



Appeal Decision

Site visit made on 28 November 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2022

Appeal Ref: APP/J1915/W/22/3292603

Colvins, Parsonage Lane, Sawbridgeworth CM21 0ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Martin Weller against East Hertfordshire District Council.
 - The application Ref 3/21/2342/FUL, is dated 9 September 2021.
 - The development proposed is demolition of existing outbuildings and erection of a single storey Passivhaus dwelling with associated access, landscaping and associated works.
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Decision

1. The appeal is dismissed and planning permission for demolition of existing outbuildings and erection of a single storey Passivhaus dwelling with associated access, landscaping and associated works, is refused.

Background and Main Issues

2. The appeal is against the Council's failure to determine an application for planning permission. The Council's Statement of Case includes an officer report which outlines the reasons it considers the proposal would be unacceptable. These are not formal determinations of the Council as the jurisdiction to determine the application transferred from it upon valid receipt of the appeal. The Council has set out that it would have refused the application had it been empowered to do so. The Council subsequently liaised with the appellant in relation to its third putative reason for refusal, regarding potential effects on bats, and confirmed it no longer wished to pursue it. I have therefore taken its remaining reasons into account in determining the main issues.
3. With the above in mind, the main issues are:
 - whether the development would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt;
 - whether the site would represent a suitable location for housing, having regard to the Council's spatial strategy and its accessibility to services and facilities; and
 - if the development is inappropriate within the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

4. The National Planning Policy Framework (the Framework) sets out the Government's planning policies for England and is an important material consideration in all planning decisions. 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 GBR1 of the East Herts District Plan¹ (EHDP) requires planning applications within the Green Belt to be considered in line with the provisions of the Framework.
5. Paragraph 149 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it meets one or more of a list of exceptions. This includes 'limited infilling or the partial or complete redevelopment of previously developed land'.
6. The main parties agree the appeal site would qualify as previously developed land; and the proposal would involve its partial redevelopment. The conclusion on whether the proposal would accord with this exception, and not amount to inappropriate development, therefore hinges on if the proposal would not have a greater impact on the openness of the Green Belt than existing development. I address this point in the next main issue.

Openness

7. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics thereof are their openness and permanence. The physical presence of built or other forms may affect openness, which can also have a visual element.
8. There are numerous separate structures and areas of hardstanding scattered across site. These are of varied footprint, scale, and height, but not all are visible beyond the site so have different visual effects on openness. They would be removed and replaced by the proposed house, which the main parties agree is smaller in footprint but greater in volume by 13.6 percent.
9. I accept that were the house to be built conventionally rather than using Passivhaus principles, it could constitute a smaller volume and the presence of separate buildings sited relatively close to one another already has a spatial effect on openness. Hence, the concentration of the mass of the property would leave other parts of the site open.
10. Nevertheless, the building would be of greater proportions than the majority of the buildings to be replaced, particularly in terms of its height. The proposal would also be clearly discernible along the access drive and, to a lesser extent, from Parsonage Lane. For these reasons, it would have a greater and more adverse impact on the openness of the Green Belt in visual and spatial terms. Hence, it would therefore be contrary to the main aims of Green Belt policy at local and national levels, which I have set out above.
11. In arriving at this conclusion, I have had regard to the appeal and planning decisions referred to in the appellant's Planning Statement, particularly in respect of their consideration of the effect of openness from existing and

¹ Adopted October 2018.

proposed buildings. However, the specific circumstances of the cases, including the plans, merits, any material or other considerations, and policies relevant to those schemes are not before me to enable a reasonable comparison to be made with the proposal before me. In any event, having regard to the site and its own specific set of circumstances, the decisions do not alter my conclusions.

Location and Accessibility

12. The appeal site is situated within an area of open countryside outside the urban area of Sawbridgeworth, but lies within the garden of the appellant's house. There are other residential, commercial and leisure uses to the southeast.
13. Given the agreement that the site is previously developed land, it would satisfy part of the first criteria within the strategy of the EHDP Policy DSP2 to deliver sustainable development but sites must also be sustainable. In that regard, it is also common ground between the main parties that the site would not be 'isolated' in the language of the Framework and a Court of Appeal judgement². Nevertheless, the proposal would add to existing development encircled by open countryside beyond Sawbridgeworth.
14. I have been referred to Framework paragraph 85 but the proposal does not relate to a local business or community need, so it does not apply. However, Paragraph 79 seeks to restrict housing in rural areas to locations where it will enhance or maintain the vitality of rural communities; and Paragraph 105 suggests opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
15. There are various local services and facilities and public transport options for onward travel to other locations at the A1184 and Sawbridgeworth, but the walking and cycling route, along Parsonage Lane, does not include street lighting or footways and operates to the national speed limit. Public footpaths available through fields are also unlit and generally on unmade paths. While I accept that the curving nature of the lane means vehicle speeds are, in part, likely to be less than its upper limit, this is no guarantee it would be palatable to future occupiers. Equally, the appellant and his family may have used these routes, but this does not obviate the need for opportunities to walk or cycle to nearby services and facilities to be convenient or realistic, particularly after dark or in bad weather.
16. Future residents would therefore be highly likely to be required to travel regularly by private motorised transport to access education, retail, healthcare, and employment needs. The proposal would not, of itself, generate large traffic movements and a greater dependency on car use is inevitable in more rural locations. The inclusion of space in the proposed house for homeworking could also reduce the need to travel to some places of work, but this would replace the office located in an existing building on the site, so would maintain the contribution in this respect. The occupiers of existing residential properties in the immediate vicinity, including the appellants' existing home, are also already likely to make such journeys. Nonetheless, the cumulative effect of allowing developments in such locations would be likely to increase the amount of unsustainable journeys made. I also share the view of the Inspector for the appeal at Parsonage Lane from earlier this year³ that the location of bus stops

² *Braintree DC v SSCLG* [2018].

