



Appeal Decision

Site visit made on 7 January 2025

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 30 January 2025

Appeal Ref: APP/Z2315/W/24/3347402

Afonwen, Ightenhill Park Lane, Burnley, Lancashire BB12 0RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Mr & Mrs Wyatt against the decision of Burnley Borough Council.
 - The application Ref is PIP/2023/0730.
 - The development proposed is described as 'stage 1 permission in principle for the erection of a single self-build dwelling'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above has been taken from the application form as the description used in the decision notice was not agreed by the appellants. I do not consider that any party would be unfairly prejudiced by my determination of the appeal on this basis.
3. The appeal proposal is for Permission in Principle (PIP) in accordance with the Town and Country Planning (Permission in Principle) (Amendment) Order 2017. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle from the technical detail.
4. The scope of the considerations for PIPs is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent Technical Details Consent (TDC) application if PIP is granted. I have determined the appeal accordingly.
5. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. The main parties have been provided with an opportunity to comment on the revised Framework and its relevance to the determination of this appeal, which I have taken into account. References to the Framework in this decision therefore reflect the revised Framework.

Main Issues

6. With reference to the PPG advice on PIPs, and the Council's reasons for refusing the application, the main issues are whether the site is suitable in principle for residential development, in respect of its location, the proposed land use and the amount of development, having particular regard to:

- Whether or not the proposed development would be inappropriate development in the Green Belt;
- Whether the proposed development would provide a suitable site for housing having regard to the development strategy for the area;
- Whether acceptable living conditions would be provided for the occupiers of Afonwen and future residents of the proposed development, with particular regard to privacy.
- If the proposed development would be inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to very special circumstances.

Reasons

Whether Inappropriate Development

7. The site is located 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 states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Policy SP7 of Burnley's Local Plan 2018 (Local Plan) is consistent with the Framework as it includes a general presumption against inappropriate development.
8. The Framework regards the construction of new buildings as inappropriate in the Green Belt subject to certain exceptions. The main parties agree that the exception pertinent to this appeal is paragraph 154 g) which provides for limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt.
9. The Framework glossary refers to previously developed land (PDL) as land, which is occupied by a permanent structure, including the curtilage of the developed land but excluding residential gardens in built-up areas.
10. There is a small cluster of dwellings and buildings, which includes Afonwen nearby, that appear to be situated adjacent to the built-up envelope of a large settlement. However, open fields and agricultural land bound two sides of the wider predominantly undeveloped area of land to the north and east of Afonwen. This land, which the appeal site forms a part of benefits from a certificate of lawfulness of existing use or development for the use of the land as residential garden (CEU/2023/0108).
11. The appeal site also predominantly comprises grassland, with mature vegetation along its boundaries, and its character is consistent with adjacent open agricultural land and countryside. The site and surroundings therefore have a strong rural quality which I characterise to be at the edge of but not within the built-up area.
12. The Framework is silent on whether residential gardens within rural areas should be considered PDL. Nonetheless, I am mindful of the Court of Appeal judgement in

the Dartford case¹ which found that residential gardens that are not in built-up areas are not excluded from the general definition of PDL. The Framework also confirms that it should not be assumed that the whole of the curtilage should be developed in such cases. With these factors in mind, the proposal could meet exception (g) provided the redevelopment would not cause substantial harm to the openness of the Green Belt.

13. Openness is an essential characteristic of the Green Belt and has a spatial and visual aspect. Matters relevant to openness in any particular case are a matter of planning judgement, not law. The arrangement, size, design and materials for the proposed dwelling on the site are ultimately a matter for the TDC stage. Nonetheless, it is inevitable that the introduction of a dwelling and associated paraphernalia would give rise to a spatial loss of openness on the site as it would result in development where there is presently none. The additional activity associated with the comings and goings and vehicle movements to the occupiers of an additional dwelling would undermine the openness of the Green Belt further.
14. The appeal site has Afonwen to one side, and hedgerows and mature trees along its other boundaries. However, this vegetation does not constitute permanent screening, particularly in the winter months when the trees would not be in leaf. Although some long-distance views of the proposal would be filtered by these mature trees and shrubbery even without their leaves, the form, bulk and massing of any residential development on this site would still be apparent, particularly from along the Ighthenhill Park Lane highway. The development of this land would also be readily visible from the first-floor windows of Clynders Cottage and Afonwen. It would thereby appear considerably more urbanised than is presently the case.
15. On the basis of the evidence before me, and under the terms of this type of application, I therefore cannot be certain that the proposed development would not cause substantial harm to openness, in both visual and spatial terms. As such, the proposed development would not qualify as an exception under paragraph 154 g) of the Framework.
16. I have been made aware that the appeal site is within a parcel of land that the Council previously considered in its Green Belt Review in 2016, which was used to inform the Local Plan preparation. However, this parcel of land covers an extensive area that is too broad to meaningfully inform how the much smaller appeal site performs against Green Belt purposes. Nonetheless, given my conclusions on the appeal site's rural character and location adjacent to the built-up area I consider it to strongly contribute to purpose a) of checking the unrestricted sprawl of large built-up areas.
17. The introduction of a dwelling on this site would inevitably increase the extent of urban sprawl. Accordingly, the appeal scheme would have an adverse impact on purpose a) and would therefore not utilise grey belt land. As such it also fails to accord with paragraph 155 of the Framework. The proposed development would thereby constitute inappropriate development in the Green Belt.

