



Appeal Decision

Site visit made on 24 May 2023

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2023

Appeal Ref: APP/M1005/W/23/3315869

Serenity Croft, Riley Lane, Pentrich, Ripley, Derbyshire DE5 3RR

- 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 R Taylor against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2022/0499, dated 30 May 2022, was refused by notice dated 4 January 2023.
 - The development proposed is erection of single storey dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey dwelling at Serenity Croft, Riley Lane, Pentrich, Ripley, Derbyshire DE5 3RR in accordance with the terms of the application, Ref AVA/2022/0499, dated 30 May 2022, subject to the conditions set out in the attached schedule:

Preliminary Matters

2. Legislation requires that planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise. The Council in its evidence has identified conflict with Policies H5 and EN2 of the Amber Valley Borough Local Plan, adopted 2006. However, those policies insofar as they seek to restrict new housing in the countryside and do not allow limited infilling in the Green Belt respectively, are out of date and not in accordance with the National Planning Policy Framework (the Framework). In that respect, the Council has not sought to rely upon conflict with the development plan policies in the reason for refusal in the decision notice and instead considered the application in the context of paragraph 11 d) of the Framework. I proceed to determine the appeal on that basis.

Main Issues

3. The main issues are: -
 - whether the proposal constitutes inappropriate development in the Green Belt, and the effect on openness, having regard to the Framework.

Reasons

4. The Framework explains that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. The Framework makes it clear that the construction of new buildings is considered inappropriate unless it satisfies one of the exceptions cited. Amongst other things, these include limited infilling in villages.

5. The village of Pentrich is washed over by the Green Belt and its boundaries are not defined on a plan. Main Road runs through the centre of the village and comprises of a mostly linear development on both sides of the road. The position of buildings along Main Road varies in terms of their proximity to the road with some being close to the road whilst others are set back behind stone walls of varying heights. Riley Lane is located towards the northern end of the village and branches off Main Road to the west.
6. The appeal site includes an existing access off Riley Lane leading to an overgrown area of land upon which the appellant proposes to erect a single storey dwelling. The appellant owns land around the appeal site and operates a small holding. As well as open land this includes a grouping of buildings and structures utilising the access from Riley Lane. Amongst these is a recently constructed agricultural building¹.
7. The appellant is not claiming an agricultural justification for a dwelling but is applying for a dwelling from which he can operate his smallholding. The proposed dwelling would be located to the north of Pentrich Village Hall and to the south-west of a residential property, The Bungalow. The village hall is set back from Main Road with a car park in front of it whilst The Bungalow is located close to Main Road on the corner of Main Road and Riley Lane.
8. The Council consider that the boundary of the village is clearly defined, in particular by the boundaries of The Bungalow and the Village Hall. However, there is a degree of fluidity about the village's boundaries and I do not consider that they are as easily defined as indicated by the Council. This is particularly the case in the area around The Bungalow and the Village Hall where the appeal site and the buildings within the appellants smallholding are located.
9. Whilst the proposed dwelling would not front Main Road, its position between the Village Hall and The Bungalow would be such that it would appear as part of the village and not detached from it. I appreciate that the proposed residential curtilage would extend further west towards the grouping of buildings associated with the smallholding, but I do not consider that this would appear particularly out of place given that there is no specific uniformity to the rear boundaries to the properties on either side of Main Road.
10. Furthermore, the Framework sets out the purposes of Green Belts which include to check the unrestricted sprawl of built-up areas and to assist in safeguarding the countryside from encroachments. The proposal would not conflict with these or the other purposes set out in the Framework.
11. The effect upon openness of the Green Belt of limited infilling is implicitly taken into account in the exception at part e) of paragraph 149 of the Framework. Consequently, given the my findings that the proposed development would accord with that exception, it is not necessary that I separately assess the impact upon the openness of the Green Belt.
12. It is not a matter of dispute that Pentrich is clearly a village and in the context of the above, I consider that the proposal would fall within the definition of 'limited infilling in villages' for the purposes of the exception at paragraph 149 e) of the Framework and therefore, is not inappropriate development. It follows, that as I have found that the proposal constitutes limited infilling in a

¹ Ref: PDR/2022/0008 – Application for prior approval for an agricultural building – Determined that prior approval was not required – 21 February 2022.

village that it would not fall outside of the built framework of the settlement. I therefore, find no specific conflict with Local Plan Policy H5 or conflict with the purposes of Green Belt to check the unrestricted sprawl of built-up areas and to assist in safeguarding the countryside from encroachment. Whilst the proposal would not comply with Local Plan Policy EN2, the policy is out of date relative to the framework and is not therefore a determining factor when concluding on this main issue.

