



Appeal Decision

Site visit made on 7 June 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/R1038/W/24/3336365

Land south of Oberland, Crow Lane, Apperknowle, Derbyshire S18 4AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Ralph Kirk against the decision of North East Derbyshire District Council.
 - The application Ref is 23/00796/OL.
 - The development proposed is a residential development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought with all matters reserved for subsequent approval. Drawings have been submitted that include details of access, layout, scale, appearance and landscaping. I have therefore treated these drawings as indicative and determined the appeal on this basis.
3. The appellant has clarified the site address, and this is shown in the banner heading above.
4. The description of development in the banner heading above is taken from the appellant's planning application form, as I am not aware that the Council obtained the appellant's consent to change it. However, I have removed the superfluous text that does not relate to an act of development.

Main Issues

5. The main issues are:
 - a) whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - b) the effect of the proposal on the character and appearance of the surrounding area, including the loss of existing trees;
 - c) the effect of land stability on the proposal; and
 - d) if the development is inappropriate, 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 necessary to justify the development.

Reasons

Inappropriate Development?

6. The appeal site is within the Green Belt. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 of the Framework explains that other than in connection with a closed list of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt.
7. Exceptions pertinent to the appeal proposal are: (e) limited infilling in villages, and (g) 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, or not cause substantial harm to the openness of the Green Belt where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
8. Policy SS9 of the North East Derbyshire Local Plan 2014-2034, adopted 2021 (LP) states that where development falls within the Green Belt, the provisions of Policy SS10 apply. LP Policy SS10 refers to development that would not be inappropriate in the Green Belt, including (f) infilling or the partial or complete redevelopment of PDL.

Inappropriate Development? - Limited Infilling in Villages

9. The term "limited infill development" is defined in the LP as "*building on a relatively small site between existing buildings in a built-up area*". The appeal site has a wide frontage and was previously occupied by 12 terraced dwellings. Furthermore, the indicative information suggests that three detached dwellings could occupy the site with substantial gardens and an associated internal access road. Consequently, I do not find that the proposal could be described as a "small site".
10. I have not been directed to a definition of "built-up area" in the LP and the Framework does not include a definition of "village". Therefore, consideration of these terms involves a planning judgement based on the characteristics of the area. The appeal site is located between two dwellings, Oberland to the north and The Limes to the south. Oberland is sited immediately adjacent to other dwellings and, in my opinion, clearly forms part of the built-up area of Apperknowle.
11. The appeal site provides a significant gap between Oberland and The Limes. The Limes' position, set back from Crow Lane, means that it is viewed as an isolated dwelling, separate from Apperknowle. On the opposite side of the road from the appeal site is an open field and the rear garden of a dwelling fronting Town End, which add to the undeveloped character of this part of Crow Lane. Consequently, I find that the appeal site would fall outside of the village of Apperknowle and would not be in a "built-up area".
12. Accordingly, the proposal would not accord with part (e) of paragraph 154 of the Framework, or LP Policies SS9 and SS10.

Inappropriate Development? – PDL

13. The Framework defines PDL as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. The definition also contains a closed list of developments that are not PDL including, land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.
14. The appeal site comprises a plot of land on the eastern side of Crow Lane which, at the time of my site visit, was largely overgrown with vegetation, albeit some areas had been roughly mown. There were remnants of two small, dilapidated buildings positioned centrally within the site. The site was previously occupied by two blocks of terraced dwellings fronting onto Crow Lane with associated outbuildings to the rear. However, these buildings were demolished circa 1970s-80s.
15. The appellant asserts that the footings and dwarf walls of the dwellings are visible. However, they were not discernible at the time of my site visit. Even if evidence was provided of their existence, it is clear that any remnants of the dwellings have blended into the landscape. The appellant asserts that the two small buildings towards the centre of the site are the remains of outside toilets and outbuildings that served the now demolished dwellings. However, I am not convinced from the information before me that they were used for the alleged purposes. Furthermore, these buildings seem to have been uncovered following the removal of vegetation from the site and had previously blended into the landscape. As a result, I do not find the site to be PDL.
16. Even if the remnants of the existing outbuildings were considered to comprise PDL, the proposal would involve significantly larger buildings and associated works which would have a greater impact on the openness of the Green Belt.
17. Accordingly, the proposal would not accord with part (g) of paragraph 154 of the Framework or LP Policies SS9 and SS10.

Inappropriate Development? – Other Considerations and Conclusion

18. The appellant asserts that several dwellings have been approved locally within the Green Belt. However, limited information has been supplied regarding these examples and therefore I am unable to determine whether they are directly comparable to the appeal proposal. In any event, I must determine each case on its own merits. I have also been directed to extensions and a detached garage that have been constructed at Oberland, and a replacement dwelling at The Limes. However, they are not directly comparable to the proposal before me.
19. In respect of the first main issue, the development is inappropriate development in the Green Belt which is, by definition, harmful. It would therefore conflict with paragraph 154, parts (e) and (g) of the Framework and LP Policies SS9 and SS10.

Character and Appearance, including the Loss of Trees

20. There are trees towards the rear boundaries of the site. The indicative drawings show that a residential development of three dwellings could occupy the

frontage of the appeal site with the land in proximity of the trees used as gardens. Although no tree survey has been submitted to support the appeal proposal, I am satisfied that the size of the appeal site would allow a residential development to be designed at the reserved matters stage that would not impact upon the existing trees. I therefore do not find that the proposal would threaten the wellbeing of the trees that occupy the site. The proposal would therefore comply with Policy SDC2 of the LP.

