



Appeal Decision

Site visit made on 24 August 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2021

Appeal Ref: APP/X1925/W/21/3269884

Land at Turnpike Lane/Adjacent to 4 Manor Close, Turnpike Lane, Ickleford, Hertfordshire SG5 3UZ.

- 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 Mrs T Grainger against the decision of North Hertfordshire District Council.
 - The application Ref 20/00891/FP, dated 21 April 2020, was refused by notice dated 11 February 2021.
 - The development proposed is the erection of five dwelling houses in association with a new access spur from Lodge Court, on-site parking, landscaping (inclusive of new trees), formation of a pedestrian footpath and designated communal open space.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of five dwelling houses in association with a new access spur from Lodge Court, on-site parking, landscaping (inclusive of new trees), formation of a pedestrian footpath and designated communal open space at Land at Turnpike Lane/Adjacent to 4 Manor Close, Turnpike Lane, Ickleford, Hertfordshire in accordance with application Ref: 20/00891/FP, dated 21 April 2020 and the plans submitted with it and subject to conditions in the attached schedule.

Procedural Matters

2. For clarity, I have taken the name of the appellant from the appeal form as it is more precise. I have also inserted 'Hertfordshire' into the address for precision, as it is listed on the appeal form.
3. The Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework), which forms a material consideration in the determination of this appeal. The main parties have had an opportunity to comment on the significance of the changes and have submitted comments. Therefore, I will not prejudice either party by taking the comments received and the Framework into account in reaching my decision.
4. The parties have referred to policies contained within the emerging North Hertfordshire District Council Local Plan 2011-2031 (LP). Given the stage of preparation and the degree of consistency with the Framework, I attach significant weight to the emerging policies. Notwithstanding this, the starting point for determining this appeal remains the North Hertfordshire District Council – District Local Plan No.2 with Alterations 1996 (saved policies 2007) (DLP). The relevant DLP policies are broadly consistent with the Framework.

Main Issues

5. The main issues of this appeal are:
- i. whether the proposed development would be inappropriate development in the Green Belt;
 - ii. the effect of the proposed development on openness of the Green Belt;
 - iii. if the proposal is inappropriate development, whether 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 the development.

Reasons

Inappropriate development

6. The appeal site is currently located within the Green Belt under the existing DLP, but under the emerging LP, the site is to be removed from the Green Belt and included within the revised settlement boundary for Ickleford. However, although at an advanced stage, the emerging LP has not yet been found sound or adopted. Nonetheless, no issues have been raised surrounding the revised settlement boundary for Ickleford.
7. The Framework establishes, at paragraph 149, that the construction of new buildings is to be regarded as inappropriate in the Green Belt, unless, amongst other things, they represent limited infilling in villages¹. The Framework does not define a village or what would constitute limited infilling, and a High Court judgment² brought to my attention underscores that it is necessary to consider the facts on the ground. Whether or not a proposal represents limited infilling is ultimately a matter of planning judgment, having regard to factors such as the nature and size of the development, the location of the application site and its relationship to other, existing development adjoining and adjacent to it.
8. Whilst the proposed development would have some relationship with the existing pattern of development, with particular regard to the adjacent properties on Lodge Court and Manor Close, the visual connection would be limited due to the open field and woodland to the rear of the site where the dwellings would be located. Additionally, the woodland between Lodge Court and Turnpike Lane would provide additional visual limitations. Therefore, the gap in which the proposed development would take place would not be small and would not fill the gap which currently exists. Taking all of these factors together, I conclude that the proposed development would not constitute limited infilling. Therefore, it would not meet the exception criteria in paragraph 149 e) of the Framework.
9. I conclude that the development would constitute inappropriate development in the Green Belt, which would conflict with the requirements of the Framework. The Framework states that inappropriate development in the Green Belt is by

¹ Paragraph 149 e)

² Julian Wood v The Secretary of State for Communities and Local Government, Gravesham Borough Council (2015) EWCA Civ 195

definition harmful and should not be approved except in very special circumstances.

Openness

10. A fundamental aim of Green Belt policy, as set out in paragraph 137 of the Framework, is to prevent urban sprawl by keeping land permanently open. As such, openness is an essential characteristic of the Green Belt. The Planning Practice Guidance (PPG) states that openness is capable of having both spatial and visible aspects.
11. As the proposed development would be constructed on a site which is currently free from built development, the proposal would result in both a spatial and visual reduction in the openness of the Green Belt. Although the proposed development seeks to retain woodland and adjacent mature trees, there would still be significant harm to the openness of the Green Belt through the amount of development proposed. The Framework requires that substantial weight is given to that harm to the Green Belt.

