and purposes of the Green Belt or the setting of the CA. As such, this is a matter to which I give no weight.
28. A number of comments have been made by interested parties, which include concerns about the effect of the proposal on the living conditions of neighbouring occupiers, increased traffic, loss of trees, loss of wildlife habitat and flood risk. The Council have not raised objections to the proposal on these grounds and I have no reason to disagree with this assessment based on the evidence before me and my observations on site. However, these are neutral matters rather than ones that weigh in favour of the proposal.
29. Given the specific circumstances of the site, the acceptance of the proposal would not set a precedent for other forms of residential development within the Green Belt. However, that does not represent very special circumstances.

Other Matters

30. The appeal site is within the Zone of Influence of the Chiltern Beechwoods Special Area of Conservation (SAC) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). The Habitat Regulations require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC. Had I been minded to allow the appeal I would have found it necessary to investigate this matter in greater detail. However, as I am dismissing the appeal for other reasons, there is no need for me to consider this matter further.

Planning Balance and Conclusion

31. The proposal would be inappropriate development in the Green Belt and it would be harmful to the openness of the Green Belt. The Framework is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances 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.
32. I have considered the other considerations in support of the proposal. Whilst I have given weight to these factors in favour of the proposal, when taking these matters cumulatively, they do not clearly outweigh the harm that the proposal would cause. Consequently, there are not the very special circumstances necessary to justify the development.
33. The proposal would not result in harm to the settings of the nearby listed buildings. However, I consider that it would be harmful to the character and appearance of the Berkhamsted Conservation Area. Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. When considered in light of the designated heritage asset as a whole, the proposal would amount to less than substantial harm. Paragraph 202 of the Framework states that less than substantial harm to the significance of a designated heritage asset should be weighed against the public benefits of the proposed development.
34. I have considered the public benefits of the scheme, which include a contribution to the borough's housing supply in an accessible location, and it would include the provision of affordable houses. It would also result in employment opportunities during the construction phase and spending in the local area by future residents. Repairs to the canal bank would be undertaken, but it has not been demonstrated that such works are dependent on the proposed development taking place. Any noise reduction from passing trains would be unlikely to be significant. I must give considerable importance and weight to designated heritage assets. Although I give some weight to the public benefits of the scheme, they do not outweigh the less than substantial harm that would be caused to the significance of the designated heritage asset.
35. The scheme would conflict with the development plan and with the Framework, and would not benefit from its presumption in favour. For those reasons, and having regard to all other matters raised, the appeal is dismissed.

M Ollerenshaw

INSPECTOR