



Appeal Decision

Site visit made on 20 February 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2024

Appeal Ref: APP/A0665/W/23/3330224

Land next to Woodbridge, Benty Heath Lane, Willaston CH64 1SD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Tony Furlong against Cheshire West and Chester Council.
 - The application Ref is 23/02150/FUL.
 - The development proposed is the erection of a single family house (with solar panels, landscaping, waste, recycling and cycle storage).
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Decision

1. The appeal is dismissed and planning permission for the erection of a single family house (with solar panels, landscaping, waste, recycling and cycle storage) is refused.

Preliminary Matters

2. The Council have commented that had they determined the application they would have refused planning permission for the development as they consider that the proposed development; does not accord with development plan policy for development in the countryside, would be inappropriate development in the Green Belt, would cause harm to protected trees, and that insufficient information has been submitted in relation to the consideration of the impact on biodiversity.
3. On 20 December 2023, the Government published its revised National Planning Policy Framework ('the Framework'). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. I have had regard to the Framework in reaching my decision.

Main Issues

4. The appeal site is within the Green Belt and so the main issues are:
 - Whether or not the proposed development would be inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies, including the effect on openness;
 - Whether or not the appeal site is in an appropriate location for housing development having regard to development plan policy and the settlement strategy;
 - The effect of the proposed development on the character and appearance of the area, with specific regard to trees;

- The effect of the proposed development on biodiversity; and
- If the proposed development 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 required to justify the development.

Reasons

Site and appeal development

5. The appeal site comprises garden land to the side of Woodbridge which is a two-storey detached dwelling in large, landscaped grounds. The site currently contains a grassed area with trees, outbuildings, and a swimming pool. It is located on Benty Heath Lane, which is a verdant rural road with several large, detached properties set in extensive grounds with mature landscaping. The street comprises a linear form of development beyond which are open fields.
6. The proposed development is for the erection of a two-storey detached dwellinghouse. The existing swimming pool and outbuildings would be retained, and the property would have a large garden area.

Whether or not inappropriate development in the Green Belt including the effect upon openness

7. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework outlines that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 154. Policy STRAT9 of the Cheshire West and Chester Council Local Plan (Part One) (2015) ('the LP1') states that in areas of the countryside that are within the Green Belt, additional restrictions will apply to development in line with the National Planning Policy Framework. Policy DM19 of the Cheshire West and Chester Council Local Plan (Part Two) (2019) ('the LP2') states that proposals for the development of land in the Green Belt must accord with Green Belt policy as set out in the National Planning Policy Framework. These policies are therefore consistent with the Framework.
8. The appellants case puts forward the argument that the proposed development would constitute an exception under 154 e), namely limited infilling in villages. Limited infilling or the partial or complete redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt than the existing development is also not inappropriate development in the Green Belt, as outlined in paragraph 154 g).
9. The Framework does not provide a definition of infilling. I have taken it to mean the development of a relatively small gap between existing buildings. The appeal proposal would serve to fill a gap in an otherwise developed road frontage between existing buildings. In this sense, the development may be considered to be infill. However, this is but one criteria of the exception, the others being that it must also be 'limited' and in a village.
10. The Framework does not provide a definition of what constitutes 'limited'. The reference to 'limited' in exception e) of the Framework requires a consideration of both the scale and form of the development and has to be interpreted in the context of the overall aim of Green Belt policy, which is to preserve the

