



Appeal Decision

Site visit made on 1 February 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal Ref: APP/C1950/W/22/3307181

5 Oakwell Drive, Northaw, Potters Bar, Hertfordshire EN6 4EZ

- 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 Andrew Marler against the decision of Welwyn Hatfield Council.
- The application Ref 6/2022/0821/FULL, dated 4 April 2022, was refused by notice dated 27 May 2022.
- The development proposed is a single subterranean dwelling.

Decision

1. The appeal is allowed and planning permission is granted for a single subterranean dwelling at 5 Oakwell Drive, Northaw, Potters Bar, Hertfordshire EN6 4EZ in accordance with the terms of the application Ref 6/2022/0821/FULL dated 4 April 2022 subject to the conditions in the attached schedule.

Main Issues

2. The appeal site is within the Green Belt. Accordingly, the main issues are:
 - i) whether or not the proposal would be inappropriate development in the Green Belt including with regard to the effect of the proposal on the openness of the Green Belt;
 - ii) the effect of the proposal on the character and appearance of the area;
 - iii) whether or not the development would be in a suitable location having regard to the accessibility of services and facilities; and
 - iv) if the development would be 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 it.

Reasons

3. The appeal site includes part of the garden currently associated with 5 Oakwell Drive and an area of loose stone adjacent to Oakwell Drive. The main parties indicate that planning permission was granted for the demolition of an outbuilding on the site and the erection of a pool house which would be mostly underground¹. Permission was subsequently granted for variations to the development, including a change to the location of the above ground part of the building and alterations to the underground part of the building² ('the

¹ Application reference 6/2018/1808/HOUSE

² Application reference 6/2021/2670/VAR

S73'). At my visit, I saw that some excavation had been carried out, ostensibly in the location of the S73 development, although there was no built structure present at the time of my visit.

Whether Inappropriate Development

4. Policy GBSP1 of the Welwyn Hatfield District Plan 2005 ('the DP') states that the Green Belt will be maintained in Welwyn Hatfield as defined on the Proposals Map. The National Planning Policy Framework ('the Framework') outlines that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and permanence. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework further sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt, although some exceptions are specified.
5. These exceptions include the limited infilling or the partial or complete redevelopment of previously developed land. It is common ground between the main parties that the appeal site would fall within the definition of previously developed land. However, to be considered an exception, the Framework requires that the redevelopment of the site must not have a greater impact on the openness of the Green Belt than the existing development. In making such an assessment, the Planning Practice Guidance explains that openness is capable of having both a spatial and visual dimension.
6. The proposed dwelling would sit beneath the level of the adjacent ground closest to Oakwell Drive, and would include a sloping roof to the rear section which would broadly reflect the general fall in land levels from Oakwell Drive towards the rear boundary of the site with the adjacent open fields. Given this arrangement, I consider that the dwelling itself would not materially affect the openness of the Green Belt in spatial terms.
7. The position of the dwelling level with or beneath the surrounding ground, as well as vegetation to the site boundaries, would also significantly limit potential views from Oakwell Drive. However, some views of the steps which would provide access into the dwelling and the 6 relatively large rooflights in the sloping section of the roof could be possible from neighbouring dwellings, indicating the presence of built development on the site. Views may also be possible from the surrounding landscape to the north, east and west; albeit that these would be likely to be heavily filtered by vegetation, and the visual impact of the development would further be moderated by the largely mid to long distances at which the development would be seen.
8. In addition, the proposal includes a parking space with an electric vehicle charging point. The parking would be located on an existing loose stone area with access from Oakwell Drive. At the time that the Council determined the application, it noted that the lawfulness of this area had not been confirmed, but it has not disputed the appellant's evidence which indicates that a Certificate of Lawfulness has since been granted. However, while the space could potentially be used for parking currently, there is also an existing driveway and garage closer to No 5. The additional dwelling proposed would be likely to increase the overall demand for parking at the site, and the greater total potential number of parked vehicles associated with the dwelling in addition to No 5 would be appreciable including from Oakwell Drive. The

electric vehicle charging point would also introduce a new feature to the site. I acknowledge that vehicles would be unlikely to be present at all times, and the plans indicate that the electric vehicle charging point would be hidden when not in use. Even so, I find that there would be some impact on the openness of the Green Belt in both spatial and visual terms.

