



Appeal Decision

Site visit made on 26 June 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2024

Appeal Ref: APP/M1005/W/24/3337416

8 Leggers Row, Riddings DE55 4FE

- 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 YARN architecture against the decision of Amber Valley Borough Council.
 - The application Ref is AVA/2023/0640.
 - The development proposed is the change of use of land to domestic garden space.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to domestic garden space at 8 Leggers Row, Riddings DE55 4FE in accordance with the terms of the application, Ref AVA/2023/0640, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with drawing numbers 01-00 and 06-00.
 - 2) Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 2015 (or any other revoking and re-enacting that Order) no development relating to Class E of Part 1 of Schedule 2 (buildings incidental to the enjoyment of the dwelling house) shall be undertaken without the prior written approval of the Local Planning Authority.
 - 3) Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 2015 (or any other revoking and re-enacting that Order), no new or additional walls, fences, gates or other means of enclosure relating to Class A of Part 2 of Schedule 2 shall be erected on any of the land without the prior written approval of the Local Planning Authority.
 - 4) Within 6 months of the date of this decision, the land which is located forward of the front elevation of the dwelling and garage at 8 Leggers Row (excluding the area which is block paved) shall be laid as grass unless otherwise agreed in writing by the Local Planning Authority and shall be maintained as such in perpetuity.

Preliminary Matter

2. The land subject to the appeal has mostly been enclosed by close boarded fencing to match that which encloses the dwellings on the adjacent development. This fencing follows a line along the boundaries of the site with the woodland to the north-west and the field to the north-east, with a further section also running across the site following the same line as the front

elevation of the garage of the property. Although separated from the garden area that was approved to the dwelling at 8 Leggers Row by a lower picket fence, the appeal land appeared at the time of my visit to be being used as garden space in association with the dwelling. I have therefore approached my determination of the appeal on the basis that it is a retrospective proposal.

Main Issues

3. The main issues are:

- (i) 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.
- (ii) Whether any 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

- 4. Paragraph 155 of the Framework lists certain forms of development which are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. Paragraph 155e) includes material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). Whilst the change of use to residential garden land is not explicitly mentioned, by virtue of the words 'such as' this is not a closed list. As such I am satisfied that it would constitute a form of development which could fall within paragraph 155e). For the change of use to comply with paragraph 155e) it is also necessary to consider its effect on openness and the purposes of including land within the Green Belt. The effect on openness has spatial and visual aspects.
- 5. Providing that no buildings or permanent structures were erected on the land, its use as garden land would preserve the openness of the Green Belt both visually and spatially. Given that permitted development rights for buildings incidental to the enjoyment of the dwellinghouses were removed on permission AVA/2017/1120 and because there would be a legitimate reason to do so on the appeal proposal to ensure that Green Belt openness would be preserved, it would be reasonable and necessary to impose that condition. However, in terms of the Green Belt purposes there would be a degree of conflict, albeit limited, with the purpose of assisting in safeguarding the countryside from encroachment. The fencing that has been erected, as a solid structure, has also not preserved the openness of the Green Belt in a visual sense.
- 6. Consequently, taken as a whole, the development would not fall into the exception listed in paragraph 155e) of the Framework, and it would be inappropriate development in the Green Belt. The development also fails to accord with Saved Policy EN2 of the Local Plan 2006, although that policy in itself is not consistent with the more recent Framework in terms of changes in the use of land.

Other Considerations

7. The appeal site sits between the dwelling at 8 Leggers Row and an area of dense mature woodland. It is an area of land which falls outside of the site area on which new development, including the appeal dwelling and the redevelopment of the former Newlands Inn Public House was permitted. Whilst the Council refers to the land as being an area of open space, it was outside of the red line site area of that previous permission and furthermore no use for it was noted on the approved plans. Therefore, it does not appear that it would formally serve the purpose of open space, nor that there is any requirement under the terms of the permission to provide it as such. Instead, it has in effect been left as an unaccounted for area of land between the approved development and the woodland.
8. It is not suggested by the Council that what has been undertaken has caused harm to the character and appearance of the area and I agree. Indeed, enclosing this parcel of land and erecting a fence has, with the benefit of hindsight, followed a much more logical line than what was approved under permission AVA/2017/1120 and it has avoided an isolated piece of land with limited options for its future use. To require the removal of the fence and the prevention of the use of the land as garden would leave an area of land outside of the adjacent residential development but not within the woodland. Whilst the appellant refers to potential alternative agricultural/horticultural uses, it is entirely possible that the land instead would be left unkept and unmanaged.
9. From views taken from the end of Leggers Row towards the appeal site in particular but also from the pavement on Newlands Road, this would be to the clear detriment of the character and appearance of the area in comparison to the site as it exists at the present time. That the approval of the appeal proposal would allow the land to be retained in its currently more visually favourable, and coherent, form in relation to the wider development site is therefore a consideration which offers significant weight in favour of the development.

Other Matters

10. I have had regard to the proximity of the appeal site to the adjacent Conservation Area and understand that the former Newlands Inn Public House is a listed building. The Council's Heritage Consultant raised no objection to the development, and I concur that it has not caused harm to either of those designated heritage assets.

Planning Balance

11. The Framework at Paragraphs 152 and 153 establishes 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.
12. The proposal would be inappropriate development in the Green Belt. However, the other considerations relating to the benefit to the character and appearance of the area, and conversely the harm that would have the potential to arise in

comparison if the appeal were not allowed, are matters which offers significant weight in its favour. They are considerations which clearly outweigh the harm to the Green Belt and in the specific circumstances of this case they represent very special circumstances. They also represent a material planning consideration which indicates that a determination of the appeal should be made otherwise than in accordance with the development plan.

Conditions

13. As the development has commenced, it is not necessary to impose a condition relating to the period of time to commence the development, but a condition listing the approved plans should be imposed to provide certainty.
14. For the reason I have set out above it is necessary to replicate the condition imposed on the original permission with respect to the removal of permitted development rights. This needs to be limited only to a restriction on development under Class E of Part 1 of Schedule 2 of the General Permitted Development Order 2015 because the dwelling itself does not fall within the appeal site area, and to new or additional walls, fences and other enclosures as they would impact on openness and the street scene. The remainder of the frontage has been laid partly as a block paved driveway, but a part remains as bare land. In the interests of ensuring that the finished development has an acceptable visual appearance in the street scene it is also necessary to impose a condition requiring this to be laid to grass.
15. The Council has suggested a further condition preventing means of access to the adjacent woodland and agricultural field however it is unclear why the condition is required to protect the character and visual amenities of the locality, including the Green Belt, Conservation Area and the setting of the nearby listed building. Furthermore, there appears to be no similar condition imposed on the original permission. Therefore, I am not persuaded that it meets the tests set out in paragraph 56 of the Framework and will not impose it.
16. Whilst the Environmental Health Officer suggested during the application that land contamination issues may still need to be addressed, this is not a matter that the Council pursued in its suggested appeal conditions. On the basis of the information that the appellant has provided about work already undertaken and because there would be no built development on the land, I am satisfied that a land contamination condition is not necessary.
17. I acknowledge that Derbyshire Wildlife Trust recommended a condition be imposed with respect to measures to maintain hedgehog connectivity. However, the Council have not suggested that such a condition should be imposed and there is no indication that this was a requirement of the wider housing development scheme and its already erected fencing. Therefore, it would not be reasonable to impose that condition.

Conclusion

18. For the reasons given above, the appeal should be allowed.

Graham Wraight

INSPECTOR