- openness of the Green Belt. This implies minimising the loss of significant open gaps between buildings. Having regard to the size, scale and quantum of development proposed, it would constitute 'limited' infilling.
11. The Framework does not provide a definition of what constitutes a village. The Oxford English Dictionary defines a village as a group of houses and associated buildings, larger than a hamlet and smaller than a town, situated in a rural area.
 12. The appeal property is 1.1km from Willaston village. There is a large and significant undeveloped area, displaying a clear lack of built development, between the properties on Benty Heath Lane and those in Willaston Village with the intervening land comprising open fields. The site is therefore not within, and is clearly separated from, Willaston village. Benty Heath Lane comprises several dwellings which are mainly set in large, landscaped grounds. It does not have a clear identity of its own nor does it have any basic services one would find in a village. Therefore, it would not constitute a village.
 13. The appellant has referred to case law¹ which established that what constitutes 'limited infilling in a village' for the purpose of the Framework is a question of planning judgment for the decision maker, and that this would depend upon their assessment of the position on the ground and not necessarily solely on village boundaries in local plans. I have had regard to the position 'on the ground' in my decision, and for the reasons set out above, it is my planning judgement that the appeal site is not within a village and thus the proposal does not constitute the limited infilling in a village.
 14. As the appeal site is not within a village, the proposed development would not meet the exception outlined in paragraph 154 e) of the Framework.
 15. Having regard to the exception outlined in paragraph 154 g) for such development not to be inappropriate, it must not have a greater impact on the openness of the Green Belt than the existing development.
 16. The Framework outlines that one of the essential characteristics of Green Belts is their openness. Openness has a spatial aspect as well as a visual aspect. The proposal to construct a large dwelling, where there is currently none, cannot fail but to have a greater impact on the openness of the Green Belt in spatial terms, and thus cause harm. Given there is no development currently on site, the harm to the openness of the Green Belt from a spatial aspect that would be caused by a new dwelling, would be significant.
 17. The development would be located in between existing residential properties. It would be highly conspicuous when compared to the current situation. I consider that given there is no development currently on site, the harm to the openness of the Green Belt from a visual aspect that would be caused by a dwelling of the size, scale and mass proposed, would be significant.
 18. I therefore consider that in both spatial and visual terms the proposal would cause significant harm to the openness of the Green Belt and thus have a greater impact than the existing situation. Furthermore, in doing so the scheme also fails to assist in safeguarding the countryside from encroachment, one of the 5 purposes of the Green Belt, and would therefore not comply with the

¹ Julian Wood v The Secretary of State for Communities and Local Government and Gravesham Borough Council

fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open. Collectively, I give this harm substantial weight.

19. For these reasons, the proposal would not constitute one of the exceptions outlined in the Framework and would therefore be inappropriate development in the Green Belt.

Development plan policy and settlement strategy

20. The appeal site is not located within a defined settlement and is therefore, by definition, within the countryside. The Council's development plan seeks to direct new housing to the main settlements which provide good access to services and facilities and so reduce the need to travel.
21. Policy STRAT9 of the LP1 and Policy DM19 of the LP2, set out the forms of development that will be permitted in the countryside. The appeal development does not constitute any of the forms of development that are listed in the policies, nor has it been demonstrated that it could not be accommodated within identified settlements.
22. Although the appeal site is not a substantial distance from Willaston, where there are local services and facilities, future occupants would be required to travel to these, and the site has poor accessibility. There is no public footpath leading to the site or to provide a complete connection to Willaston, and from my observations on my site visit, access to the site by means other than private car appears to be extremely limited. The reality is that future occupiers would use a car for most of their journeys.
23. The proposed development would therefore not be in a sustainable location and would be in an inappropriate location for residential development. It would be contrary to Policies STRAT1, STRAT2, STRAT8 and STRAT9 of the LP1 and Policy DM19 of the LP2 as they seek to direct new development to the most sustainable locations, reduce non-sustainable travel and limit the development in countryside areas to that requiring a countryside location. It would cause significant harm to the Council's sustainable approach to housing delivery. It is also contrary to the Framework with regards to achieving sustainable patterns of development.

Character and appearance - Trees

24. There are a number of mature trees at the appeal site, most notably a line of oak trees along its frontage. These trees are the subject of a Tree Preservation Order. The trees are substantial features and make a hugely positive contribution to the character and appearance of the area. The appellant has submitted an Arboricultural Impact Assessment and Method Statement.
25. The Council consider that the basic tree survey lacks pertinent information, including plans showing the proposed development, the tree root protection zones and any necessary mitigation. I acknowledge the omission of details that would normally be included in such a document.
26. The submitted plans do show a root protection area/no construction zone based on the findings of the report. This report, however, has not been produced having regard to the development proposed, and it states that the details of the proposed development are not known at present.

