



Appeal Decision

Site visit made on 16 January 2024

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/N5090/W/23/3322380

Land at Horseshoe Lane, Totteridge Common, Barnet, London N20 8NJ

- 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 S Bowler against the decision of the Council of the London Borough of Barnet.
 - The application Ref 23/0082/FUL, dated 9 January 2023, was refused by notice dated 9 March 2023.
 - The development proposed is erection of single dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal, a new version of the National Planning Policy Framework (the Framework) came into effect. The main parties have had the opportunity to comment on its relevance to the case. I am therefore satisfied that no party has been prejudiced by my proceeding on the basis of the revised Framework.
3. The site has been subject to an appeal decision¹ dated 12 January 2022 which was dismissed, for the same scheme to that currently proposed. Another appeal² was dismissed relating to a similar scheme on the site dated 3 October 2017. I have taken the previous Inspector's findings into account in my decision. Nonetheless I have reached my own findings based on the circumstances of the present case.

Main Issues

4. The main issues are:
 - whether or not the proposal is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt, and the purposes of including the land within it;
 - the effect of the proposal on the character and appearance of the area, including trees, bearing in mind it would be within the Totteridge Conservation Area (TCA);
 - the effect of the proposal on ecology and biodiversity; and

¹ APP/N5090/W/20/3265698

² APP/N5090/W/17/3175937

- whether harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

5. The appeal site falls within land defined as Green Belt. It comprises a parcel of land located between two dwellings and accommodates a hard surfaced tennis court cut into the ground, enclosed by metal mesh fencing, and surrounded by grassed areas and mature landscaping.
6. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 154 of the Framework establishes that the construction of new buildings is inappropriate in the Green Belt, subject to several exceptions. My attention has been drawn to the exceptions at paragraph 154e) and 154g).
7. Paragraph 154e) allows for limited infilling in villages and paragraph 154g) allows for limited infilling or the partial or complete redevelopment of previously developed land (PDL), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
8. Policy G2 of the London Plan (2021) (LP) and Policy DM15 of Barnet's Local Plan Development Management Policies (2012) (DMP) set out that the Green Belt will be protected from inappropriate development in accordance with national planning policy and generally reflect the approach of paragraph 154 to the extent that it is relevant to this appeal.

Limited infilling in villages

9. The development plan does not appear to define settlement limits, nor does it contain a settlement hierarchy. The Council has indicated in their submissions that the appeal site does not fall within a village. While the appellant disputes this and contends that the appeal location is effectively part of Totteridge village, I have not been presented with any potential indicators with respect to whether Totteridge constitutes a village for planning purposes.
10. The Wood judgement³ held that whether or not a proposed development constitutes limited infilling in a village is a question of planning judgment which includes an assessment of the position on the ground. Taking this into account, a largely continuous pattern of concentrated residential development exists from Totteridge to the east, and the built-up area has no clear affinity with what could readily be discerned on the ground to be a village. Notwithstanding that there is a Totteridge Village character area within the TCA Character Appraisal Statement (2008) (TCA Appraisal), in the same way many historic villages have been subsumed into larger settlements over time, Totteridge is part of a wider suburban area of a far greater mass than what could reasonably be termed a village for the purposes of paragraph 154e).
11. Furthermore, there is a distinct difference in character between the main built-up area of Totteridge and the looser grain of development along the A5109 and

³ Julian Wood v The Secretary of State for Communities and Local Government, Gravesham Borough Council [2015] EWCA Civ 195

the appeal site location. The appellant suggests that Grange Avenue to the east of Horseshoe Lane is the point at which development becomes more intensive to the east than that to the west. In contrast to the suburban development to the east of Grange Avenue, development to the west has more open and verdant qualities owing to properties being set within spacious plots which are set back from the road by wide grass verges and vegetation. This dispersed pattern of development creates a gradual transition between the main built-up parts of Totteridge to the east and the more open countryside to the west.