9. Furthermore, the subdivision of the site and presence of an additional dwelling would in itself result in an intensification of development and activity on the site when compared to the garden of an existing dwelling. A bin storage area for the dwelling would also have a spatial and visual presence. Boundary hedging would provide for some screening, but this is unlikely to be complete, and coverage may vary throughout the year. Taken together, I find that these aspects of the proposal would diminish the openness of the site somewhat.
10. I appreciate that available views of the development would be very localised and limited. Nevertheless, the development would cause some, albeit very limited, harm to the openness of the Green Belt in both spatial and visual terms relative to the baseline condition as it currently exists where the absence of built form results in an appreciable sense of openness on the site. Because the proposal would have a greater impact on the openness of the Green Belt than the existing development present, it would not therefore meet the terms of the exception for limited infilling or redevelopment of previously developed land specified within the Framework.
11. Accordingly, I conclude that the proposal would comprise inappropriate development which is, by definition, harmful to the Green Belt. There would also be harm to the openness of the Green Belt which the Framework identifies alongside permanence as one of the essential characteristics of Green Belt.
12. That said, the potential fallback position under the S73 is an important relevant factor which I return to consider further in the context of other considerations below.

Character and Appearance

13. Oakwell Drive and Woodgate Avenue form a small residential estate set within surrounding open fields and woodland. Dwellings are typically two-storey detached properties of traditional design and materials which are set back from the streets on generous plots. Together with mature trees and vegetation which are appreciable within many of the gardens and street-side open spaces, this provides for an attractive spacious and verdant semi-rural character to the estate.
14. The proposed dwelling would be detached, but its single-storey form and subterranean nature would contrast with other development nearby. Its plot would also be smaller than is typical, and the layout with amenity space provided to the front of the dwelling would be at odds with the usual pattern of development in the vicinity.
15. However, I have already found that the dwelling itself would not materially reduce openness on the site in spatial terms, and noting that the built form would be below ground level, I am satisfied that the development would not appear unduly cramped. Opportunities for views of the dwelling would also be very limited, even without reliance on screening by boundary vegetation which

would significantly reduce its visual impact and effect on the character and appearance of the area.

16. In addition, the Council has suggested a planning condition which would require implementation of measures to protect trees during development. Subject to this condition, and given that the footprint of the dwelling would be consistent with the S73 development, I am satisfied that the proposal would not unacceptably harm trees which contribute to the character and appearance of the area.

17. In a previous appeal decision for a dwelling on the site³, the provision of an access point, driveway, parking area and domestic paraphernalia were found to be significant changes that would create the appearance of a dwellinghouse on a separate plot. In the appeal before me, the access point and parking are existing features. Although they would serve a separate dwelling, the visual change from the baseline condition of the site would therefore be much more modest than under the previous appeal. In addition, there is currently hedging along the majority of the boundary of the appeal site with No 5. There is an existing gap which would be closed off, but this is of limited size and I consider there would be little appreciable difference from outside of the site such that I find the visual impact of the physical change would be minimal.

18. Nevertheless, the likely need for features such as a house name/number that would be apparent from Oakwell Drive together with the parking and bin storage/collection separate from that of No 5 mean that the presence of an additional dwelling would still be likely to be discernible, including from Oakwell Drive and neighbouring dwellings. Despite the limited visibility of the dwelling itself, I find as a consequence that the development would be urbanising and that it would erode the impression of openness at the site. Even so, the above factors and lack of an above-ground element to the dwelling mean that the visual effect of the proposal would be limited, and much more subtle than would have been the case under the previous appeal. The effect would also be localised. In my judgement, the proposal would cause only very limited urbanisation and loss of openness in comparison to the existing site, and while the form and layout of the development would be somewhat incongruous, I am satisfied that it would not be conspicuous, and it would not detract from the character or appearance of the street scene or area to any significant degree.