27. It is likely that the siting of certain features of the development, hard surfaces, building etc can be such as to ensure that the trees and their rooting zones are not harmed following the development. It is also likely that site specific construction methods can achieve the same aim. However, the lack of a specific analysis of these matters as they relate to the development leads to a degree of uncertainty in relation to the impact of the proposed development in relation to trees.
28. I cannot therefore conclude with certainty that the proposed development could be undertaken without causing harm to the protected trees, and this weighs against allowing the appeal. Any ensuing harm that would result in the loss of these trees would harm the character and appearance of the area and would be contrary to Policies ENV2, ENV3, ENV4 of the LP1 and Policies GBC2 and DM45 of the LP2 in terms of ensuring the protection of trees and landscape features.

Biodiversity

29. The Council consider that the mature trees on the site are reasonably likely to be suitable for roosting bats and nesting birds. Given the semi-rural nature of the site and its surroundings it would be reasonable to suggest that the trees have potential for significant ecological value. It would be for the appellant to consider such potential in their application and the potential implications.
30. The Council also refer to multiple ponds within 250m of the site (the closest of which are 11m and 33m from the site boundary) meaning it is reasonably likely that Great Crested Newts could be present and impacted by the development. Again, where such potential exists, it would be for the appellant to explore the implications for their proposed development.
31. Given the potential habitats of protected species that have been identified, I find that the Council's concerns are reasonable and not unfounded.
32. A Preliminary Ecological Appraisal or similar survey has not been submitted. The appellant considers that the requirement to undertake a Preliminary Ecological Appraisal could be secured by a pre-commencement planning condition. The matter is however of great significance in decision making and should be addressed from the outset. It would therefore not be appropriate to deal with the matter by condition.
33. In the absence of such information, I am unable to conclude with any certainty that the proposed development would not cause harm to any protected species or necessitate any mitigation measures, this weighs against allowing the appeal. Any ensuing harm to biodiversity or matters of ecological significance would be contrary to Policy ENV4 of the LP1 and Policy DM44 of the LP2 in terms of ensuring the preservation and enhancement of the natural environment.

Other considerations

34. The fact that the proposed development would result in the creation of an additional dwelling is of moderate weight in favour of the appeal.
35. I acknowledge the appellant's commendable approach in terms of seeking pre-application advice in the first instance. I also acknowledge the timescale and

delays experienced, which would have no doubt caused frustration. Neither matter is however a reason to allow the appeal.

Planning Balance

36. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 continues by stating that 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.
37. The development in this case amounts to inappropriate development in the Green Belt and the Framework requires that substantial weight is attached to the harm in that regard. It would also cause significant harm to the openness of the Green Belt. It would be outside of a defined settlement, and I cannot be certain that the development would not cause harm to the character and appearance of the area in relation to the protected trees, or have an adverse impact on biodiversity.
38. Having considered the matters raised in support of the proposal, including in relation to the creation of an additional dwelling, I conclude that they do not clearly outweigh the harm that I have identified, by reason of inappropriateness and harm to openness. Consequently, the very special circumstances necessary to justify the development do not exist.
39. Therefore, the proposal would be contrary to Policy STRAT9 of the LP1 and Policy DM19 of the LP2 in terms of ensuring that proposals for the development of land in the Green Belt must accord with Green Belt policy as set out in the Framework.

Conclusion

40. The proposed development would therefore conflict with the development plan and there are no other material considerations, including the Framework, that outweigh this conflict.
41. For the reasons given above, and having had regard to all other matters raised, I therefore conclude that the appeal be dismissed, and planning permission refused.

A M Nilsson

INSPECTOR