¹ Dartford BC v SSCLG [2017] EWCA Civ 141

Development Strategy

18. The site lies outside of a defined settlement boundary and is therefore within the open countryside for the purposes of the Local Plan. Policy SP4 of the Local Plan provides a settlement hierarchy and states that in the open countryside development will be strictly controlled. The preamble to this policy highlights that development will only be permitted where it has a genuine need to be located in the countryside and is of an appropriate scale and type. Examples of such developments include agricultural workers dwellings, house extensions, rural building conversions and development in the Green Belt permitted under Local Plan Policy SP7.
19. The government attaches importance to the supply of self-build and custom build housing and the appellants have described the dwelling as being for self-build purposes. Local authorities have a duty under the Self-build and Custom Housebuilding Act 2015 (the Act) to keep a register of those seeking to acquire serviced plots in the area and to give enough suitable development permissions to meet the identified demand.
20. Whilst the proposal may have the benefit of making a small contribution to meeting any suggested shortfall, the evidence does not indicate why there is a need for the self-build dwelling to be in the countryside. Even though the appellants' own the site, this in itself does not demonstrate why the development requires a location outside a defined settlement in conflict with the spatial strategy for the location of new residential development.
21. Moreover, the description of the proposed development alone would not provide me with the necessary certainty that self-build and custom housing would be delivered. I have had regard to all of the submitted appeal decisions on this matter and am aware that S2A (5) of the Act includes permissions in principle in the definition of 'development permissions'. Nevertheless, S2A (6) (b) goes on to state that an authority gives development permission if such permission is granted (in the case of permission in principle) by a development order, under section 59A(1)(a) of the 1990 Act, in relation to land allocated for development in a document made, maintained or adopted by the authority. This is not the case in this appeal.
22. The PPG also sets out that planning obligations cannot be secured at the permission in principle stage. As such there is not an appropriate mechanism before me to ensure that a self-build development is delivered. I also cannot be sure that its self-build status would be safeguarded, for example if the site ownership changed. Accordingly, under the terms of this type of application, and on the basis of the evidence before me, I am unable to be confident that the proposed self-build housing, would be secured, delivered, safeguarded and positively contribute towards meeting any demand.
23. As such, it has not been demonstrated that there is a need for the proposed development to be located in the countryside. I therefore find that it would not provide a suitable site for housing when having regard to the development strategy for the area and conflict would thereby arise with Local Plan Policy SP4. Accordingly, the location, proposed land use and amount of development proposed is unacceptable having regard to Local Plan Policies SP4 and SP7.

