
Appeal Decision

Site visit made on 29 July 2014

by Mark Caine BSc (Hons) MTPL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 October 2014

Appeal Ref: APP/D2320/A/14/2219301

Land adjacent Taleford on Squirrel Lane, Anderton, Chorley BL6 7QJ

- 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 Mr Kevan Boardman against the decision of Chorley Borough Council.
 - The application Ref 13/00640/FUL, dated 8 July 2013, was refused by notice dated 22 November 2013.
 - The development proposed is described as "the erection of a detached dwelling house that will be level six sustainable".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Chorley Local Plan 2012-2026 (Emerging Plan) has been examined and the Examining Inspector (EI) has issued a partial report concluding that, subject to modifications which do not affect Policies HS7, BNE1, BNE9 and BNE10, the plan meets the criteria for soundness. Accordingly, given the very advanced stage the plan has reached and having regard to the advice at paragraph 216 of the Framework, I attach significant weight to the provisions and objectives of Policies HS7, BNE1, BNE9 and BNE10 as material considerations.
3. The appeal site lies within the Green Belt. On 9 October 2014 the Court of Appeal (CoA) overturned the decision of Patterson J in the High Court (Redhill Aerodrome Ltd v SSCLG and others). This appeal decision is therefore based on the pre-High Court position, and in considering whether very special circumstances exist to justify inappropriate development I have interpreted "any other harm" in paragraph 88 of the National Planning Policy Framework (the Framework) to not be restricted to harm to the Green Belt.

Main Issues

4. The main issues in this appeal are:
 - Whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and development plan policy;
 - The effect of the proposal on the openness of the Green Belt, and the character and appearance of the surrounding area.

- Whether the proposal would provide adequate safeguarding of nearby trees and protected species.
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify it.

Reasons

Whether inappropriate development

5. This appeal relates to a relatively open grassed area of land directly to the north of a pair of semi-detached residential properties on Squirrel Lane. This site is also adjacent to the long intervening rear garden areas of four large recently constructed detached dwellings on Bolton Road. Nonetheless, the overall character of this area is dominated by open fields and agricultural land with a number of mature trees that are protected by a Tree Preservation Order (TPO) situated along the north and western boundaries of the site.
6. The appeal site is located within the Green Belt. Policy DC1 of the Adopted Chorley Borough Local Plan Review 2003 (Local Plan) reflects the advice within the Framework and expresses a general presumption against inappropriate development in the Green Belt.
7. Paragraph 89 of the Framework sets out that the construction of new buildings is inappropriate except for a limited number of exceptions. These include the limited infilling or the partial or complete redevelopment of previously developed sites, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
8. The terms of limited infilling are not further defined in the Framework. However Local Plan Policy DC4 and the Emerging Plan Policy HS7 outline a number of criteria which a proposal has to meet to qualify as infill. These policies only permit development within an existing substantial built frontage where the existing buildings form a clearly identifiable small group; the plot lies within the group, with buildings to either side, and its development does not extend the group. The development is also required to complement the character and setting of the existing buildings. It is to be expected that local plan policies provide more detail than national policy, and I therefore do not consider these policies to be inconsistent with the Framework.
9. Whilst the pair of semi-detached properties are located in close proximity to the northern shared boundary of the site, there is a substantial intervening garden area between the site and the nearest detached property on Bolton Road. This is in keeping with the open, spacious and relatively green character of this area. I also noted on my site visit that the pair of semi-detached properties are the only buildings on this part of Squirrel Lane for quite some distance, with open agricultural land extending beyond these and to the rear. As such the appeal site does not in my view form part of an existing urbanised area or village, nor would the proposal be located within a substantial built-up frontage where the existing buildings form an identified small group. There is also little evidence before me, or from what I saw on my site visit, to substantiate that this grassed site, which contains a number of mature trees,

and has previously been used as a garden, can be categorised as previously developed land as defined in Annex 2 of the Framework.

10. Furthermore, paragraph 80 of the Framework stipulates that the Green Belt serves five purposes. One of these is to assist in safeguarding the countryside from encroachment. Assessed within a wider context, the proposal is a small one but the site reads very much as part of the adjoining countryside and, in so far as it would recognisably add to existing built development, it would amount to encroachment into this open land.
11. The proposal does therefore not meet the terms of the Framework's exception that puts limited infilling or the redevelopment of previously developed sites outside the scope of inappropriate development in the Green Belt. The proposed dwelling would also not fall within any other exceptions stated in the Framework and I conclude that, for the reasons provided above, it would amount to inappropriate development that is, by definition, harmful to the Green Belt and in conflict with the Framework, Local Plan Policies DC1 and DC4, and Emerging Plan Policy HS7.

Openness

12. Paragraph 79 of the Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Therefore, any built development has the ability to reduce openness.
13. The proposal is for a two storey detached dwelling house. Although there are buildings nearby, and a number of mature trees, the appeal site is currently open and undeveloped. The size, bulk and massing of the proposal would therefore result in a substantial reduction in the openness of this part of the Green Belt. Such harm to openness, in the context of the policies of the Framework, requires that substantial weight be apportioned to this harm when considered in the planning balance.