12. My attention has been drawn to an appeal decision⁴ where a proposal was found to constitute limited infilling in a village. However, in that case, the appeal site was adjacent to a defined settlement boundary of an identified village and displayed similar characteristics to the built form of the main village. The circumstances in that case therefore differs from this proposal and does not lead me away from my above findings.
13. I conclude that the appeal site is not within a village and the proposed development does not therefore meet the exception in paragraph 154e) of the Framework. Having reached this conclusion, there is no need for me to consider further whether the proposed development would represent infilling, nor whether any infilling would be limited.

Limited infilling or the partial or complete redevelopment of PDL which does not have a greater impact on openness.

14. PDL can include residential gardens where they are not in built-up areas⁵. Notwithstanding my findings that the appeal site is not located within a village and the difference in character at the appeal site location and the suburban development of Totteridge, in my view, the appeal site is located in a built-up area. In coming to this conclusion, I have had regard to the almost continuous run of development, albeit with a loose grain, extending from the centre of Totteridge along the A1509 and that the appeal site itself is surrounded by development in the form of dwellings and their gardens. Moreover, the appellant suggests that the site is not in open countryside given that it is surrounded by development, in comparison to the open fields to the north and south of the developed strip either side of the A1509.
15. Even if the appeal site is considered to be PDL, the determining factor in assessing the scheme in relation to the exception at Framework paragraph 154g) is the effect of the proposal on openness. The Framework indicates that openness is an essential characteristic of the Green Belt which relates to the presence or otherwise of built development. The Turner judgement⁶ confirmed that openness of the Green Belt has a spatial aspect as well as a visual aspect. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.

⁴ Appeal Ref: APP/A0665/W/20/3247387

⁵ Dartford Borough Council v The Secretary of State for Communities and Local Government and Ors [2017] EWCA Civ 141.

⁶ Turner v The Secretary of State for Communities and Local Government and East Dorset Council [2016] EWCA Civ 466

16. The appeal site is almost completely enclosed by mature vegetation and trees, on its frontage. The proposed dwelling would be set back from Horseshoe Lane and would largely be screened from public view. Regardless of its public visibility, and despite having a similar footprint to the tennis court and its partially subterranean design, the proposal would introduce a significantly increased volume of built development compared to the existing development, reducing Green Belt openness in spatial terms. As well as the dwelling itself, the proposed paved areas and parking areas would erode openness within the confines of the site. Consequently, the proposal would have a greater impact on the openness of the Green Belt than the existing situation. The exception set out at paragraph 154g) of the Framework would not be met.

Conclusion on whether inappropriate development

17. The proposal would fail to meet any of the exceptions set out by paragraph 154 of the Framework and would be inappropriate development, which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Effect on openness and purposes of Green Belt

18. I have found that the proposal's increased scale and extent of built development would have a greater impact on the openness of the Green Belt than the existing development. The loss of openness would be localised and mitigated by the limited degree of public visibility. Nevertheless, there would be a moderate level of harm to openness in spatial terms.
19. I share the view of the Inspector in the previous appeal decision at the site⁷ that the proposal would not conflict with the five purposes for including land in the Green Belt, as set out in paragraph 143 of the Framework. Having visited the site, I see no clear reason to depart from my colleague's findings. The lack of harm on this matter would be a neutral factor, weighing neither for nor against the proposal.

Character and appearance

20. The appeal site is a relatively narrow plot located on Horseshoe Lane which has a spacious and verdant character created by the distance between houses and mature landscaping. This includes trees which are an important part of the landscape. Located in the TCA, the appeal site falls within character area 5. From my observations and the TCA Appraisal the significance of the conservation area, insofar as is relevant to this case, is primarily derived from the generously sized properties set within spacious plots with well-established gardens that reflect the historic development of the area. As a parcel of land providing separation between dwellings and retaining the traditional pattern of development, the appeal site makes a positive contribution to the TCA.
21. Several trees of various species, age and condition lie within the site boundary that are afforded protection by a tree preservation order. The Arboricultural Implication Assessment and Method Statement (2023) (AIA) shows that while the main development would largely occur outside the Root Protection Areas (RPA), the driveway would pass through the RPA of a number of trees. To cause minimum disturbance it is indicated that a specially designed driveway is required, to be installed before any other construction activities can start.