Other Matters

13. The proposal for a single dwelling would make a positive contribution to the supply of housing with associated social and economic benefits that are afforded moderate weight based on the limited scale of development and given that the Council has identified that a five year supply of deliverable housing can be demonstrated with no contrary evidence before me.
14. As stated the existing access would serve both the smallholding and the proposed new dwelling and whilst the Council consider that this would represent a change of use that would be out of context with the agricultural nature of the area, I do not find this to be harmful. This is due to the shared nature of the access and the relatively modest area of domestic curtilage and its relationship to existing buildings and structures.
15. Also, I am satisfied that the location of the dwelling and its curtilage would not cause harm to the living conditions of any neighbouring properties including the closest property, The Bungalow. No objections have been raised in connection with highway safety or parking provision.
16. The design of the proposed dwelling would be simple and include details consistent with the character and appearance of its surroundings. Furthermore, I do not consider that it would fail to enhance local distinctiveness of the natural environment by eroding the rural setting of the village, it would be modest in scale and design and would not have a harmful effect on the rural setting of this village.
17. No issues have been raised about contamination or land stability. However, comments are made by the Coal Authority and the Borough's Scientific Officer regarding ground conditions and past coal mining activity. These can be addressed by a condition which I refer to further below.

Conditions

18. The Council has not suggested any conditions but the appellant has which I have considered in the light of the Framework and the Planning Practice Guidance².
19. In addition to the standard time limit condition, a condition requiring details of materials to be used in the construction of the dwelling is necessary in order to achieve a satisfactory appearance that is in keeping with the surrounding properties in the village. The requirement of a coal risk assessment has also been suggested by the Coal Authority. This includes additional requirements than that suggested by the appellant but more fully meets the requirements of the Framework in order to ensure the safety and stability of the site³. I have

² Planning Practice Guidance – Published 6 March 2014 – Updated 23 July 2019.

³ Paragraphs 183 and 184.

therefore amended the suggested wording in line with that suggested by the Coal Authority. These conditions are necessary to ensure that adequate information pertaining to the ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site.

20. No details have been submitted with regard to the boundaries of the domestic curtilage and so these are required to be secured by condition in the interests of the visual appearance of the site.
21. A condition requiring a landscaping scheme is suggested but there is limited land associated with the dwelling and given the location and scale of this development, I do not consider that a specific condition is necessary. Also, I do not consider that a condition is necessary in relation to the surface of the existing driveway as this will serve the dwelling and the buildings associated with the smallholding and I do not consider it necessary to require specific approval for any resurfacing if required.
22. Also, a condition is suggested withdrawing permitted development rights for any ancillary building⁴ but the appeal site is modest in size and any works capable of being constructed under permitted development, as suggested, would be limited. I do not therefore consider that such a restriction is necessary.
23. Whilst not suggested, a condition requiring the development to be carried out in accordance with the approved plans is necessary for the avoidance of doubt and in the interests of proper planning. I have amended the wording of some of the suggested conditions in the interests of clarity and conciseness.

Conclusion

24. The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance with Policy EN2 of the Local Plan in so far as it seeks to restrict development in the Green Belt. Proposed development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In that respect, I have previously found that Local Plan EN2 is out of date relative to national policy relating to Green Belt in the Framework. The tilted balance in paragraph 11 d) of the Framework, therefore necessarily applies.
25. With regard to the above, I have found that the proposal would not be inappropriate development in the Green Belt nor would it harm the openness of the Green Belt or conflict with the purposes of including land in the Green Belt. I have also identified no other harm arising from the development. Consequently, the application of policies in the Framework that protects areas or assets of particular importance do not provide a clear reason for refusing the development proposed. Furthermore, there are no adverse impacts of allowing this appeal that significantly and demonstrably outweigh the benefits when assessing against the policies in the Framework as a whole. It follows, that I go on to find that there are material considerations arising from the benefits identified in this particular case which indicate that the proposal should be determined otherwise than in accordance with the development plan.

⁴ Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class E.

26. For the reasons given above and taking all other matters into account, I conclude that the appeal should be allowed and planning permission granted subject to the conditions set out in the attached schedule.

J D Clark

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - *Location Plan and Drawing No: RT/RLP/1.*
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) 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 and/or mitigation measures to address land stability 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 the authoritative UK guidance.
- 5) Prior to the occupation of the development, 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 and approved in writing by the Local Planning Authority. 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.
- 6) Prior to the formation of any domestic garden/curtilage, precise details of any boundary treatment shall be submitted to and agreed in writing by the Local Planning Authority. The approved details shall be implemented in full.