³ Appeal Reference: APP/J1915/W/21/3273613.

may not necessarily be convenient having regard to these routes, so would be unlikely to discourage use of vehicles.

17. I appreciate that Sawbridgeworth is to expand north and west, closer to the appeal site, but the proposal would still be some distance north of it. Moreover, as referred to in the appellant's Planning Statement, the site north would include enhanced walking and cycling opportunities to encourage travel into the town, which differs from the appeal scheme.
18. For the reasons outlined above, I conclude that the site would not represent a suitable location for housing, having regard to the Council's spatial strategy and its accessibility to services and facilities. Hence, the proposal would conflict with the aims of EHDP Policies DSP2 and TRA1 and paragraphs 79 and 105 of the Framework.

Other Considerations

19. I am referred to the exception for houses in isolated locations in Framework paragraph 80(e), but the site is agreed to not be isolated. While this aspect of the Framework is therefore not relevant to the proposal, I recognise that there could be benefits of the scheme resulting from its design and construction. Moreover, the design of the proposed house is clearly well-considered, such that it would assimilate with the verdant setting of the appeal site, amongst retained trees in its surroundings. However, the EHDP expects design to be of a high standard, so would only be a negligible additional benefit through an absence of harm.
20. The proposed dwelling would also be designed to exceed Building Regulations and target Passivhaus standards, following the American principles of the Living Building Challenge. Its sustainability performance could therefore set it apart from most housing expected to be built in Sawbridgeworth, which could set a precedent for future development. It would be constructed of sustainable materials, including some reclaimed. Some of the energy required to heat and cool the house would also be generated by air source heat pumps and photovoltaic panels, which are renewable sources. This would help to meet carbon reductions set as a legislative target by the Government and contribute to addressing the UK and Hertfordshire climate emergencies. Nonetheless, these benefits would be limited in scale and kind, so only of moderate weight.
21. The proposed landscaping scheme and enhancement for protected species would be beneficial to the immediate setting and ecological value of the site, which would amount to environmental gains of moderate weight, including in respect of how surface water would be managed.
22. The use of water would be in accordance with development plan policy. Access into and around the building for future users and electric charging for vehicles would be provided, as required by the Building Regulations. I therefore afford these negligible weight as social and environmental benefits. Exceedance of the Nationally Described Space Standards would also be a limited social benefit to occupants of the building. The house would also be situated on previously developed land but, for the reasons outlined in the main issues, it would not safeguard and improve this particular environment, a key component of the Framework's objective of making effective use of land.

23. I have not been referred to a lack of deliverable housing sites in the district, but the Government is seeking to significantly boost the supply of housing. The proposal would contribute to supply in the district and greater choice, and be a small site the Framework recognises as more likely to be built relatively quickly. Nevertheless, the magnitude of the contribution to housing supply in the district would be modest, so would attract limited weight.
24. The appellant claims to have a fallback position through potential expansion of his wife's dog walking and training business, which could employ several people from the site. In order to support this approach, I am referred to an unnamed appeal decision reported in the Journal of Planning Law to quash an enforcement notice relating to the use of a person's home for business purposes, employing third parties. However, there is no substantive evidence before me as to how the existing business operates from the site, or would operate in the future under the circumstances promoted, including the likely number of journeys to and from the site and the likelihood of the expansion being a realistic proposition. I have therefore afforded limited weight to this argument, as there is not a greater than theoretical possibility of the expansion taking place, so it would not be considered a 'fallback' position.

Planning Balance and Conclusion

25. The appeal proposal is inappropriate development in the Green Belt. This is harmful by definition. The proposal would reduce the Green Belt's openness which gives rise to additional harm. In each case, these harms render the appeal scheme contrary to the aims of the EHDP and the Framework.
26. The harm by virtue of the location and accessibility of the proposal would also be contrary to relevant development plan policies.
27. The Framework advises that substantial weight should be given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to it by reason of inappropriateness, and any other harm resulting from the proposal, is 'clearly outweighed by other considerations.' Against this, the other considerations that have been advanced are not sufficient to clearly outweigh the harm to the Green Belt and the other harm I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
28. In addition, while the Local Plan predates the current Framework, I am satisfied that the policies relevant to the determination of the appeal are in accordance with the aims of the Framework regarding the Green Belt and location of housing where it can best be served by facilities and services. The conflict of the proposal with EHDP policies is therefore a significant concern.
29. The proposed development would be contrary to the development plan. There are no other material considerations that would indicate that the proposal should be determined other than in accordance with the development plan. Accordingly, for the reasons given, I conclude that the appeal should be dismissed and planning permission is therefore refused for the appeal scheme.

Paul Thompson

INSPECTOR