



Appeal Decision

Hearing held on 8 April 2015

Site visit made on 8 April 2015

by S Stevens BSc (Hons) MSc DipTP DMS MCMi MRTPI

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

Decision date: 25/06/2015

Appeal Ref: APP/B1930/W/15/3003840

R/O Bricket Wood Country Club, Lye Lane, St. Stephen AL2 3TF

- 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 J K Rudkin against the decision of St Albans City & District Council.
 - The application Ref 5/14/1999 DC.4, dated 16 July 2014, was refused by notice dated 10 September 2014.
 - The development proposed is described as "proposed internal and external alterations and conversion of existing buildings (no lawful use) to create 8 self-contained residential dwellings (Class C3) with associated landscaping and parking and change of use of the land from Class D2 (sports and recreation) to Class C3 (residential) (resubmission following refusal of 5/13/1755)."
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application form described the proposed development as "use of redundant buildings, internal alterations, minor external alterations and external works to create 8 dwellings". However, the Council's decision notice and appellant's grounds of appeal refer to a revised description which is set out in the fourth bullet in the banner heading above. At the Hearing the appellant confirmed he had agreed to the revised description of development and I shall therefore use it in this decision.
3. The application form also indicated that the proposal would provide 4 x 2 bedroom houses and 4 x 3 flats/maisonettes whilst the plans show 4 x 2 bedroom and 4 x 4 bedroom dwellings. The appellant confirmed that the latter combination of dwellings as shown on the plans was correct and I have determined the appeal on that basis.

Main Issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt;

- whether the location of the proposal would represent sustainable development;
- if the proposal 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 necessary to justify the development; and
- whether financial contributions are necessary to mitigate the impact of the development.

Reasons

Background

5. The site is located on the eastern side of Lye Lane and is within the Green Belt. The site is roughly 'T' shaped with a vehicular access off Lye Lane which then widens out and contains a long building containing two floors. To the northern side of the access are two single storey buildings used as a sports and country club. Immediately to the south of the access are three detached dwellings and further to the south is an access leading to a paint ball centre which is located adjacent to much of the eastern boundary of the appeal site.
6. There is a lengthy planning history relating to the appeal site and the adjacent land which is within the ownership of the appellant. The building which is the subject of the appeal was not constructed in accordance with its planning permission but due to the time that it has been in place the Council accepts the building now has immunity from enforcement action. Furthermore, as it was never used, the parties agree it does not have any lawful use.

Inappropriate development

7. The National Planning Policy Framework (the Framework) states the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. There is a presumption against inappropriate development in the Green Belt and development should not be allowed except in very special circumstances.
8. The St. Albans District Local Plan Review 1994 (LP) predates the National Planning Policy Framework (the Framework). LP Policy 1 refers to the Green Belt and seeks to prevent development within it unless it is for a development that is set out in the exceptions listed within the policy. The five exceptions listed, although not identical largely replicate those contained within paragraphs 89 and 90 of the Framework. It also states new development in the Green Belt should seek to have regard to other policies in the LP. In this respect Policy 1 is consistent with the Framework and should be afforded substantial weight.
9. LP Policy 1 (e) permits the conversion of existing buildings to appropriate new uses, where this can be achieved without substantial rebuilding works or harm to the character and appearance of the countryside. Paragraph 90 of the Framework states certain forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. The fourth bullet point of paragraph 90 of refers to the re-use of buildings provided that the buildings are of permanent and substantial construction.

10. The parties disagree whether the proposal represents inappropriate development. The Council seeks to rely on the fact the existing building has never been occupied and therefore has no lawful use. It also argued that the residential use is not within any of the developments permitted in LP Policy 1 or Framework paragraphs 89 and 90 and the proposal would create a residential curtilage around the building.
11. Although the building in its current form has not had the benefit of planning permission, nor does it have a Certificate of Lawful Existing Use or Development it is now immune from enforcement proceedings. Consequently it now represents an existing building within the Green Belt regardless of whether it has previously been used or has a lawful use. The building is permanent and is of a substantial construction. Reuse of the building therefore falls within one of the forms of development set out in paragraph 90 but this is subject to a caveat that the development would preserve the openness of the Green Belt and does not conflict with the purposes of including the land within it.
12. The appeal site includes the land that lies to the front and rear of the building on the site. The proposal includes the change of use of land from Class D2 (sports and recreation) to Class C3 (residential) and landscaping, parking and the erection of fencing in order to provide gardens and parking for the dwellings.
13. The change of use of land is not included within the exceptions listed in paragraph 90. Furthermore, the term "building" is defined in section 336 of the 1990 Act to mean any structure or erection. This means that a structure, such as a fence should be assessed under paragraph 89 and not paragraph 90 of the Framework. Consequently such development should be regarded as inappropriate development in the Green Belt as it is not within the list of new buildings listed in Paragraph 89.
14. Consequently, the proposal does not form an exception covered in paragraphs 89 and 90 and, as such must represent inappropriate development, which is by definition harmful to the Green Belt. Nor does it fall within one of the exceptions listed in LP Policy 1.

