
Appeal Decision

Site visit made on 13 January 2015

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 28 January 2015

Appeal Ref: APP/B1930/A/14/2228339
Old Orchard, Park Street, Chiswell Green, AL2 2QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Robert Hyslop against the decision of St Albans City and District Council.
 - The application Ref 5/14/0316, dated 5 February 2014, was refused by notice dated 8 May 2014.
 - The development proposed is the erection of detached houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved for further approval. However, a Proposed Site Layout (drawing number 2053_304 Rev C) was submitted for illustrative purposes and I have taken it into account in my decision.
3. The appeal proposal is for residential development on a site located within the Metropolitan Green Belt. Both main parties accept that the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and policies 1 and 2 of the St Albans District Local Plan Review (LP). I see no reason to disagree with that finding and have framed the main issues accordingly.

Main Issues

4. The main issues in this case are:
 - the effect of the proposal on the character and openness of the Green Belt
 - whether a financial contribution is necessary to provide adequate leisure, open space, sustainable transport, primary, secondary and nursery education, childcare, youth and library facilities and fire hydrants.
 - 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.
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Reasons

Character and Openness of the Green Belt

5. The appeal site comprises a relatively narrow, rectangular area of land to the north of a residential area accessed from Old Orchard. This road, together with the side boundary of one property and a track providing access to the rear of houses on Watling Street, define the southern boundary of the site. A row of young hawthorn plants mark the northern boundary and there are remnants of some more established vegetation on the southern and eastern boundaries. The site is also free of built development and, therefore, essentially open in character. The appellant states that the site was previously used as a market garden. However, any structures associated with that use have since blended into the landscape.
6. Beyond the site's northern boundary the land is in agricultural use and is open in character. By virtue of its openness and the absence of built development therefore, the appeal site has a greater affinity with the agricultural land to the north than the residential area to the south. As such, it contributes to the openness of the Green Belt.
7. The illustrative site layout plan shows 10 detached houses served by a new access road running along most of the site's southern boundary. The northern boundary would be formed by the rear or side boundaries of the proposed houses. Although the details of the scheme, including landscaping, would be subject to further approval, this scale of development would have a substantial urbanising and enclosing effect on the character of the entire site. It would, therefore, reduce the openness of this part of the Green Belt.
8. Moreover, the site is visible in long range views from Watling Street to the north. From this direction the existing Old Orchard houses can be seen behind gently rising open ground. The proposal would advance built development across this ground and closer to the viewpoint. Whilst a substantial gap between the urban areas of Park Street and St Albans would remain were the proposal to proceed, the new built development would, nevertheless, encroach into area which currently has a countryside character.
9. The appellant has referred to new planting proposed on the northern site boundary. However, the narrow row of recent planting in that location, even when mature, would not be sufficient to effectively screen the proposed two or 2½ storey houses. Having regard to the illustrative site layout, there appears to be limited scope to increase significantly the width of the planting along this boundary. On this basis, the proposal would not accord with policy 74(ii) of the LP which requires developments to allow adequate space for screen planting, particularly at the edge of settlements. Moreover, whilst any planting may soften the visual impact of the development, it would not overcome the effects of the proposal on the openness of the Green Belt or its encroachment into the countryside.
10. The appellant cites paragraph 85 of the Framework and argues that it is not necessary to keep the appeal site permanently open. Notwithstanding my conclusion on the contribution which the site makes to the openness of the Green Belt, paragraph 85 is concerned with the definition of boundaries through the development plan process. Paragraph 83 is clear that, once

established, Green Belt boundaries should only be altered in exceptional circumstances, and then through a review of the local plan. A section 78 appeal is not, therefore, the appropriate mechanism to consider whether or not the Green Belt designation should be applied to the appeal site.

11. Therefore, I find that the proposal would have a harmful effect on the character of the Green Belt by reason of encroachment into the countryside and result in a significant loss of openness. As such, it would conflict with Framework paragraph 79 and the third of the purposes of the Green Belt set out in paragraph 80.

Financial Contributions

12. The third reason for refusal concerns the absence of a planning obligation to secure financial contributions towards a number of infrastructure items. The appellant has not disputed the need for these contributions and has indicated that an appropriate obligation would be provided. However, no such obligation has been included with the appeal submissions. The Planning Inspectorate's Procedure Guide for Planning Appeals (section N.2) advises that obligations must be submitted within 7 weeks of the start date of written representations appeals.
13. Policy 143B of the LP expects development proposals to include provision for infrastructure, including off site facilities, and Hertfordshire County Council's consultation response on the application seeks to justify the need for the contributions. Amongst other things, it states that the figure for the contribution has been calculated using its Planning Obligations Guidance – Toolkit for Hertfordshire. However, the appeal submissions do not specify the amounts sought, or relate the need for the contributions to the appeal proposal. Indeed, the submission states that need for nursery education and childcare contributions have not been confirmed. Elsewhere it advises that further information may be submitted in the event of an appeal. However, the Council's appeal statement does not contain any further information on this matter.
14. Paragraph 204 of the Framework advises that planning obligations should only be sought where they are fairly and reasonably related in scale and kind to the development. Based on the information available, I am not persuaded that this requirement has been met in this case. Consequently, it has not been satisfactorily demonstrated that the absence of an obligation would be contrary to the Framework or LP policy 143B.

