



Appeal Decision

Site visit made on 27 June 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2024

Appeal Ref: APP/M1005/W/23/3333822

Land at The Grange, Horsley Lane, Coxbench, Derby DE21 5BH

- 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 Mr and Mrs S Brook against the decision of Amber Valley Borough Council.
 - The application Ref is AVA/2022/0014.
 - The development proposed is a proposed self-build dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether or not the proposed development would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (2023) (the Framework) and any relevant development plan policies, including the effect on openness;
 - Whether or not the proposed development would preserve or enhance the character and appearance of the Coxbench Conservation Area; 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

3. The appeal site is a triangular shaped piece of land on Horsley Lane. It is situated between the residential properties of Brae Burn and Grange Cottage. At the time of my site visit, part of the site was being used for the grazing of donkeys and this part of the site contains a small brick stable building. There was a temporary fence dividing the site, with the remainder of the site being formed of grassland. The site is adjacent to a long private access drive which leads to The Grange dwellinghouse. There is a dense hedge to the Horsley Lane frontage which includes some mature trees and there is a notable slope on the appeal site downwards towards Horsley Lane.

4. The proposed development involves the construction of a detached dwellinghouse which would be part submerged into the slope of the land. Access would be taken via the existing private driveway. Although not within the description of development, the evidence outlines how the proposal would include the removal of the existing stable building on the site, and an existing manège which is outside the appeal site but within the control of the appellant.

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

5. 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. Saved Policy EN2 of the Amber Valley Local Plan (2006) also outlines the types of development that will be permitted in the Green Belt. Although this policy contains some of the exceptions in the Framework, and broadly complies with the Green Belt aims of the Framework, it does not contain all the exceptions in the Framework, nor does it contain those which are most pertinent to the appeal. Therefore, having regard to paragraph 225 of the Framework, due to the lack of consistency, I afford greater weight to the Framework in my consideration of the appeal.
6. The appellants case considers the proposed development against two of the given exceptions in the Framework, namely 154 e) and 154 g). These exceptions are for; limited infilling in villages, and the 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, respectively.
7. In 154 e) for this exception to apply, the site must be within a village. Coxbench is a relatively disjointed and fragmented settlement. It is predominantly made up of residential properties, although there is a small number of business premises, a residential care home, a public house which appears closed for business, and a bus service. The settlement is significantly severed by the A38 dual carriageway; however, it extends eastwards along Horsley Lane and Coxbench Road.
8. 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. Although I did not observe any features such as a shop or a church, having considered the situation on the ground, I consider that Coxbench is capable of being considered as a village, and that the appeal site is within the village.
9. The Council refer to the lack of a defined settlement boundary, however the Courts have held that whether or not there is a defined boundary may not be determinative for this purpose. Therefore, the lack of a defined settlement boundary does not lead me to conclude that it is not a village having regard to the 'on the ground' situation.
10. The Framework does not provide a definition of infilling. I have taken it to mean the development of a relatively small gap in an otherwise built-up frontage. This is consistent with the supporting text of Saved Policy EN2 of the

local plan, which identifies infilling as the filling of small gaps between built development. From Burn Brae to the west to Grange Cottage to the east, due to its length along Horsley Lane and its overall area, the appeal site forms a large and sizeable piece of open land. It creates a clear and significant visual break and separation between the existing buildings along Horsley Lane. This is exemplified by the curvature of the lane at this point which means Brae Burn and Grange Cottage are not seen together when viewed from the lane. Viewed objectively and in context, for these reasons, the appeal site is considerably more than a 'small gap' between existing buildings.