Effect on purpose of the Green Belt

15. The fundamental aim of the Green Belt is to prevent urban sprawl by keeping the land permanently open. The proposed development would be outside any settlement boundaries.
16. Lye Lane is a narrow road which has a number of detached properties along it in spacious plots. Much of the area is well wooded and the area has a verdant, rural appearance. However, the appeal site and land immediately to the west, north and east contain a number of buildings and other structures used, or formerly used for recreational purposes and residential. Abutting the rear of the appeal site is an area used for a paint balling activity centre and to the west of the site access are two single storey buildings used in association with a sports and recreation club. The front of the appeal site is clearly visible from the lane but the sides and rear of the site are partially screened by trees or the activity centre to the rear.
17. As the proposed dwellings are to be accommodated within an existing building the conversion element of the proposal would not increase either the number or size of buildings on the site. Therefore the conversion of the existing building

would not contribute to urban sprawl and would not alter the openness of the Green Belt.

18. However, the proposal also includes the change of use of land around the building to residential and the erection of fences. The area to the front (west) side of the building is currently an open, albeit somewhat untidy area with a part hardcore and concreted surface used for parking. The proposal would provide 14 car parking spaces in front of the building and garden areas for Units 1- and 6. The rear of the building is currently grassed with a tarmac area towards the southern eastern corner of the site. The proposal would provide 7 parking spaces to the rear and most of the remainder of the land would be changed to private gardens for each dwelling and an area of communal gardens.
19. The gardens to the front and rear of the building would be separated by fencing that would be between 0.9 – 1.8 metres high and a 1.8 metre high fence is also proposed between the front of the site and the existing country club buildings. The site is clearly visible from the road and also by users of the activity centre to the rear which includes some structures that allow people to walk or stand well above the level of the ground. In addition to the fencing it is reasonable to assume the occupants of the proposed dwellings would place domestic paraphernalia in their gardens. This would substantially alter the appearance of the external areas of the site introducing structures, subdivision and formalisation to land that is currently open and impact would be compounded by the number of separate residential units proposed.
20. The appellant suggests the additional parking that would be provided would still retain the openness of the site and that most of the means of enclosure are to the rear of the site and could, in any event, be erected without planning permission. Furthermore, that other D2 uses on the site could cause even more harm to the openness of the Green Belt.
21. I am not persuaded that the possibility of the extent of fencing proposed would occur unless the building is subdivided into a number of units where for reasons of privacy and demarcation of sites such boundary treatment would be necessary. The possibility of more harm arising from a D2 use must be considered against the likelihood of such an activity taking place. Whilst the adjacent sports and social club retains a license the appellant acknowledged it had been last used 2 years ago and the building was in a poor state of repair. Therefore I consider the possibility of the alternative scenarios suggested by the appellant actually occurring to be relatively low.
22. Having viewed the site, the area and from the submissions I conclude, for the reasons set out above that the development would result in a more urbanised character and appearance and contribute to urban sprawl which would undermine the aim of keeping land in the Green Belt permanently open. The proposal therefore conflicts with LP Policies 1, 69, 70 and 74.

Whether the development would be sustainable

23. Paragraph 55 of the Framework seeks to avoid new isolated homes in the countryside unless there are special circumstances which includes a development that would reuse redundant or disused buildings and lead to an enhancement to the immediate surroundings. No evidence has been put forward to demonstrate that the proposal would satisfy any of the exceptions set out paragraph 55.

