



Appeal Decision

Site visit made on 30 April 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th June 2024

Appeal Ref: APP/A1910/W/23/3322549

Land Adjacent to Rose Cottage, River Hill, Flamstead, St Albans AL3 8DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Gary Clayton against the decision of Dacorum Borough Council.
 - The application Ref is 22/03491/FUL.
 - The development proposed is to replace double garage block and viewing deck over with a single bedroomed split level studio, viewing deck area and single garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023 and therefore I have referred to that revised document in my determination of this appeal. I am satisfied that the parts of the Framework most relevant to this appeal have not substantively changed from the previous iteration.
3. The Council sets out in their Statement of Case that although harm to the setting of the adjacent Flamstead Conservation Area (CA) from the proposed development is found in their Officer Report assessment, a reason for refusal relating to this matter was omitted. Whilst the appeal site is not within the CA and therefore the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply, I nonetheless must have regard to any impact that may occur to a designated heritage asset.
4. It is evident from the Officer Report that this was a matter of concern and that the Council found that harm to the designated heritage asset would arise. Opportunity was also available to the appellant to have responded to this matter at final comments stage, after the matter had again been raised in the Council's Statement of Case. I therefore consider that my inclusion of a main issue relating to the effect of the proposed development on the setting of the CA would not cause prejudice to the appellant.

Main Issues

5. The main issues are:
 - (i) Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - (ii) The effect of the proposal on the setting of the CA;

- (iii) Whether appropriate living conditions would be provided for future occupiers of the proposed dwelling;
- (iv) The effect of the proposal on the living conditions of the occupiers of Rose Cottage with regard to overlooking;
- (v) The effect of the proposal on protected species and habitats;

Reasons

Green Belt planning policy

6. There are two Green Belt policies in the Dacorum Core Strategy 2013 (CS) that I have been made aware of. Policy CS5 is the sole policy referred to on the decision notice and it includes reference back to national Green Belt policy. But, as Flamstead is a selected small village, Policy CS6 also applies. That policy is more permissive than national planning policy, containing no reference to inappropriate development within the Green Belt nor to openness. Whilst this is not consistent with the Framework, the policy forms part of the adopted development plan which is the basis for decision making unless material considerations indicate otherwise.
7. Policy CS6 instead requires that Green Belt development, including the replacement of existing buildings, must meet two criteria. Firstly, it must be sympathetic to its surroundings, including the adjoining countryside, in terms of local character, design, scale, landscaping and visual impact. Secondly it must retain and protect features essential to the character and appearance of the village. To avoid duplication, I shall address those considerations in my assessment of the second main issue relating to the setting of the CA.
8. However, as the Framework is a material planning consideration in planning decisions, the policies it sets out on development in the Green Belt must also be considered.

Whether inappropriate development

9. Paragraph 154g) of the Framework allows for the partial or complete redevelopment of previously developed land, 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. The main parties are in agreement that the appeal site represents previously developed land and I find no reason to take a different view.
10. Openness is, in effect, the absence of development and it has both a spatial and visual aspect to it. At the present time, the appeal site accommodates a single storey flat roofed garage building. It has a viewing deck on its roof that is enclosed by post and rail style fencing. Whilst I note the appellant's view that this means the viewing deck has a volume and in effect an impact on openness, the fencing that exists allows vision through it and across the building. This means that the presence of the viewing deck has no discernible impact on openness.
11. The proposed development would be notably larger than the existing building and be much bulkier in its appearance. It would have a greater footprint, be closer in part to River Hill, it would be wider, and its central section would be

considerably higher than the height of the existing built form. In views taken from the adjacent allotments, from the adjacent public footpath, from the garden of Rose Cottage and from River Hill itself the difference in scale between what exists and what is proposed would be readily appreciable.

12. Whilst existing landscaping provides screening from some views and the differences in scale would be less perceptible in longer views, there would nonetheless be a clear impact on openness when seen from the areas I have identified. The impact on the openness of the Green Belt resulting from the proposed development would not be the same or less than the impact that arises at the present time, it would instead be greater in both a spatial and visual sense.
13. In conclusion, the proposal would not fall into the exception listed at paragraph 154g) of the Framework, and it would be inappropriate development in the Green Belt.

