



Appeal Decision

Site visit made on 29 May 2024 by Darren Ellis MPlan MRTPI

Decision by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2024

Appeal Ref: APP/W3005/W/23/3335639

115 Church Lane, Selston, Nottinghamshire NG16 6FB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Nicholas John Danson against the decision of Ashfield District Council.
 - The application Ref is V/2023/0413.
 - The development proposed is the erection of dwelling and detached garage.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of dwelling and detached garage at 115 Church Lane, Selston, Nottinghamshire NG16 6FB in accordance with the terms of application ref: V/2023/0413 and subject to the conditions in the attached schedule.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters and Main Issues

3. The Green Belt boundary appears to pass through the site. Consequently, the majority of the proposed rear garden and part of the boundary fence would be within the Green Belt, but the dwelling and garage would not. The latter do not therefore need to be assessed against Green Belt policy. It also appears, based on what I have seen and the fact that the Council have not argued to the contrary, that the dwelling and garage would in fact be within the settlement boundary of Selston as the development plan defines it. Since Selston is one of the settlements identified by Policy ST3 as being capable of accommodating limited development, there is nothing to make me doubt that the principle of what would be a single dwelling would be acceptable.
 4. With this in mind, the main issues are therefore a) whether the boundary fence and garden would be inappropriate development in the Green Belt; b) their effect on the openness of the Green Belt; c) the effect of the proposal on highway safety; and; d) if the boundary fence and garden are 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 necessary to justify it.
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Reasons for the Recommendation

Inappropriate Development

5. The Framework establishes that new buildings and certain other forms of development in the Green Belt are inappropriate except in certain circumstances, which are listed in paragraphs 154 and 155. Policy EV1 of the Ashfield Local Plan Review 2002 (ALPR) sets out the development which would not be inappropriate in the Green Belt. The policy pre-dates and is more restrictive than the Framework. ALPR Policy ST4 states that in locations outside of Ashfield's main urban areas and named settlements, Green Belt development should be in accordance with Policy EV1.
6. Building includes any structure or erection; therefore, a fence can reasonably be considered as a building for the purposes of the Framework. The proposed fence would not fall within any of the exceptions in paragraphs 154 or 155 of the Framework or the restrictions of Policy EV1 and, by association, ST4 and would therefore be inappropriate development which is, by definition, harmful to the Green Belt. In regard to the garden, there is nothing sufficiently compelling in the evidence to suggest that this is not the current use of the land. I.e. what will be the garden for the new dwelling is currently the garden for No 115 Church Lane. Since the situation would not therefore change, there would be no development to be considered inappropriate.

Openness

7. Openness is an essential characteristic of the Green Belt. The Planning Practice Guidance states that openness is capable of having both spatial and visual aspects, so that both the visual impact of the proposal and its size may be relevant. Policy EV1 of the ALPR also requires development to not adversely affect the openness of the Green Belt.
8. The part of the appeal site that lies within the Green Belt is already used as a residential garden, so domestic paraphernalia could currently be placed there at any time. The majority of the Green Belt land would lie within the boundary of the proposed dwelling, with only a small part of the remaining garden of the existing property falling within the Green Belt. As such, the division of the site would not lead to any significant intensification of a domestic use of the Green Belt.
9. Nevertheless, the fence would result in an increased sense of enclosure which would reduce the openness of the Green Belt in both spatial and visual terms given its intended height and length. Whilst, given the nature of the surrounding residential buildings and associated curtilage uses, the harm would be limited, one of the fundamental aims of Green Belt policy is to keep land permanently open. This harm to the openness of the Green Belt would be in addition to that caused by its inappropriateness.

Highway Safety

10. The width of the proposed driveway would not allow two vehicles to pass. This would increase the likelihood for two vehicles, including visitors to the property or delivery vehicles, to meet head-on. However, even if the proposal met the requirements of the Nottinghamshire County Council Highway Design Guide 2021 for a single private drive to be a minimum of three metres wide, or

slightly greater if bounded by walls, it would still not be wide enough for two vehicles to pass comfortably.

11. The plans indicate that some of the existing fence panels adjacent to the driveway of 113 Church Lane would be removed, to be in line with the front wall at the appeal property, which would allow an adequate field of view for the driver of a vehicle that has to reverse out of the proposed driveway. A sufficient visibility splay could be secured by a condition. Furthermore, given the parking arrangements of other properties in the street, reversing onto the road appears to be a common manoeuvre, and no evidence has been provided of accidents on the road where a vehicle reversing off a driveway has been a factor.
12. It has therefore not been sufficiently substantiated that the proposed driveway width would adversely affect highway safety. The proposal would therefore comply with ALPR Policies HG5 and ST1 insofar as they require safe access for vehicles and to not adversely affect highway safety. The proposal would also satisfy the transport requirements of the Framework.

Other Considerations

13. There is nothing to suggest a two metre high fence could not be installed without the need for express planning permission in the garden of the appeal site, in the location of the proposed fence, at any time. It appears from the evidence to be the appellant's intention to install such that would comply with the limitations set by permitted development rights. Therefore, the proposed fence, if it is not higher than two metres, would have the same or less of an impact on the Green Belt. I afford this fallback option very substantial weight.

Other Matter

14. It appears that the Council can demonstrate a housing land supply of just less than three years. As such, paragraph 11 d) of the Framework would be engaged where planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. However, since there would be no unresolved harm arising from the appeal scheme and the principle of the proposal for a dwelling would be acceptable, I have not considered the actions of paragraph 11 further.