24. The appeal site is outside any defined settlement boundary and according to the submissions is about 500 metres from Bricket Wood and How Wood but from my visit I would estimate the distances to be greater, especially to any local services or facilities. Although there are a few dwellings and other structures along the lane, the site is nevertheless within the countryside and clearly separated from any settlement.
25. Furthermore, the location of the site would result in the occupants of the dwellings being highly reliant on a car to access services and facilities. Lye Lane is narrow, unlit and has no footpath which makes it unattractive to pedestrians. During the hearing the appellant produced a map of bus services but there was insufficient information to establish their routes and frequency and there was no evidence of a bus stop in the vicinity of the appeal site.
26. However, paragraph 55 also refers to development that reuses buildings and which leads to an enhancement of the immediate surroundings. The building which would be converted has a pleasant appearance but the site especially that to the front is unkempt with building rubble and vegetation growing through the surfaces. The appearance of the site would alter as a result of the proposal and could result in it appearing tidier and cared for. However, the appearance of site could be enhanced without the development and I therefore attached very limited weight to this benefit.
27. The Framework also refers to three elements of sustainable development which comprises three dimensions: environmental, social and economic. No evidence has been submitted which indicates that the site is important in terms of ecological, historical, archaeological or agricultural or recreational value. In light of the lack of evidence I can only conclude that the proposal would neither harm nor enhance these. The occupants of the proposed 8 new dwellings might be expected to use some of the limited local services and facilities provided in the nearby villages and in this respect would provide some support to such services. In addition the occupants might participate in local activities that help create and maintain the health, culture and wellbeing of local communities. The proposal might therefore provide some limited social and economic benefits.
28. Having considered all these points above I conclude the proposal would represent isolated development in the countryside contrary to the provisions of the Framework. I do not consider the limited benefits significantly and demonstrably outweigh the harm identified, when assessed against the Framework taken as whole. I therefore conclude the proposal would not represent sustainable development and conflicts with LP Policy 2.

Very special circumstances

29. The Framework requires substantial weight is given to any harm to the Green Belt. For the appeal to succeed there must be very special circumstances and these will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
30. The appellant has put forward eight special circumstances to justify the proposal. Those relating to visual enhancement of the site, the harm that could be caused by alternative uses, sustainability; that above ground works are minimal; and the improvement of damaged or derelict sites have been considered under the issues set out above. I have concluded any benefits arising from these would be

very limited and I do not consider they represent the very special circumstances required to outweigh the harm to the Green Belt.

31. Two other reasons relate to the planning status of the existing building and a further one to the fact that the above development would be minimal and not open to public view. The Council has acknowledged that the building is now immune from enforcement and it accepts it is lawful and appellant argues the Council had previously taken a decision not to enforce. I do not know all the circumstances that led to present situation but that does not justify a development which would harm the Green Belt. The existing building would remain almost unaltered externally but, as set out above it is the change of use of the surrounding land and associated structures that would harm the openness of the Green Belt and contribute to urban sprawl. The eighth special circumstance suggests the Council is promoting continued non use of an empty building which is contrary to good planning principles. Such an argument could equally be applied to many other buildings and it does not justify a development that for other reasons is unacceptable given the specific circumstance of the proposal.
32. Having considered carefully all the matters put forward, including the benefits of the development which I attach limited weight to, I conclude the considerations put forward to justify the proposal do not outweigh, let alone considerably outweigh the substantial harm to the Green Belt and other harm I have identified. The very special circumstances do not therefore exist. Consequently the proposal would conflict with LP Policy 1 and the Framework.

Financial contributions

33. The fourth reason for refusal concerned the absence of a mechanism to secure financial contributions towards infrastructure. Prior to the hearing a unilateral undertaking, dated 9 March 2015 was submitted to the Council providing a mechanism for the provision of the contributions sought by the Council.
34. I am mindful of the recent change to the government's policy in respect of contributions for development of less than 10 dwellings announced in the Ministerial Statement dated 28 November 2014 and contained in the Planning Policy Guidance. Furthermore, on 6 April 2015 the transitional period under Community Infrastructure Levy (CIL) Regulation 123(3) (as amended), ended. This means S106 planning obligations designed to collect pooled contributions ('tariffs') may not lawfully be used to fund infrastructure which could be funded from CIL. Only very limited pooled contributions (in respect of up to five separate planning obligations that relate to planning permissions granted for development within the area of the charging authority) are now permitted towards infrastructure which could be funded from CIL.
35. After the Hearing the Council was asked to comment in respect of the revised policy set out in the PPG and in respect of any obligations that have already been entered into for any of the infrastructure contributions sought. The Council has subsequently confirmed that it withdraws its request for financial contributions in respect of a swimming pool, sports halls and parks and gardens and the County Council is not seeking contributions towards libraries, education, youth and fire services. However, contributions are still being sought towards the provision of children's facilities, teenagers and play pitches in the Greenwood park play area as no other obligations have been entered into.

36. As I am dismissing the appeal for other reasons I have not assessed whether the requirement for such contributions would meet the relevant tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. However, even if I were to conclude the relevant tests had been met the submission of the unilateral undertaking does not lead me to a different decision in respect of the appeal.

Conclusion

37. For the reasons given above I conclude that the appeal should be dismissed.

Sarah Stevens

INSPECTOR

APPEARANCES

For the appellant:

Mr Ken Rudkin	Appellant
Mr David Parry	Agent
Mr Dean Goodman	Agent

For the Local Planning Authority:

Mr Paul Keen	Lead Planning Officer, St Albans City & District Council
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DOCUMENTS SUBMITTED AT THE HEARING

1. Doc 1 – photocopy of map showing bus services