



Appeal Decision

Site visit made on 14 November 2016

by **Rachel Walmsley BSc MSc MRTPI**

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

Decision date: 9th December 2016

Appeal Ref: APP/T3725/W/16/3154102

**Weston House (formerly The Bull Inn), Weston under Wetherley,
Leamington Spa CV33 9BP**

- 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 Dickinson. Bains and Thompson against the decision of Warwick District Council.
- The application Ref W/16/0280 dated 12 February 2016, was refused by notice dated 26 April 2016.
- The development proposed is the erection of three detached two storey dwellings, following demolition of derelict public house.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Dickinson. Bains and Thompson against Warwick District Council. This application is the subject of a separate Decision.

Procedural matter

3. Within the evidence before me, reference is made to the Council's emerging Local Plan¹. This is not adopted policy and therefore carries little weight. In refusing the planning application, however, the Council referred to the policies within the National Planning Policy Framework (the Framework) and the Local Plan² which are adopted policy and therefore carry weight. The Council and the appellant have referred in their submissions to the policies within the Local Plan and therefore have had the opportunity to respond. I have had regard to this in my reasons below.

Main Issues

4. These are:
 - (i) whether the proposal would be inappropriate development in the Green Belt;

¹ Warwick District Local Plan (2011-2029)

² Warwick District Local Plan (1996-2011)

- (ii) the effect of the proposal on the openness of the Green Belt and the purposes of including land within it;
- (iii) whether a financial contribution towards affordable housing is necessary;
- (iv) whether or not there are other considerations weighing in favour of the proposal; and,
- (v) if the development is inappropriate, 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.

Reasons

5. The appeal site includes a derelict public house with associated car parking. The site sits outside Weston under Wetherley village and is therefore within the open countryside, as well as within the Green Belt.

Whether the proposal would be inappropriate development in the Green Belt

6. Paragraph 89 of the Framework indicates that, other than in connection with a number of exceptions, the construction of new buildings should be regarded as inappropriate development in the Green Belt.
7. One of the relevant exceptions listed in paragraph 89 is *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces*. The proposal involves the demolition of the existing public house and the erection of three dwellings. Notwithstanding matters of size, the new dwellings would not be the same use as the public house they replace and therefore the exception does not apply.
8. Paragraph 89 also makes an exception for the *limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land)...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*. In the absence of any definition of limited infill within the Framework, I consider limited infill to be the development of land which fills in a gap within an otherwise built up area.
9. The appeal site runs parallel with the B4453. To the north of the site is Bibury Cottage; a dwelling with a garden that fronts the road. The appeal site is largely surrounded on its other sides by open countryside. The predominance of open land around the site, therefore, means that the proposed development would not be within an area that is largely built up. Consequently the proposal would not constitute infill.
10. The appeal site is occupied by a permanent structure and therefore constitutes previously developed (brownfield) land. Paragraph 89 makes an exception for development within the Green Belt and on brownfield land, provided that the proposed development does not have a greater impact on the openness of the Green Belt and the purpose of including land within it. My conclusions on the next issue, the effect of the proposal on the Green Belt and openness, will determine whether or not the development would be inappropriate.

Effect on the openness of the Green Belt and the purposes of including land within it

11. The Framework (paragraph 79) indicates that openness is an essential characteristic of the Green Belt. Openness derives from an absence of built form.
12. Spatially, the public house occupies part of the appeal site with the rest dominated by hardstanding which serves as a car park. Much of the site is therefore open and devoid of structures. Whilst the layout of the dwellings proposed would leave gaps between buildings for views through, three houses and to two storeys in height would have a notable physical presence. Together with the boundary treatments and landscaping proposed, the development would have a sense of permanence and would result in a material increase in the amount of built form. In all, the open character of the site would be reduced, resulting in significant harm to openness.
13. As part of my assessment of whether or not the proposal would be inappropriate development in the Green Belt, I am to consider, in line with the 6th bullet point of paragraph 89 of the Framework, whether the proposal would conflict with the five purposes of including land within the Green Belt, as listed in paragraph 80 of the Framework.
14. One of the purposes listed and relevant to the development proposed is to safeguard the countryside from encroachment. Given that the development would be within the open countryside, the development would conflict with this purpose. Another relevant function of the Green Belt is to assist in urban regeneration by encouraging the recycling of derelict and other urban land. Whilst the development would make use of a derelict site, its location in the countryside would not assist the regeneration of an urban area.
15. In all, therefore, as the proposal would have a harmful effect on the openness of the Green Belt and would undermine its purposes, the development does not fall within the exception at bullet point 6 of paragraph 89. Nor does the development fall within any other exception of the Framework. As such the development would be inappropriate development. The Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt.

Affordable housing

16. Policy SC11 of the Local Plan requires the provision of 40% affordable housing on sites of more than 0.25 hectares. The appeal site qualifies for such a provision and there is no secure means before me, such as an obligation under Section 106 of the Town and Country Planning Act 1990 to make this provision. However, a consequence of the Court of Appeal's Judgement of 11 May 2016³ is that a Written Ministerial Statement of 28 November 2014 is now considered as national planning policy and a material consideration in development management decisions. The Ministerial Statement states that for sites of 10 units or less, which have a maximum combined gross floor space of no more than 1000 sqm, affordable housing and tariff style contributions should not be sought. I attach great weight to the Ministerial Statement and conclude that given that the development is for less than 10 units and no more than 1000

³ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

sqm, a financial contribution towards affordable housing is not necessary. The lack of affordable housing, therefore, does not carry weight against the appeal.

Other considerations

17. The evidence before me points to the Council not having a five year supply of housing land. The development would, therefore, contribute to the Council's need for housing, although three houses would make a limited contribution. I attach some weight to this consideration.
18. I note the judgement of *Cheshire East Council v SSCLG and Richborough Estates Partnership*⁴ put before me. The judgement considered the meaning of paragraph 49 of the Framework and found Green Belt policies to be relevant to the supply of housing. The Council cannot demonstrate a five year supply of housing land and therefore its housing supply policies, including those relating to Green Belt, are out-of-date in accordance with the provisions of paragraph 14 of the Framework. Paragraph 14 states that planning permission should be granted, unless specific policies in the Framework indicate that development should be restricted. The restrictions listed in footnote 9 of the Framework include land designated as Green Belt. I have assessed the proposed development against the Framework's policies on Green Belt and found harm to its openness. The judgement before me carries no weight in favour of this appeal. In reaching this conclusion I have given consideration to the Opinion of Theo Osmund Smith⁵ which supports the weight given to footnote 9 in light of the lack of a five year supply of housing land.
19. The development would make visual and environmental improvements to the site and overcome current problems of vandalism. However, it has not been demonstrated that a development of three houses is required to bring about the benefits identified. As demonstrated by the permission to convert the existing public house, alternative ways of realising the benefits identified whilst at the same time not being inappropriate development within the Green Belt are possible. I attach little weight, therefore, to the environmental and visual improvements proposed.
20. I note the Parish Council's support for the proposal and the lack of objection to matters including design, impact on the living conditions of neighbouring residents and highway safety. These benefits are welcomed, although their overall impact is limited given that the proposal is for three dwellings. I attach some weight to this consideration.
21. The appellant refers to an appeal decision on the site that allowed the change of use of the public house to a single residential building. Whilst the Inspector is reported to have considered the proposal an exceptional case for development in the countryside and a sustainable form of development, the proposal was for a change of use of the existing building. This is a material difference to the current proposal which proposes three new dwellings and presents a different set of circumstances and matters for consideration. As a result the appeal decision does not set a precedent for the development proposed and therefore does not carry weight in favour of the appeal.

⁴ [2015] EWHC 410 (Admin)

⁵ Opinion of Theo Osmund Smith of No 5 Chambers (24th June 2016)

22. I have before me an appeal decision⁶ for a replacement dwelling which the appellant suggests is a material planning consideration. Without further explanation, the relevance of this appeal to the current proposal is unclear. Nevertheless I have considered the appeal decision and note that it granted planning permission for a replacement house. The current proposal concerns two different uses; a public house and a residential development within a different site context to the proposal allowed on appeal. I find little similarity, therefore, between the two development proposals for me to give favourable weight to the appeal decision.
23. The appellant suggests that if the permission to convert the existing public house to residential use was implemented, further development of a substantial scale could occur under permitted development rights and within the Green Belt. There is no evidence before me to suggest that this is likely. Notwithstanding this, if development did occur under permitted development rights, the amount of development that could be built would be restricted by the conditions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). I suggest that conditions would restrict development in such a way that the same scale of development as that currently proposed could not be realised. The fallback position of developing under permitted development rights therefore carries little weight.

Very special circumstances

24. Paragraph 87 of the Framework states that inappropriate development, by definition, is harmful to the Green Belt and should not be approved except in very special circumstances.
25. I have concluded that the proposed development would be inappropriate development and would therefore, by definition, be harmful to the Green Belt. I have also concluded that the proposal would harm the openness of the Green Belt and would undermine its purposes. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt.
26. The substantial weight given to the harm arising from inappropriate development and its effect on the openness of the Green Belt and its purposes is not clearly outweighed by the other considerations. Whilst the increase in housing and the visual and environmental benefits of the proposal are welcomed, the proposal would be for three houses. As a result the weight of these benefits is not sufficient to outweigh the substantial weight given to the harm identified. This does not amount, therefore, to the very special circumstances necessary to justify the proposal.

Conclusion

27. The proposed development would be inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition there would be a loss of openness and the purposes of the Green Belt would be undermined.
28. The harm arising from inappropriate development and its effect on the openness of the Green Belt and its purposes is not clearly outweighed by other considerations. Consequently the very special circumstances necessary to

⁶ REF: APP/T3725/W/16/3142783

justify the development do not exist. For the reasons given, the overall conclusion is that the appeal is dismissed.

R Walmsley

INSPECTOR