Other considerations

12. Both main parties agree that the Council is not able to demonstrate a 5-year supply of deliverable housing sites³. This represents a housing shortfall. In these circumstances, paragraph 11 of the Framework indicates that housing policies should be regarded as out of date and that there is a 'tilted balance' in favour of granting permission. As the site is located in the Green Belt Paragraph 11 of the Framework is not engaged as the Green Belt is listed as a clear reason for refusing the proposed development. However, I give the modest amount of existing deliverable housing sites moderate weight in the overall planning balance.
13. It is agreed that the emerging LP is at an advanced stage and that in all likelihood it would have been adopted by now if it was not for the global pandemic. I note that the emerging LP has been through public examination and has had modifications published. I accept that the application subject of this appeal has been submitted before the adoption of the emerging LP. Nonetheless, there is little before me to indicate that the site will not become part of the settlement boundary for Ickleford, as proposed in the emerging LP. I also acknowledge, the aims and objectives of the Housing Delivery Test Action Plan (HDTAP), which was approved by the Council in June 2020. The stage of preparation of the emerging LP and the HDTAP attract very significant weight in the overall planning balance.

Other Matters

14. A number of interested parties, including local residents have also expressed a wide range of concerns including, but not limited to the following: the Council's housing strategy as proposed in the emerging LP; ecology / biodiversity; security and safety; highway and pedestrian safety; drainage (including foul water); trees and archaeology, amongst other things. Additionally, I note the comments on the planning application from elected members, Ickleford Parish Council and Campaign to Protect Rural England (Hertfordshire). However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have

³ 2.2 years

dealt with in the assessment above. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Green Belt Balance

15. The Framework requires that substantial weight is given to any harm to the Green Belt and states that very special circumstances will not exist unless harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
16. I have concluded that the proposed development has harmful implications for the Green Belt in terms of inappropriate development and the erosion of the openness of the Green Belt. I have also carefully considered the benefits of the proposed development, including the resulting economic and social benefits through the construction phase and the subsequent occupation of the dwellings, and the positive contribution to the Council's deliverable housing land supply, albeit modest. There is also an absence of other identified harm, including character and appearance, highway safety and biodiversity.
17. Therefore, the above factors, particularly the advanced stage of the emerging LP and the impending removal of the site from the Green Belt would, in this instance, clearly outweigh the substantial weight given to Green Belt harm. I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development. Consequently, the proposed development accords with the Green Belt aims of DLP Policy 2 and the requirements of the Framework.

Conditions

18. The Council has suggested conditions which I have considered, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the PPG.
19. In addition to conditions relating to the time limit for implementation, for reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans is necessary. Materials, trees and landscaping conditions are necessary in the interests of the character and appearance of the appeal site and surrounding area.
20. Conditions relating to the access, carriageway and pavements are all reasonable and necessary in the interest of highway / pedestrian safety. A condition is reasonable and necessary for details of cycle parking at Plots 4 and 5, and the installation of an electric vehicle charging point at all dwellings to ensure that alternative methods of travel are available to future occupants of the proposed development.
21. A condition is necessary in relation to contamination in the interests of future occupiers. Additionally, a condition is necessary to restrict the construction and site clearance operations to protect the living conditions of existing neighbouring occupiers. Conditions relating to archaeology and ecology are reasonable and necessary to ensure that no adverse effects would occur in respect of heritage and biodiversity, respectively. Finally, a condition relating to drainage is reasonable and necessary to ensure that the site and / or

neighbouring land does not experience flooding as a consequence of the development.

Conclusion

22. For the reasons given above, I conclude that the appeal should succeed.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PL.001; P01; P01 Street Elevations; P02; P03; P04 E; TR01 A; SHA 1132LS; TS18-125D\1 and 2020-3940-001 A.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those specified within the Design and Access Statement and on the application form.
- 4) None of the trees to be retained on the application site shall be felled, lopped, topped, uprooted, removed or otherwise destroyed without the prior written agreement of the Local Planning Authority (LPA).
- 5) Before the commencement of any other works on the site, trees to be retained shall be protected by the erection of temporary chestnut paling or chain link fencing of a minimum height of 1.2 metres on a scaffolding framework, located at the appropriate minimum distance from the tree trunk in accordance with Section 4.6 of BS5837:2012 - Trees in relation to design, demolition and construction – Recommendations. The fencing shall be maintained intact for the duration of all engineering and building works. No building materials shall be stacked or mixed within 10 metres of the tree. No fires shall be lit where flames could extend to within 5 metres of the foliage, and no notices shall be attached to trees.
- 6) Prior to the first occupation of the development hereby permitted, the soft landscaping of the development shall be done in accordance with the details contained in the report submitted by Sharon Hosegood in support of the application, unless otherwise agreed in writing with the LPA.
- 7) No gate(s) shall be erected across the access to the site for the life of the development without prior written consent from the Council first being obtained.
- 8) Prior to the first occupation of the development hereby permitted, the vehicular access shall be provided 5.5 metres wide and thereafter retained at the position shown on the approved drawing number P04E in conjunction with drawings number 2020-3940-001 A and swept path analysis detailed drawing number 2020-3940-TR01 A. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

9) Prior to the first occupation of the development hereby permitted, the footway leading from the development shall be provided and extended as shown on the approved drawing number P04E to the west side of the reconfigured access and shall include for pedestrian dropped kerbs and tactile paving and corresponding dropped kerbs and tactile paving opposite on the existing footpath of Turnpike Lane.