Character and appearance

14. The plans show the proposed dwelling to be of a contemporary design with a stepped flat roof, elongated aluminium window openings and first floor projecting bay features. These design features are not characteristic of the houses nearby. Whilst this is an innovative approach, its form, layout, proportions and appearance would bear little resemblance to neighbouring properties. Rather than add interest it would appear incongruous in the context of the more traditional design of the nearby properties and the character of this spacious green tree-dominated site. It would therefore detract from the character and appearance of the area as a result.
15. I note the appellant's willingness to amend the elevations to reflect treatment associated with modern rural buildings, and this could be secured by the way of condition, however this would not overcome or negate all of the concerns that I have identified above.
16. As a result of these factors, I conclude that the proposal would have a significantly harmful effect on the character and appearance of the surrounding area. It would thereby conflict with the aims of Local Plan Policies GN5 and HS4, Policy 17 of the Central Lancashire Core Strategy 2012 (Core Strategy)

and Emerging Plan Policy BNE1 which is of a similar thrust. These collectively seek, amongst other things, to ensure that developments respect and take account of the character and appearance of the surrounding area, having regard of factors such as building height, bulk, roof shape, external construction materials, and existing landscape features without innovative and original design initiatives being stifled.

Safeguarding of trees and protected species

17. There is also little evidence before me to indicate whether or not the proposal would encroach into the root protection zones of the protected trees. Whilst the submitted stage 1 arboricultural report (AR) states that the proposal would not result in any loss of trees, and a root protection zone plan has been provided, there are no details to illustrate these in relation to the footprint of the proposed dwelling. My concerns are heightened by the identified conflict in the AR, albeit marginal, between the root protection area of the trees and where the proposed dwelling is to be located, and the recommendation that the dwelling should be moved as far to the south as possible.
18. In the absence of any details to illustrate the root protection zones and their relationship with the proposal I cannot be certain that construction would not harm the future health of these important trees. The appellant has suggested that any repositioning of the footprint could be covered by an appropriate condition, however this would fundamentally alter the proposal and I must deal with the application as submitted. As such I consider that it would not be reasonable to deal with this matter by condition.
19. In regards to species protection the submitted ecological report (ER) does not identify any potential for the occurrence of roosting or hibernating bats, a protected species, within the appeal site. However the ER accepts that the large Sycamore and Ash trees rooted adjacent to the northern boundary, outside of the appeal site, provide sheltered air-space and have the potential to attract foraging bats.
20. The presence of a protected species is a material consideration when considering a proposal that, if carried out, is likely to result in harm to the species or its habitat. Paragraph 99 of Circular 06/2005 advises that it is essential that the presence or otherwise of protected species, and the extent to which they might be affected by the proposed development, is established *before* planning permission is granted, otherwise all relevant material considerations will not have been addressed in making the decision.
21. Given the uncertainty regarding the effect of the proposal on the protected trees and the AR's recommendation to prune the branches of these trees I consider that the presence or otherwise of bats in the trees needs to be established before permission is granted. I note that the appellant argues that this matter could be dealt with by planning condition however Circular 06/2005 advises that the need to ensure that ecological surveys are carried out should only be left to planning conditions in exceptional circumstances. I have not been made aware of any such exceptional circumstances.
22. Without evidence to establish the presence or otherwise of bats in the trees that are recommended for pruning, I conclude that the appeal scheme could result in harm to a protected species or its habitat. To grant permission in

these circumstances, or deal with this by planning condition, would conflict with the advice in Circular 06/2005.

23. As a result of these factors, the proposal would thereby conflict with the aims of Local Plan Policies EP4 and EP9 and Emerging Plan Policies BNE9 and BE10 which are of similar thrust. Collectively, these seek, amongst other matters, to safeguard and sustain trees and protected species.

Other considerations

24. In support of his case the appellant has stated that the proposal would be fully deliverable, achieve level 6 rating in the Code for Sustainable Homes and comply with the carbon reduction policies in the Framework. The accessible and sustainable location of the site has also been put forward as a benefit of the scheme.
25. I appreciate that the appeal site is situated relatively close to bus services and local facilities, and is therefore in a relatively sustainable location. In this way, the proposal would contribute some positive social benefits to which I attach moderate weight.
26. Level 6 of the Code for Sustainable Homes would also be an achievement and I have no reason to conclude that the proposal would not be deliverable. However I have not been provided with anything substantive to indicate that Code Level 6 could not equally well be attained at another site. It is therefore not necessary for Green Belt land to be used. I also note the Council's scepticism, for the reasons it gives, regarding the commitment to achieve Code 6 of the Code for Sustainable Homes and this is another factor that must temper the weight I can accord this consideration. I have therefore attributed limited weight to these factors.
27. The appellant has referred me to a number of other planning permissions in the near vicinity. However I have not been provided with the full details that led to these proposals being accepted so cannot be certain that they represent a direct parallel to the appeal proposal. I have, in any case, considered the appeal on its own merits and therefore also attribute minimal weight to this.
28. The subject of "achieving sustainable development" in the Framework has 3 dimensions, which are economic, social and environmental roles that are expected to be delivered equally. The proposal would provide new housing and employment for local builders so would perform a social and economic role and, in so far as it is intended to incorporate energy-saving features, would in part perform an environmental role. Some weight can be attached to this. However, this must be offset by the extent to which, with regard to Green Belt and character and appearance considerations, it would fail to perform a wider environmental role and so, to that extent, any weight that can be attached to sustainability considerations must be limited.

Green Belt balance and conclusions

29. In conclusion I have identified that the proposal would be inappropriate development in the Green Belt as defined by the Framework. The Framework establishes that substantial weight should be given to any harm in the Green Belt. In addition it would substantially reduce the openness of the Green Belt, be significantly harmful to the character and appearance of the surrounding area, and could result in harm to protected trees and a protected species or its

habitat. As such, even when taken together, the other considerations reviewed above do not clearly outweigh the harm that the proposal would cause. Very special circumstances do not therefore exist.

30. For the reasons given above, the appeal is therefore dismissed.

Mark Caine

INSPECTOR