Setting of the CA

14. The appeal site occupies a prominent location close to a bend in the road, towards the edge of Flamstead. Immediately to the south-west of the site the CA begins, the significance of which arises primarily from the presence of period properties which form part of the historic settlement pattern as it extends along River Hill. These properties create an attractive and visually coherent entrance to the village from this direction. The properties are for the most part of a traditional design and utilise traditional external facing materials in their construction.
15. In contrast, the appeal proposal would be a building of a modern appearance, incorporating flat roofs and the use of timber cladding on its external elevations. It would occupy most of the appeal site, having a significant width and visual bulk in comparison to such a constrained site. Timber cladding is not a facing material used so extensively in the surrounding area and it would appear visually at odds with its surroundings. There would be an absence of any notable fenestration or detailing on the front elevation of the proposed dwelling which along with its bulk would result in an uncharacteristic and incongruous building. The screening to the roof terrace would be a dominant visual feature which too would be out of keeping in the locality.
16. For these reasons, I conclude that the proposed development would cause harm to the setting of the CA. It would therefore fail to accord with Policy CS27 of the CS where it seeks to protect the setting of designated heritage assets. The proposal would also fail to accord with Green Belt Policy CS6 as it would not be sympathetic to its surroundings in terms of local character, design, scale and visual impact.

Living conditions – future occupiers

17. The appeal site is clearly constrained in its size. However, the size of the roof terrace, along with a small patio area to the rear would be adequate to meet the needs of the residents of what would be a small dwelling. The proposed screening to the terrace would prevent overlooking onto it. The absence of space around the proposal would not have any significant impact on the living conditions of future occupiers. Of the policies referred to with respect to this

main issue, none appear directly relevant to these issues but, in any event, I find that no harm would result with respect to future occupiers.

Living conditions – Rose Cottage

18. Due to the position of the proposed roof terrace and its elevated height there would be the clear opportunity for intrusive overlooking to occur from it onto the garden area of the adjacent dwelling, resulting in harm to the living conditions of the occupiers of Rose Cottage. Whilst the Lawful Development Certificate¹ granted for the site does include a viewing deck, there is no dwelling on the appeal site at the present time. This is likely to significantly lessen the frequency of use of the viewing deck as opposed to if it was part of a dwelling from which occupiers could walk onto it with ease.
19. That said, the appellant suggests that high screening could be installed around the proposed roof terrace to prevent overlooking from it. Whilst this would elevate the height of the building adjacent to the boundary with Rose Cottage, it would be far enough away from the adjacent property and not of such a height to cause harm from a loss of light or from its massing. Such screening could be secured by way of a planning condition, and this would ensure that the proposal would accord with Policy CS12 of the CS where it seeks to avoid loss of privacy to surrounding properties.

Protected species and habitats

20. No substantive information has been provided by either main party as to the likelihood of a protected species, namely bats, being present in the existing building. It appears that the relevant ecology consultee either was not consulted or did not respond to a consultation request. There therefore remains a possibility that if bats were present and utilising the building as a roost, a bat mitigation license might be needed.
21. Natural England advice is clear that before granting planning permission a decision maker must be confident that a license would be issued, which is subject to three legal tests being passed. It would not therefore be possible to address this matter by way of a planning condition. Given the uncertainty that exists in that regard, I cannot conclude that the proposed development would accord with Policies CS26 and CS29 of the CS where they seek to minimise impacts on biodiversity and to conserve species.
22. A further reason for refusal states that it has not been demonstrated that the proposal would not adversely affect the Chilterns Beechwoods Special Area for Conservation (SAC). It would appear that this matter could be overcome by the payment of a financial contribution towards a mitigation strategy. Whilst the appellant states that they are agreeable to pay this and to secure its payment by a planning obligation, no such legal undertaking has been provided. Therefore, as things stand the proposal does not accord with Policy CS26 of the CS which requires that designated sites be protected, nor with the requirements of the Habitats Regulations.

Other Considerations

23. The Council cannot demonstrate a five-year supply of housing and the appellant suggests that the supply may be as low as between 1.76 to 2.52

¹ 21/01818/LDE

years. The 2022 Housing Delivery Test results show that the Council has delivered 77% of its housing requirement in the relevant reporting period. Reference is made by the appellant to the age of the existing development plan and to there being no timescale for adoption of the emerging local plan, and they query as to whether there are currently an adequate number of housing sites allocated in the borough. The proposal would boost the supply of new homes in that context and it would do so whilst utilising previously developed land and a small site, all of which are aims of the Framework.