Living Conditions

24. I appreciate that the appeal site would be able to accommodate a new dwelling and garden area. However, the size, shape, and location of the site would clearly constrain the size and siting of any residential development on it.
25. There are many habitable room windows within the ground and first floor side elevation of Afonwen which directly face the appeal site. The appellants envisage that the plans presented at TDC stage would show their house closer to Ighthenhill Park Lane and have provided an indicative diagram highlighting this area in a solid red colour.
26. It may be the case that the proposed dwelling and boundary fencing could be sited to avoid harming the levels of light and outlook for the occupiers of Afonwen. However, if the proposed house was to be positioned in the red area the location and orientation of any back garden area in such an arrangement would be that it would be directly overlooked by the first-floor side windows of Afonwen. This would result in a significant and unacceptable amount of overlooking and loss of privacy for the future users of this garden area. Even if both a dwelling and curtilage area were to be located in this solid red area, Afonwen is positioned directly adjacent to the southern boundary of the appeal site and the eastern side of the solid red square. As such, any private back garden space in this red coloured area would still be significantly overlooked, albeit at an angle by the first floor front and side windows of Afonwen.
27. Whilst the planning circumstances may not be the same, I take a similar view to the Inspector in the case Ref: APP/P4415/W/21/3279031 in that I must be content that the amount of development proposed could be feasibly accommodated on the appeal site without, in this case, causing harm to the living conditions of future residents. However, there is insufficient evidence for me to be able to do so. I therefore conclude that the proposed development would fail to provide acceptable living conditions for the future residents of the proposed development only, with particular regard to privacy.
28. The proposal would thereby conflict with Policies SP5 and HS4 of the Local Plan. These seek, amongst other things, to ensure that development does not result in unacceptable conditions and levels of privacy for future users and occupants. As such, the location, proposed land use and amount of development are also not acceptable in these respects.

Other Considerations

29. The appellants' evidence refers to a potential fallback option through a granted certificate of lawfulness of proposed use or development for a detached outbuilding on the site (Ref: CEA/2023/0471). For significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out in the event that planning permission was refused, but it would also need to be equally or more harmful than the scheme for which permission is sought.
30. I have had regard to the submitted cost estimate for the construction of the outbuilding and valuation of Afonwen in respect of whether it would be likely to be delivered if the appeal is dismissed. Nonetheless, there is uncertainty at this stage in respect of the proposed dwelling's size, scale and siting on the site, which are

matters for the TDC stage. I am therefore unable to be certain that the approved outbuilding would be equally or more harmful than the proposal. Given this uncertainty the fallback attracts limited weight.

31. The Framework seeks to significantly boost the supply of homes, with an overall aim of meeting an area's identified housing need. It advises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are essential for small and medium enterprise housebuilders to deliver new homes. People wishing to commission or build their own homes are also identified in the Framework as one of the different groups in the community that should be assessed and reflected in planning policies, within the context of establishing need.
32. It has also been put to me that the proposal would be in an accessible location, and that it has a good relationship with the urban area. It would generate some economic activity during the construction of the house and provide homes to occupiers who would spend and contribute to the local economy. Reference has also been made to wider social and environmental benefits. Nevertheless, given that the proposal is for one dwelling, any benefits in all of these respects and to the supply of housing would be somewhat limited. Due to the lack of a mechanism to secure the proposed self-build nature of the proposal I have also given the provision of this, and any social benefits associated with it limited weight.
33. Furthermore, benefits in connection with energy efficiency and compliance with Part M4(2) of Building Regulations, enabling adaptations to suit the changing needs in later life are also matters of design that would be for future consideration at TDC stage and have not been qualified. I am therefore unable to attribute these factors any more than very limited positive weight.
34. A number of appeal decisions and Counsel advice have been referred to me. These are in respect of the benefits and weight afforded to self-build housing. Nonetheless, these cases involved a mixture of different policy considerations, main issues and site characteristics which were subsequently considered in the respective planning balances and attributed weight dependant on the circumstances of each case. Each application and appeal must be determined on its own merits, and that is what I have done in this case. As such, they do not attract any positive weight in the overall Green Belt balance.

Green Belt Balance and Conclusion

35. The proposal would be inappropriate development in the terms set out by the Framework. The Framework establishes that substantial weight should be given to any harm in the Green Belt. Further, I have found that the site would not accord with the development plan in respect of its location, and that it would cause unacceptable harm to the living conditions of future residents. I have therefore concluded that its location, proposed land use and the amount of development would not be acceptable. As such, even when taken together, the other considerations reviewed above do not clearly outweigh the harm that the proposal would cause. The very special circumstances required to justify the proposed development therefore do not exist and the proposal is contrary to Local Plan Policies HS4, SP4, SP5 and SP7.
36. Even if I were to conclude that there is a shortfall in the five-year housing land supply on the scale suggested by the appellants, footnote 7 therewith specifies

that land designated as Green Belt is among the examples of specific policies which indicate that development should be restricted. The identified harm to the Green Belt provides a strong reason for refusing planning permission and the proposal would therefore not benefit from the presumption in favour of sustainable development.

37. Accordingly, the site is not suitable in principle for residential development. The appeal scheme consequently conflicts with the development plan and there are no material considerations including the Framework that warrant taking a decision otherwise than in accordance with it. The appeal should therefore be dismissed.

Mark Caine

INSPECTOR