11. Therefore, although, the quantum of development may be considered to be 'limited' and within a village, as a matter of fact and degree, it would not constitute infilling as set out above. The proposed development therefore would not constitute an exception under 154 e).
12. Paragraph 154 g) applies to previously developed land. This is defined in the Framework 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)'.
13. The appeal site contains a stable building which is proposed to be demolished, and part of the site was being used for the grazing of donkeys. The rest of the site was grassland, with a temporary fence dividing the site. There is an existing manège to the east of the site. Although not within the appeal site, it is within the appellant's control and is proposed to be removed. The evidence also sets out that the site forms part of the curtilage of The Grange.
14. 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.
15. 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 dwelling, in a place 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 building currently on the site of the proposed dwelling, the harm to the openness of the Green Belt from a spatial aspect that would be caused by a new dwelling, would be significant.
16. The dwelling would be semi-submerged within the existing slope of the field. I recognise the appellant's commendable approach in working with the landscape and this would lessen the impact on openness in visual terms and this is demonstrated in the Landscape and Visual Assessment¹. It would nevertheless be visible to some degree and would also involve the formation of a new access and parking area. It would also likely include the siting of domestic paraphernalia such as outdoor furniture, trampolines, BBQs, sports equipment on the land, and I find that cumulatively, there would be a greater impact on openness in visual terms than the current situation. Due to the considered design, however, I find that the harm to the openness of the Green Belt from a visual aspect would be moderate.
17. The appellant has referred to the removal of the existing stable building and manège and has outlined the ground area covered by these features. Although

¹ Influence Environmental Ltd – 07.12.21

the manège is outside the appeal site, it is within the appellant's control and its removal could be secured by condition. The removal of the building and manège would contribute to off-set the impact of the development on the openness of the Green Belt. The stable building is however considerably smaller in both footprint and volumetric terms than the proposed dwelling. It is also differently sited in a relatively unobtrusive part of the site. The manège consists of very little built form. Whilst it covers a relatively large spatial area, it has very little volume. It is also sited in a different location to the appeal development. Its removal would result in only a minor positive impact on the openness of the Green Belt.

18. Therefore, both features combined do not have the same impact on openness as the proposed development, even if they are greater in footprint than the proposed dwelling. Although their removal would serve to reduce the impact of the proposed development on openness, however, due to its overall volume, size and siting, I find the appeal development would have a greater impact even with the removal of these features.
19. I therefore consider that in both spatial and visual terms the proposal would cause moderate harm to the openness of the Green Belt and thus have a greater impact on openness than the existing development, this being the test that is required to be satisfied in 154 g).
20. 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 and thereby harmful by definition.

Coxbench Conservation Area

21. The appeal site is located within the Coxbench Conservation Area (CCA) which is characterised as forming much of the settlement of Coxbench and its surrounding rural landscape. Although there is not a Character Appraisal, from the evidence before me, and my own observations, its significance lies in its traditional stone buildings and the significant amount of open space which encapsulates the historic relationship between the settlement and its rural context.
22. The appeal site is predominantly a piece of open land located on a rural lane and devoid of any notable built structures. This positively contributes to the spacious setting of the unlisted dwelling to the north, known as The Grange, forming part of its extensive historic curtilage with the appeal site and driveway leading to the property adding a sense of grandeur which provides a positive distinction from the otherwise more tightly arranged close-knit properties nearby. In conjunction, the appeal site, with The Grange, positively contribute to the character and appearance of the CCA, with the appeal site providing a distinctive contribution to the historic evolution of the rural settlement with its characteristic open spaces.
23. Due to its size and the mere construction of a dwelling in this location, the proposed development would lead to the erosion of this open land, which I have identified makes a positive contribution to the CCA. It would introduce a more intensive and urbanising form of development that would adversely impact on the open rural character of this part of the CCA when considered against the current situation.