⁷ APP/N5090/W/20/3265698

Alongside construction exclusion zones, ground protection and protective fencing the AIA indicates that any works required for services in proximity to tree roots should follow best practice.

22. While I acknowledge that trees can be perceived as a nuisance by reason of the obstruction of light and from falling leaves and debris, given the site layout relative to the trees I have not been presented with any substantive evidence to indicate that the proposal would subject the trees to additional pressure for pruning or removal. In any event, owing to the protection afforded to the trees through the TPO any work would require the Council's written consent.
23. As such, suitably worded conditions to secure the provisions of the AIA would ensure that the trees at the site would be protected and that the positive contribution they make to the landscape and character of the TCA would be retained. The proposal therefore accords with Policy DM01 of the DMP, insofar as this policy requires trees to be safeguarded and proposals to adequately protect existing trees and their root systems. It follows that in this regard the proposal would be in line with the TCA Appraisal which recognises the importance of trees to the conservation area.
24. The proposal would have a similar footprint to the existing tennis court and would be partially subterranean with a green roof which would help assimilate the building into its verdant setting. However, it would have an awkward relationship with the prevailing pattern of development by encroaching on the spacious gap between 2 and 4 Horseshoe Lane. Furthermore, the proposal would be almost as wide as the plot, exacerbating the proposal's incongruity and detracting from the open qualities of the area. It would not therefore relate positively to the historic pattern of development by undermining the relationship between plots and their buildings which the TCA Appraisal identifies as a negative feature of the character area.
25. Owing to the proposal's reasonably low height and screening by trees and vegetation, the established pattern of development would largely be maintained in views from Horseshoe Lane. However, while I acknowledge that the proposal would not be overly visible from outside of the site, and despite views from neighbouring properties and gardens being filtered by planting and trees, the increase in the quantum of built form at the appeal site would be readily apparent. In any event, although the adverse effects may be localised the development plan requirement for proposals to protect heritage and character is not limited to that which is visible in public views.
26. Even if the appeal scheme were to introduce superior design quality that draws inspiration from award winning contemporary projects and has been designed to ensure that the proposal contributes to a zero-carbon future, it would change the character of the area and visually compete with the balance between spaces and buildings within this part of the TCA. In doing so the proposal would be contrary to the Residential Design Guidance Supplementary Planning Document (2016) (SPD) which advises that the design and layout of new development should respect the character of the area in which it is situated and respond to the positive features of that character.
27. The adjacent site has permission for a replacement dwelling which is larger than the previous dwelling at the site. However, it is located within a spacious plot and would not result in an additional dwelling. As such it does not undermine the character and appearance of the area in the way the appeal

scheme would. Similarly, I note that there have been several alterations and extensions in the surrounding area and there are a number of relatively large outbuildings. Nonetheless, clear spacings around the developments remain and have not urbanised the street scene. Furthermore, I did not observe any smaller properties on smaller plots in the surrounding area.

28. Overall, the proposal would fail to preserve or enhance the character or appearance of the TCA and would harm its significance as a whole. The harm that I have identified is 'less than substantial' harm. In those circumstances, the Framework states that the harm should be weighed against the public benefits of the proposal. I will return to this matter later.
29. For the reasons given, the proposal would harm the character and appearance of the area, failing to preserve the TCA and harming its significance. The scheme is therefore in conflict with policies CSNPPF, CS1, CS5 and CS7 of Barnet's Local Plan Core Strategy (2012) (CS) and policies DM01 and DM06 of the DMP. Amongst other things, these policies require development to improve environmental conditions, protect and enhance Barnet's heritage and character, including green spaces of historic significance, through development that is based on an understanding of local characteristics. It would also be contrary to the guidelines set out in the SPD in relation to good design and enhancing local character.