21. The appeal site is located outside the Settlement Development Limits of Apperknowle and therefore, is within the countryside. The appeal site comprises a predominantly undeveloped parcel of land that, together with the vegetation on the opposite side of the road, provides an open and verdant approach to, and exit from, Apperknowle. The proposal is in outline with all matters reserved and therefore the siting, scale and appearance of the proposed residential development is unknown. However, the indicative information indicates the construction of three single storey dwellings with green roofs and cedar panelling to the exterior walls.
22. The proposal would harm the dispersed pattern of development along this part of Crow Lane by extending the built-up area of Apperknowle southwards to The Limes. It would also erode the undeveloped and green character of this part of the road. While the appellant asserts that the proposed residential development would integrate with the natural landscape due to the external materials, appearance and scale are matters reserved for subsequent approval. Even if the residential development was constructed of materials like the indicative details, they would conflict with the predominant building materials in the surrounding area and would appear out of character.
23. The appellant states that the proposed residential development would be screened by new tree and hedgerow planting. Landscaping is a matter reserved for subsequent approval and therefore planting details are unknown at this stage. Notwithstanding this, it would take a significant time before any new planting would be of a height and density to effectively screen the proposed housing development, and in any event, screening should not be used to hide an otherwise unacceptable form of development.
24. In reference to the second main issue, the proposal would harm the character and appearance of the surrounding area. It would conflict with Policies SS1, SS2, SS9 and SDC12 of the LP which, amongst other things, seek to respect the form, scale and character of the landscape through careful siting, scale, design and use of materials.

High Risk Coal Mining Area

25. The appeal site is within a high risk coal mining area which includes an area where coal mining has taken place at shallow depth and where further historic unrecorded shallow coal mining is likely to have occurred. Voids and broken ground associated with such workings can pose a risk of ground instability and may give rise to the emission of mine gases. The appeal site is also within the potential zone of influence of two off-site recorded mine entries and, due to plotting inaccuracies, their plotted positions could deviate and place either mine shaft within the appeal site.
26. The Coal Authority objected to the planning application as only a factual Coal Mining Search Report had been submitted which does not provide an

assessment of the potential risks posed to the proposal from past coal mining activity or any mitigation/remedial measures. Consequently, a Coal Mining Risk Assessment (CMRA) was requested. I am not aware that any further coal mining reports were submitted with the planning application, and none were submitted to support the appeal.

27. The appellant asserts that the indicative drawings would ensure the proposed residential development could be sited away from the mine shafts. However, this does not overcome The Coal Authority's concerns in respect of unrecorded shallow coal mining or plotting inaccuracies. Furthermore, the information before me suggests that further site investigations are required. In the absence of additional information, I cannot be satisfied that the proposal would not be affected by land stability issues.
28. The appellant has directed me to Oberland's siting within the 9m mine shaft exclusion zone. However, I have not been provided with the property's planning history and therefore, I am unable to determine whether it is directly comparable to the appeal proposal.
29. In reference to the third main issue, insufficient information has been provided to determine whether the proposal would be harmed by land stability. It would therefore conflict with Policies SS1 and SDC14 of the LP which, amongst other things, seek to ensure that development proposals take account of any coal-mining related land stability risks and demonstrate that they will not cause the site or surrounding environment to become unstable.

Other Considerations

30. The provision of additional dwellings weighs in favour of the proposal and would make a contribution, albeit small, to the Government's objective of significantly boosting the supply of new homes and the Council's housing supply. The proposal would also provide a limited amount of short-term employment through the construction of the proposal, and some long-term employment if future occupiers chose to use services such as window cleaners and gardeners. The proposal would result in some additional support to the local community and its services from future occupiers, and it would generate additional Council Tax payments. Additional planting and habitat creation could be secured that would enhance the biodiversity of the appeal site. The proposed residential development would include energy efficiency and climate change measures, which could be secured by condition. Accordingly, these benefits would carry moderate weight in favour of the scheme.
31. It is said that housing in the village is in short supply and high demand and the proposals would meet the housing needs of the village. However, this has not been substantiated with evidence. The indicative information suggests that the proposed dwellings would be single storey and therefore could be accessible. However, it is unclear whether there is a local need for accessible dwellings. The appeal site is within 400m of a bus stop. However, I have not been supplied with information regarding the frequency of the bus service to determine whether it would offer a genuine alternative to the private car for future occupiers. I therefore attribute these matters limited weight.
32. The proposal would avoid the best quality agricultural land and is unlikely to sterilise mineral resources as they have previously been worked in this

location. The proposed residential development could also be designed so as not to overlook neighbouring properties. However, these are neutral matters.

33. While it is asserted that the proposed residential development would minimise opportunities for crime and anti-social behaviour, I am not aware that this is an issue that affects the surrounding area. The Council's Land Availability Assessment considered the appeal site. However, it was not deemed acceptable for consideration as a site allocation in the Local Plan. The appellant asserts that the proposal would make efficient use of the appeal site. However, I have already established that it does not comprise PDL.

Conclusion

34. The development would be inappropriate development in the Green Belt. The Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
35. Given the substantial weight to be given to Green Belt harm, relative to the moderate benefits of the development, the harm is not clearly outweighed by other considerations. Therefore, in respect of the fourth main issue, the very special circumstances necessary to justify the proposal do not exist.
36. For the reasons set out above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR