



# Appeal Decision

Site visit made on 16 April 2024

**by N Bromley BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 May 2024**

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**Appeal Ref: APP/R3705/W/23/3335824**

**Old Beretun, Barnes Wood Lane, Whitacre Heath, Warwickshire B46 2EF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr David Trueman against the decision of North Warwickshire Borough Council.
  - The application Ref is PAP/2023/0206.
  - The development proposed is detached two bedroom dwelling.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appellant has submitted a Flood Risk Assessment (FRA), dated November 2023. The FRA was prepared after the Council's decision, but it was submitted with the appellant's Statement of Case. While the Council has reservations about accepting the FRA as part of the appeal, it has had an opportunity to comment on the FRA, as has the Environment Agency. Having regard to the principles established in *Holborn Studios Ltd*<sup>1</sup>, I am satisfied that no party has been prejudiced in this regard and I have taken the FRA into account in determining this appeal.
3. Since the date of the decision, the Nether Whitacre Neighbourhood Plan (NP) was adopted in January 2024. The NP forms part of the development plan and a copy has been provided with the Council's Statement of Case (SoC). The Council refer to the NP and relevant policies in its SoC, which the appellant has had an opportunity to comment on.

## Main Issues

4. The main issues are:
  - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies, including assessing the effect of the proposal on the openness of the Green Belt;
  - whether or not the location would be suitable for housing having regard to accessibility to services and facilities;
  - whether or not the location would be suitable for housing having regard to flood risk; and

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<sup>1</sup> *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

- if the proposal is found to 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 the 'very special circumstances' required to justify the proposal.

## **Reasons**

### *Whether inappropriate development*

5. The appeal site is located within the open countryside, set amongst a complex of residential properties. The land is currently used as garden land to the host property and includes a summer house and other domestic paraphernalia. The site is accessed from the main road by a long, uneven driveway.
6. The Framework establishes that new buildings in the Green Belt are inappropriate other than for specified exceptions that are set out in paragraph 154. One such exception, 154(e), is limited infilling in villages. A further exception is set out at paragraph 154(g), which allows for the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development.
7. Policy LP3 of the North Warwickshire Local Plan, 2021 (LP) is broadly consistent with the Framework in resisting development in the Green Belt except in certain circumstances. Point 3 states that "Limited infilling, in settlements washed over by the Green Belt, will be allowed within infill boundaries as defined on the Policies Map". It also identifies, at point 4, that "Limited infilling may also be acceptable where a site is clearly part of the built form of a settlement, i.e. where there is substantial built development around three or more sides of a site". However, I am also mindful that it is a matter of planning judgement for the decision maker, taking into account numerous factors, including the size and location of the development and its relationship to the existing built form of the surroundings.
8. The cluster of buildings off Barnes Wood Lane is detached from the nearest settlement of Whitacre Heath. As a consequence, the buildings within the small complex, as well as neighbouring properties are physically separated from the settlement. Thus, they are not viewed within the context of the settlement and its built form. Therefore, the site is not part of the settlement.
9. In addition, the group of buildings are surrounded by open fields, and the surrounding area has a wholly rural character. The pattern of development close to the appeal site is also largely fragmented, with the sizeable gardens of neighbouring dwellings resulting in spacious gaps between buildings. As such, the site is not surrounded around three or more sides and the proposal would not infill a small gap within a substantial built development.
10. Furthermore, whilst the proposed dwelling would replace the existing small summer house building, its bulk and mass would be significantly larger. This would increase its prominence making it more visually intrusive. This would be a significant negative change in terms of the existing spatial and visual openness of the Green Belt and it would have a greater impact on the openness of the Green Belt. Therefore, even if I were to accept that the proposal is deemed to be the partial redevelopment of previously developed

land, for the reasons given, the proposal would not benefit from the exemption listed in paragraph 154(g) and any of the other listed exceptions.

11. The proposed development would also conflict with the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open and safeguarding the countryside from encroachment.
12. For the reasons given above, I conclude that the proposal would be inappropriate development in the Green Belt and would harm the openness of the Green Belt and the purposes it serves.

#### *Location*

13. Policy LP2 of the LP directs development, including new housing, to specified main towns and settlements, categorised from 1 to 4, and category 5 being "All other locations". The site falls within the latter and the policy sets out that development within these locations will not generally be acceptable, albeit it does set out that there may be some instances where development may be appropriately located and would enhance or maintain the vitality of rural communities. This is consistent with paragraph 83 of the Framework, which seeks housing to be located where it will support local services.
14. Policy HP1 of the NP states that new dwellings should represent limited infilling within the Nether Whitacre parish development boundary.
15. Whitacre Heath is the nearest settlement, which has a category 4 status. However, as I have already identified, the appeal site is within the open countryside, physically detached and a reasonable distance from the settlement.
16. While I accept that the main road, which leads to the settlement, has a footpath on one side, the pavement is narrow and there appears to be limited street lighting along the busy road. Furthermore, the future occupiers of the proposal would also need to travel down the long, narrow, winding, uneven driveway that serves the properties to access the main road. For these reasons, future occupiers would be discouraged from walking and cycling to access services and public transport opportunities, particularly during hours of darkness.
17. There is also limited evidence before me regarding the nearest bus stop, the frequency of a bus service, if any, and the level of services and amenities within the settlement. Therefore, it is not clear to what extent the proposal could support the day to day needs of the future occupiers and how it would enhance or maintain the vitality of the nearby community.
18. Accordingly, for the reasons outlined above, I conclude on this main issue that the site is not suitable for housing having regard to accessibility to services and facilities. It would thereby fail to comply with Policy LP2 of the LP, Policy HP1 of the NP and the Framework.

#### *Flood risk*

19. The appeal site is located within Flood Zone 3 and the Framework and Planning Policy Guidance (PPG) aim to steer development to areas with the lowest probability of flooding through the application of the sequential approach.

Policy LP33 of the LP is broadly consistent with the Framework and reinforces this requirement.

20. The Framework requires a 2-stage process to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. The process consists of the sequential test and exceptions test which seek to minimise the risk of flooding both to the development proposed and the surrounding area.
21. A new dwelling does not fall within any of the exceptions listed in footnote 60 of the Framework and accordingly a sequential test is required, as set out at paragraph 174 of the Framework.
22. The submitted FRA identifies that the site is approximately 420 metres from the River Tame and that the site is protected by flood defences that have been constructed in recent years. Therefore, the FRA advises that the development is considered to be suitable within Flood Zone 3, further to the application of the Sequential and Exception Tests, as well as other identified mitigation measures.
23. However, it has not been demonstrated that the Sequential and Exception Tests have been undertaken. In addition, and notwithstanding that the FRA has addressed some of the concerns raised by the Environment Agency, the PPG is clear that even where an FRA shows that the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. The FRA does not seek to identify any sequentially preferable and reasonably available sites.
24. In the absence of any information to enable the sequential test to be undertaken, I cannot be satisfied that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposal therefore fails the sequential test and would therefore not be an acceptable form of development with regards to flood risk.
25. Furthermore, while other previous applications for neighbouring development may not have been required to produce a flood risk assessment, the full details of these cases have not been provided. In any event, flood risk is fact sensitive and site specific, turning on the individual circumstances of each case. Therefore, this has not eased my concerns about flood risk in this case.
26. For these reasons, I conclude that the proposed development is not in a suitable location having regard to flood risk. Therefore, the proposal is contrary to LP Policy LP33 and Paragraph 168 of the Framework as they seek to minimise the risk of flooding by avoiding development in high-risk areas.

#### *Other considerations*

27. The construction of an additional dwelling would contribute to boosting the supply of new housing, particularly in a rural area. The construction of a newer building on the land would also be more energy efficient. However, these benefits would be limited by virtue of the proposal only adding one additional dwelling to the housing supply in the area.
28. My attention has been drawn to other residential developments in the locality, some of which I viewed on my site visit. Many of these appear to relate to the conversion of existing buildings rather than the construction of new buildings.

However, I acknowledge that the Island Project (Ref PAP/2020/0097) and Heathland Farm (PAP/2021/0568) appear to be for new buildings close to the appeal site, within the Green Belt and outside of any identified settlement boundary. The full details of the schemes have not been provided, and I cannot be certain that the circumstances which led to their approval are the same as the proposal before me. Accordingly, I have determined this appeal on its merits, based on the site-specific circumstances of the case and the evidence before me.

29. No objections have been raised with regards to the design of the scheme, access and parking arrangements or the effect on neighbouring amenity levels. Nevertheless, these factors taken together, carry limited neutral weight.

### **Green Belt Balance and Conclusion**

30. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in 'very special circumstances'. It goes on to state in paragraph 153 that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
31. The proposed development would be inappropriate development in the Green Belt and therefore harmful by definition. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It identifies openness as an essential characteristic of the Green Belt. The Framework states at paragraph 153 that substantial weight is given to any harm to the Green Belt. I therefore place substantial weight on the harm by inappropriateness and harm to the openness that I have identified. The proposal would also not be an acceptable location for new housing, having regard to its location in relation to services and facilities and in relation to flood risk.
32. I have given some weight to the other considerations in favour of the proposal, as set out above. However, they do not clearly outweigh the harm arising from the proposal. Consequently, the 'very special circumstances' necessary to justify inappropriate development in the Green Belt do not exist. The development would thus conflict with the Green Belt protection aims of the Framework, Policies LP1, LP2 and LP3 of the LP and Policy HP1 of the NP.
33. Paragraph 12 of the Framework confirms that the presumption in favour of sustainable development does not change the statutory position that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Where there is conflict with an up-to-date development plan, permission should not normally be granted.
34. The proposed development would conflict with the development plan taken as a whole and material considerations do not indicate that the decision should be made other than in accordance with the development plan.
35. For the reasons given above, I conclude that the appeal is dismissed.

*N Bromley*

INSPECTOR