Ecology and biodiversity

30. A walkover survey of the appeal site has been undertaken which provides some new recommendations and concluded that all other recommendations within the Preliminary Ecology Appraisal (2019) and Biodiversity Enhancements and Ecological Mitigation Plan (2020) remain valid. While only able to act as a 'snapshot' at the time of the survey, there is no detailed evidence to suggest that the technical conclusions of the walkover are incorrect or unreliable and I have no clear reason to disagree with the findings.
31. Accordingly, through the imposition of planning conditions to secure the proposed mitigation and enhancement measures the proposal would not cause harm to ecology and biodiversity and would accord with Policy CSNPPF of the CS and Policies DM01 and DM16 of the DMP. Amongst other things, these policies require development to improve environmental conditions, contribute to biodiversity including the retention of existing wildlife habitat and the provision of an appropriate level of new habitat. It is also in line with the provisions of the Framework at Paragraph 186 regarding conserving and enhancing the natural environment.
32. The Council alleges a conflict with Policy G7 of the LP which is primarily concerned with the protection of trees and woodland. My attention has not been drawn to any words in it that are relevant to this main issue, and it has not therefore been determinative in my decision.

Other considerations

33. The appellant has indicated that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites⁸. In this regard, the proposal would deliver one home on a windfall site with good accessibility to services

⁸ Appeal Ref: APP/N5090/W/21/3273189

which would make a positive, albeit limited, contribution to meeting housing needs. I give these benefits moderate weight.

34. The proposal would not have an adverse effect on the living conditions of neighbouring occupiers, would not be an isolated dwelling and is said to make efficient use of land, however the lack of harm and policy compliance on these matters would be a neutral factor. While the appellant has expressed frustrations with the Council's handling of the case, this does not alter or outweigh my findings which are based on the planning merits of this case.

Heritage Balance

35. The harm to the significance of the TCA would be less than substantial harm. The Framework requires that great weight should be given to the conservation of heritage assets, irrespective of the level of harm. Any harm to the significance of a designated heritage asset should also require a clear and convincing justification. Nevertheless, the Framework also requires such harm to be weighed against any public benefits.
36. The proposal would provide an additional dwelling which would contribute to the supply of housing which weighs moderately in favour of the proposal. There are also likely to be modest, time-limited economic benefits from the construction stage. However, in having special regard to the desirability of preserving or enhancing the character or appearance of the TCA, these public benefits are insufficient to outweigh the great weight attached to the harm to the designated heritage asset.

Conclusion

37. I have not found the proposal to be harmful to ecology and biodiversity and the trees at the site would be protected, but I have found harm in respect of character and appearance and the significance of the TCA, in conflict with the development plan.
38. The proposal is inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. No harm would arise in respect of the Green Belt purposes however there would be a moderate reduction of spatial openness which would harm the Green Belt. The totality of the Green Belt harm attracts substantial weight. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
39. I attach moderate weight to the benefits of the proposal which make up the other considerations. As such, the other considerations do not clearly outweigh the harm I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist and the proposal would fail to accord with the Green Belt aims set out in Policy G2 of the LP, Policy DM15 of the DMP and the Framework.
40. The indicated lack of a 5-year housing supply means that the policies which are most important for determining the proposal are out-of-date in accordance with paragraph 11d) of the Framework. However, part i. of paragraph 11d) clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including

Green Belt and designated heritage assets, provide a clear reason for refusing the development.

41. As I have explained, there would be harm to the Green Belt that would not be clearly outweighed, I have also found harm in respect of the effect of the proposal on the significance of the TCA which is not outweighed by the public benefits. Accordingly, this provides clear reasons for dismissing the appeal and the proposal would not benefit from the presumption in favour of sustainable development in this instance.
42. My above findings bring the proposal into conflict with the development plan, read as a whole. There are no material considerations, including the Framework, that indicate a decision should be made other than in accordance with it. Therefore, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal is dismissed.

F Harrison

INSPECTOR