Conditions

15. The Council has suggested a number of conditions, which I have considered in the light of the advice in the Framework and Planning Practice Guidance. In some cases, I have edited the suggested condition for clarity and enforceability. The standard time limit condition and a condition specifying the approved plans are necessary to provide certainty and for enforcement purposes.
16. In order to protect the character and appearance of the area, a condition would be required for the exterior materials to be approved. It would be sufficient for such detail to be agreed prior to any works taking place above slab level. Conditions in respect of the surface material of the driveway and visibility splays are necessary in respect of highway safety. This can be secured on site, in practical terms, prior to the first occupation of the development. In the interests of wildlife and ecology, conditions are required for the submission and

approval of bird and bat boxes and for a hole in the boundary fence for the movement of wildlife. Again, it would be sufficient for such matters to be secured on site prior to the first occupation of the dwelling.

17. To facilitate a change to low carbon vehicles in line with national policy, a condition is necessary which requires the provision of the infrastructure for the future installation of electric vehicle charging points. Given what this seeks to achieve, security of the measures prior to the first occupation of the dwelling would be sufficient. In addition, and as explained in further detail above, a condition would be required to restrict the height of the boundary fence in order to make the scheme acceptable in Green Belt terms.
18. The Council has suggested a condition removing certain Permitted Development (PD) rights for the new dwelling. The Framework states that planning conditions should not be used to restrict such unless there is a clear justification. Planning Practice Guidance advises that conditions restricting the future exercise of PD rights, and blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission, are unlikely to meet the tests of reasonableness and necessity. The new dwelling would have a substantial plot and would be outside of the Green Belt, so that an extension or alteration constructed under permitted development is unlikely to have a significant effect thereon. Moreover, the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) does not remove these specific PD rights from houses in the Green Belt and the evidence suggests that the new garden would be concerned with the same area of land as is currently the garden associated with the existing dwelling. As such, the proposed condition would be unreasonable and unnecessary.

Conclusion and Recommendation

19. The proposal would cause harm to the Green Belt by way of inappropriateness and reduction in openness, to which I afford substantial weight. This would result in some conflict with the development plan, albeit such that would attract reduced weight given the reduced level of consistency of the Council's Green Belt policies with the exceptions set out in the Framework. There would be some compliance with the development plan, namely Policies HG5, ST1 and ST3 and with other parts of the Framework. For Green Belt purposes, the Framework states that development should not be approved unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. I find that the fallback position identified above is of such importance and relevance that it would clearly outweigh the totality of the harm. Consequently, the very special circumstances necessary to justify the proposal exist.
20. The proposal would comply with ALPR taken as a whole for the reasons I have set out. There are no material considerations which indicate that a decision should be made other than in accordance with the development plan. I thus recommend that the appeal is allowed subject to the conditions in the attached schedule.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

21. I have considered all the submitted evidence and my representative's report and on that basis I allow the appeal and grant planning permission subject to the conditions in the attached schedule.

John Morrison

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location and Proposed Block Plan drawing no. 22/106/101 Rev B; Proposed Block Plan and Street Scene drawing no. 22/106/102; Proposed Block Plan and Site Section drawing no. 22/106/103; Ground Floor Plan drawing no. 22-106 GF Revision A; First Floor Plan drawing no. 22-106 FF Revision A; Roof Plan drawing no. 22-106 R Revision A; Front & Rear Elevations drawing no. 22-106 E1 Revision A; Side Elevations drawing no. 22-106 E2 Revision A; Garage Plans & Elevations drawing no. 22-106 G; Arboricultural Impact Assessment by Arbtech Consulting Limited dated 07 July 2023; Preliminary Ecological Appraisal by Arbtech Consulting Limited dated 03 July 2023.
- 3) No development above slab level shall take place until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No part of the development hereby permitted shall be first occupied until all drives and any parking or turning areas are surfaced in a hard-bound materials (not loose gravel) for a minimum of eight metres behind the highway boundary. The areas shall then be maintained as such thereafter.
- 5) No part of the development hereby permitted shall be first occupied until visibility sightlines of 2.0 metres x 2.0 meters have been provided on each side of the vehicle access. These measurements shall be taken from and along the highway boundary. The area within the sightlines shall thereafter be kept clear of any object greater than 0.6m in height above the carriageway level and retained as such thereafter.
- 6) Prior to the first occupation of the development hereby permitted, details shall be submitted to and approved in writing by the local planning authority in relation to the type, number and location of bird and bat boxes which are to be installed within/on the new dwelling or wider site. Such detail should be in accordance with the recommendations contained within the submitted Preliminary Ecological Appraisal by Arbtech Consulting Limited dated 03 July 2023. The boxes/bricks shall thereafter

be installed and maintained in accordance with the approved details thereafter.

- 7) Prior to the first occupation of the development hereby permitted, a hole of 130mm-by-130mm minimum dimensions shall be provided within the approved boundary treatment capable of allowing small mammals and other wildlife access through the site. The hole shall thereafter be retained.
- 8) Prior to the first occupation of the development hereby permitted, the necessary infrastructure shall be installed so that the dwelling is capable of providing electric vehicle charging points in the future.
- 9) The fence to be erected on the northern boundary of the proposed dwelling, as shown on the plans hereby approved, shall be not higher than two metres above the ground level on which it is erected.