24. Furthermore, in the settlement hierarchy Flamstead is considered to be an appropriate place to deliver new housing, and it provides a range of services and facilities for its residents. There would be some economic and social benefits that arise during the construction of a new dwelling and once it is occupied. The overall benefits that would result from the delivery of this new housing would be limited somewhat owing to the quantum of the development that is proposed, but nonetheless taken together they carry substantial weight in favour of the proposed development.
25. The appellant intends to build the dwelling as a self-build dwelling. The provision of self build housing is supported in the Framework and it is set out in legislation that local planning authorities must give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding. Whilst the appellant highlights that the current development plan does not include any policies on self and custom build dwellings and that the Council's website contains no information as to whether they are meeting their legal obligations, conversely there is nothing before me to show that they are not. That being the case, I afford this consideration moderate weight.
26. Subject to screening being secured, the proposed terrace area would not overlook Rose Cottage. This would be an improvement on the current situation, where the existing post and rail fence does not serve to prevent vision across and towards the adjacent dwelling. However, there is no dwelling associated with the existing viewing area, and this is therefore likely to reduce the frequency of its use. Therefore, I attach limited weight to this benefit of the proposed development.
27. The development on the appeal site at the present time does not make a positive contribution to the character and appearance of the area. Indeed, it can reasonably be said that it detracts visually from what are pleasant surroundings within the setting of the CA. There would therefore be a benefit from securing its removal from the site and this is a matter which is capable of carrying considerable weight in favour of redevelopment. However, I have found that if replaced with the proposed development, this would result in harm to the setting of the CA. The fact that harmful development would be replaced by harmful development means that in this instance the removal of the existing building as part of the development proposals is only a neutral consideration in the planning balance.

Planning Balance and Conclusion

28. The proposed development would fail to accord with Policies CS6, CS26, CS27 and CS29 of the CS and therefore with the development plan taken as a whole. Whilst there would be benefits arising from the provision of new housing, including self-build housing, and from a reduction in overlooking onto Rose

Cottage, these do not outweigh the harm that would result to the Green Belt, to the setting of the CA and in terms of the ecological matters relating to protected species and habits. The material considerations outlined do not therefore indicate that a decision should be made otherwise than in accordance with the development plan.

29. With specific reference to The Framework, this states at Paragraphs 152 and 153 that substantial weight should be given to any harm to the Green Belt and 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 resulting from the proposal, is clearly outweighed by other considerations.
30. The proposal would be inappropriate development in the Green Belt and would result in harm to its openness. It would also cause harm to the setting of the CA, which given that the harm would be localised would be less than substantial. In accordance with paragraph 208 of the Framework, the harm to the designated heritage asset should be weighed against the public benefits of the proposal.
31. Of the considerations outlined by the appellant, it is those related directly to the provision of the new dwelling which would be public benefits. These would be public benefits of a collective substantial weight. There would be no public benefit from removing an unsightly building and replacing it with one that would equally cause visual harm. Balanced against these public benefits, the harm that I have found would arise to the designated area is a matter to which I afford significant weight. I find that the public benefits do not outweigh the harm to the CA that would result.
32. Furthermore, matters relating to bats and the SAC have not been addressed in a way that would confirm that legislative obligations and planning policy requirements would be met. Whilst there are a number of considerations which weigh in favour of the proposal, including those relating to the provision of a new dwelling which taken together I have afforded substantial weight, I find that collectively and individually the other considerations put forward in this case do not clearly outweigh the harm to the Green Belt and the other harm that I have identified.
33. Consequently, the very special circumstances necessary to justify the development do not exist. As the application of policies that protect the Green Belt provide a clear reason for refusing the development proposed, the presumption in favour of sustainable development set out in paragraph 11d) of the Framework does not apply in this case. Taken as a whole, the proposal therefore conflicts with the Framework.
34. In conclusion, the proposal fails to accord with the development plan and there are no material considerations, including the Framework, that indicate that a decision should be made otherwise than in accordance with the plan. Therefore, the appeal should be dismissed.

Graham Wraight

INSPECTOR