24. The Heritage Statement² draws on the continuation of the grain of development in this part of the CCA, in reference to the other properties on Horsley Lane. Whilst this may be the case, it does not automatically follow that the character and appearance is preserved or enhanced. I find positive significance to the character and appearance of the CCA in the disparity formed by the appeal site when considered against the existing grain. It positively contributes to the CCA and its rural character.
25. I acknowledge the well-considered design of the dwelling which has sought to work with the landscape and reduce its impact. There is much merit in the approach, however it does not serve to alleviate the harm in its entirety. The high hedging on Horsley Lane, combined with the semi-submerged nature of the proposed dwelling would lessen the impact in terms of appearance, as demonstrated in the Landscape and Visual Appraisal. The development would nevertheless be visible from within the site and glimpsed views from the public footpaths on the hills opposite the appeal site, particularly when the trees are not in leaf. These same factors would not however relieve the harm that would be caused to the character of the CCA.
26. The proposed development would adversely impact upon the spacious rural character which the appeal site contributes to. However, given the design of the development and the presence of landscaping, the impact would not be substantial.
27. The Heritage Statement suggests that the removal of the existing brick stable and manège provides the opportunity to remove two incongruous features from the CCA. The brick built stable is positioned close to the site boundary in a relatively innocuous location. It is a relatively small building and does not appear out of character in this rural setting. I do not agree that it is incongruous. The manège is located outside the appeal site to the side of The Grange and on land to the rear of dwellings on Horsley Lane. It amounts to little more than a fenced rectangular piece of land. It is not highly prominent and given its limited form, I do not consider it to be incongruous. Therefore, the removal of these features would have a minimal impact on the character and appearance of the CCA.
28. Paragraph 205 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial or less than substantial harm to its significance.
29. Having regard to paragraph 208 of the Framework, I find that as the proposed development would affect a limited part of the conservation area, the harm to the conservation area is relatively localised, and therefore the proposed development would cause less than substantial harm to the significance of the designated heritage asset. Under such circumstances the Framework advises that this harm should be weighed against the public benefits of the proposal. The identified public benefits in the other considerations part of this decision below would not outweigh such harm.
30. Taking the overall development into account, I therefore find that it would cause harm to the CCA, and thereby fail to preserve or enhance the CCA. It

² Trigpoint Conservation & Planning Ltd – July 2023

would be contrary to Policy EN27 of the Amber Valley Local Plan (2006) which requires that developments in conservation areas contribute to its preservation or enhancement. It would also be contrary to the Framework.

Other considerations

31. The appellant refers to the high-quality design of the development, including the creation of a wildflower meadow on the roof and in the location of the manège. High-quality design and the enhancement of the natural local environment are, however, requirements in planning decisions. Whilst they are positive features of the development, given this requirement, I give them limited weight in favour of the appeal.
32. The proposed development would deliver an additional dwelling that would be a self-build property. The Framework identifies that local planning authorities should seek opportunities, through decisions, to support small sites for self-build housing, this is in addition to the Government's aim to support sustainable housing growth. I give the provision of a self-build property, which would create an additional dwelling, moderate weight in favour of the appeal.
33. The property would incorporate a number of sustainable construction aspects to minimise water and energy consumption. It is not clear, however, that this exceeds the current requirements in terms of sustainability, and I therefore give this limited weight in favour of the appeal.
34. There would be some economic benefits of the proposed development, including through bringing additional residents to the area and its construction phase. The appellant also refers to increase Council Tax revenues and New Homes Bonus. However, given that the development would be for one dwelling, such economic benefits would likely be minor, and I give these limited weight.
35. I have been provided with a copy of another appeal decision³ where the Inspector grappled with whether or not a site which included equestrian activities constituted previously developed land. I have not disagreed, however importantly that site was not in the Green Belt, and I therefore give it limited weight in the appeal.
36. Both parties have referred to an appeal decision⁴ at nearby Rock Cottage on Horsley Lane. I acknowledge there are some similarities insofar as both that site and this site are in the Green Belt and the CCA. I do not, however, have full details of the case and have considered this appeal on its own individual planning merits.

Planning Balance

37. 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.
38. I have concluded that less than substantial harm would be caused to the identified designated heritage asset, but that this would not be outweighed by

³ APP/Y0435/W/17/3178790

⁴ APP/M1005/W/18/3200868

the identified public benefits. I afford great weight to the conservation of the designated heritage asset. This less than substantial harm weighs against the development in the planning balance.

39. 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 moderate harm to the openness of the Green Belt. It would also cause less than substantial harm to the character and appearance of the CCA.
40. Having considered the matters raised in support of the proposal, including in relation to the creation of an additional dwelling which would be a self-build property, I conclude that they do not clearly outweigh the harm that I have identified, by reason of inappropriateness, harm to openness, and harm to the CCA. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

41. Paragraph 11 of the Framework sets out that where the policies which are most important for determining the application are out-of-date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. I have found that the application of policies in the Framework that protect the Green Belt and heritage assets provides a clear reason for refusing the proposed development. Therefore, it does not benefit from the presumption in favour of sustainable development.
42. The proposed development would therefore conflict with the saved policies of the development plan. It would also conflict with the Framework. There are no other material considerations that outweigh this conflict.
43. For the reasons given above, and having had regard to all other matters raised, I therefore conclude that the appeal be dismissed.

A M Nilsson

INSPECTOR