10) Prior to the first occupation of the development hereby permitted, visibility splays measuring 2.4 metres x 43 metres shall be provided to each side of the access where it meets the highway as shown on drawing number 2020-3940-001 A and such splays shall always thereafter be maintained free from any obstruction between 600mm and 2.0 metres above the level of the adjacent highway carriageway.

11) The gradient of the vehicular access shall not exceed 1:20 for the first 12 metres into the site as measured from the near channel edge of the adjacent carriageway.

12) Prior to the first occupation of the development hereby permitted, each dwelling shall have installed one electric vehicle charging point that is ready for use by the occupier, which shall be maintained and retained for the life of the development.

13) Prior to the first occupation of the development hereby permitted, secure cycle storage is to be provided in the rear gardens of plots 4 and 5.

14) No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the LPA. Thereafter the construction of the development shall only be carried out in accordance with the approved Plan. The Construction Traffic Management Plan shall include details of:

- i. Construction vehicle numbers, type, routing;
- ii. Access arrangements to the site;
- iii. Traffic management requirements
- iv. Construction and storage compounds (including areas designated for car parking, loading/unloading and turning areas);
- v. Siting and details of wheel washing facilities;
- vi. Cleaning of site entrances, site tracks and the adjacent public highway;
- vii. Timing of construction activities (including delivery times and removal of waste) and to avoid school pick up/drop off times;
- viii. Provision of sufficient on-site parking prior to commencement of construction activities;
- ix. Post construction restoration/reinstatement of the working areas and temporary access to the public highway;
- x. where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, pedestrian routes and remaining road width for vehicle movements.

15) (a) No development shall commence, until, the submission to, and agreement of the LPA of a written preliminary environmental risk assessment (Phase I) report containing a Conceptual Site Model that indicates sources, pathways and receptors. It should identify the current and past land uses of this site (and adjacent sites) with view to determining the presence of contamination likely to be harmful to human health and the built and natural environment.

(b) If the LPA is of the opinion that the report which discharges condition (a), above, indicates a reasonable likelihood of harmful contamination then no development approved by this permission shall be commenced until a Site Investigation (Phase II environmental risk assessment) report has been submitted to and approved by the LPA which includes:

- i. A full identification of the location and concentration of all pollutants on this site and the presence of relevant receptors, and;
- ii. The results from the application of an appropriate risk assessment methodology.

(c) No development approved by this permission (other than that necessary for the discharge of this condition) shall be commenced until a Remediation Method Statement report; if required as a result of (b), above; has been submitted to and approved by the LPA.

(d) This site shall not be occupied, or brought into use, until:

- i. All works which form part of the Remediation Method Statement report pursuant to the discharge of condition (c) above have been fully completed and if required a formal agreement is submitted that commits to ongoing monitoring and/or maintenance of the remediation scheme.
- ii. A Remediation Verification Report confirming that the site is suitable for use has been submitted to, and agreed by, the LPA.

16) (a) No development (including any demolition works) shall commence, until an Archaeological Written Scheme of Investigation has been submitted to and approved by the LPA in writing. The scheme shall include an assessment of archaeological significance and research questions; and:

- i. the programme and methodology of site investigation and recording;
- ii. the programme and methodology of site investigation and recording as required by the evaluation;
- iii. the programme for post investigation assessment;
- iv. provision to be made for analysis of the site investigation and recording;
- v. provision to be made for publication and dissemination of the analysis and records of the site investigation;
- vi. provision to be made for archive deposition of the analysis and records of the site investigation; and,
- vii. nomination of a competent person or persons/organisation to undertake the works set out within the Archaeological Written Scheme of Investigation.

(b) The demolition/development shall take place/commence in accordance with

the programme of archaeological works set out in the Written Scheme of Investigation approved under condition (a).

(c) The development shall not be occupied/used until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (a) and the provision made for analysis and publication where appropriate.

17) The measures set out in the Cherryfield Ecology report, dated 30 November 2020, must be undertaken in full on site, both pre-development and during construction. This includes:

- i. before any other works on site a reptile survey is undertaken between the month of March and October. If any reptiles are found then appropriate trapping / clearing methods must be undertaken prior to any other works commencing;
- ii. no site / tree clearance during the bird nesting season;
- iii. the use of bat and bird boxes in the development;
- iv. the creation of a 'hedgehog highway' across the site; and,
- v. no lighting near to or shining on to any trees, especially those with any bat or bird boxes.

Before any other development commences details and timings of the above measures are to be submitted to, and agreed in writing by, the LPA and the approved measures must be undertaken on site. The results of the survey work are to be submitted to the Council.

18) Prior to the first occupation of the development hereby permitted, surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the LPA. Before any details are submitted to the LPA an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the LPA. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i. Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. Include a timetable for its implementation; and,
- iii. provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

****End of Schedule****