Other Considerations

Housing Land Supply

15. The appellant's claim that there is a shortfall in the supply of housing land in the district is not disputed by the Council. It acknowledges that the current development plan does not provide a definitive housing target but, based on DCLG¹ household projections, puts the annual requirement at 532 dwellings and estimates that the current supply amounts to some 3.8 years including a 5% buffer. The appellant uses figures from a Council-commissioned Strategic

¹ Department for Communities and Local Government

Housing Market Assessment and the Council's draft Housing Trajectory Data to put the requirement at 615 dwellings per annum and the supply at 3.5 years. Whilst neither of the figures quoted for the annual requirement are definitive pending the completion of the local plan process, they do purport to represent full, objectively assessed need. As such, they avoid the error identified in the Hunston High Court case² cited by the appellant and subsequently confirmed in the Court of Appeal. On the basis of these figures therefore, the shortfall equates to some 1.2 to 1.5 years supply.

16. In these circumstances, paragraphs 14 and 49 of the Framework set out a general presumption in favour of housing development. The proposal would add 10 houses to the supply of new housing in the District. Whether considered in the context of the annual requirement of 532 or 615 dwellings, this would be a modest contribution which would not significantly reduce the current shortfall in the supply of housing land.
17. The Court of Appeal judgement in the Hunston case also distinguishes between establishing a shortfall in housing supply and reaching the threshold for demonstrating the very special circumstances necessary to justify inappropriate development in the Green Belt. Whether that threshold is reached depends on, among other things, the wider context including the extent to which the District is constrained by, for example, Green Belt policies. In this case, the whole of District outside of specified settlements and sites listed in LP policies 1 and 2 is within the Green Belt and, as the Court of Appeal judgement notes, this has a bearing on whether the full, objectively assessed housing need is met.
18. These factors limit the weight that I can attach to the proposal's contribution to the District's housing land supply.
19. Moreover, Framework paragraph 14 also advises that the presumption in favour of new housing does not apply where specific policies of the Framework indicate that development should be restricted. Footnote 9 confirms that such policies include designated Green Belt land. This approach is re-iterated in the national Planning Policy Guidance (PPG) (reference 3-044-20141006). The PPG goes on to confirm that unmet housing need is unlikely to outweigh harm to the Green Belt (paragraph reference 3-034-20141006).
20. The appellant has referred to sites within the Green Belt which were to be identified for housing in a draft Strategic Local Plan. Whilst it may be necessary to consider Green Belt locations for new housing, for the reasons outlined at paragraph 10 above, that exercise is most appropriately undertaken through the development plan process rather than at appeal.

Sustainable Development

21. The appellant argues that the proposal would contribute to the economic, social and environmental dimensions of sustainability as set out at paragraph 7 of the Framework. The appeal site is located some 500m from a range of local facilities, within 250m of a bus route and 350m from a railway station. The development would be, therefore, reasonably accessible by non-car transport modes and future occupiers may, potentially, support local business. These

² Hunston Properties Ltd v Secretary of State for Communities and Local Government and St Albans City and District Council 2013

considerations offer moderate weight in support of the proposal. However, I have already concluded that the proposal would have a harmful effect on the local environment and that it would make a modest contribution to the supply of housing. Overall therefore, I attach limited weight to the sustainability benefits of the proposal.

Other Matters

22. The appellant and local residents have referred to the incidence or otherwise of fly-tipping at the site. However, it is not claimed by the appellant that the proposed development is necessary in order to resolve this issue. As such, it does not weigh in favour of the proposal.
23. The appellant and local residents have also referred to disputes over the land registry titles for two areas of land within the appeal site. There is no substantive evidence that the planning-related interests of the parties claiming title were prejudiced because then the applicant did not serve notice on them at the time the application was made. That being the case, the ownership of the land is not a planning matter.
24. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

Very Special Circumstances

25. The proposal would be inappropriate development which would significantly reduce the openness, and harm the character, of the Green Belt. The proposal would not cause harm to other interests. Nevertheless, the Framework advises that substantial weight should be given to any harm to the Green Belt.
26. On a collective basis the other considerations outlined above do not clearly outweigh the harm to the Green Belt by reason of inappropriateness and loss of openness. Consequently, it has not been demonstrated that the very special circumstances necessary to justify the development exist. Therefore, the proposal conflicts with policies 1, 2 and 74 of the LP and paragraphs 87 to 89 of the Framework.

Conclusion

27. For the reasons outlined above, the appeal should be dismissed.

Simon Warder

INSPECTOR