19. I find for the above reasons that the proposal would result in some urbanisation and loss of openness that would detract from the semi-rural character and appearance of the area in comparison to the existing site. The harm would be limited and localised, but would nevertheless conflict with Policies D1 and D2 of the DP which include requirements seeking high quality design and development that respects and relates to the character and context of the area in which it is proposed. For the same reasons, the proposal would be contrary to requirements within the Framework seeking development that is sympathetic to local character, as well as the Council's Supplementary Design Guidance 2005 which indicates that development should be sensitive to local character and not detrimentally affect the townscape and landscape.

Suitability of the Location

20. Policy GBSP2 of the DP generally directs development towards towns or specified settlements in the district. The appeal site is not part of any of these

³ Appeal ref APP/C1950/W/20/3254827

settlements. Nor is it an allocated site, and the proposal would therefore fall to be considered in light of the criteria for windfall development within Policy H2 of the DP which include the location and accessibility of the site to services and facilities by transport modes other than the car.

21. In the previous appeal, the site was found to be an unsuitable location for a new dwelling given its inaccessibility to services and facilities and an undue reliance on the use of the private motor vehicle. The appellant has sought to address the concerns identified within the previous appeal decision and in the Council's refusal of the current appeal scheme through additional evidence including a Highways Statement and a Highways Statement Rebuttal.
22. The appellant has not disputed comments in the previous appeal decision that the appeal site is around 2.3 miles from Cuffley and around 3 miles from Potters Bar which offer the greatest range of services in the vicinity of the appeal site. By road, the route from the appeal site to reach the outskirts of these settlements would be along unlit, single-carriageway roads which are subject to the national speed limit, including Coopers Lane Road. The Inspector in the previous appeal had referred to a constant flow of traffic including heavy goods vehicles along Coopers Lane Road at the time of their visit. However, the appellant indicates that traffic levels were higher than usual owing to an incident on the M25 motorway, and the flow of traffic during my visit was not continuous, often with reasonable intervals between vehicles. I also saw very few larger or heavy goods vehicles. I appreciate that this was only a snapshot, but my observations are broadly consistent with the appellant's automatic traffic count data which indicates that usual traffic flows along Coopers Lane Road are not constant, and comprise around 13% goods vehicles.
23. I also note that Northaw and Cuffley Bridleway 17 runs parallel with Coopers Lane Road for much of the distance between the site and the outskirts of Potters Bar where there are also bus stops situated at The Causeway, save for a short section where there are verges alongside the road. There are also connections from Coopers Lane Road to the wider public rights of way network, including towards Northaw and The Ridgeway where there are some, limited, services as well as bus stops available.
24. Be that as it may, access on foot from the site to reach bus stops and other services and facilities would involve travel, at least in part, along unlit and unsurfaced routes. Pedestrians would also need to walk some distance from the site along Coopers Lane Road or on verges that I saw were uneven and in places overgrown to reach the closest formal link to Northaw and Cuffley Bridleway 17. The appellant points to the availability of an informal link to the Ridgeway close to the junction of Woodgate Avenue, but the status of this link and consequently whether it could be relied on in the long-term is not clear from the information before me.
25. Moreover, the appellant's evidence highlights that distances to the closest settlements would exceed the preferred maximum walk catchments suggested in guidance produced by the Chartered Institute of Highways and Transportation ('the CIHT'), and that the closest bus stops at The Ridgeway are nearly 2km from the site. The appellant comments that households are likely to accept slightly longer walk distances to reach bus stops with fast, frequent and direct services to a range of destinations, and I note that the bus stops at The Ridgeway are served by a route with frequent services throughout the day and

week. Nevertheless, the distance to these stops would substantially exceed the 300m walking distance to bus stops with less frequent routes recommended in CIHT guidance cited by the appellant, and I consider that the distance to reach bus stops from the site would be a significant deterrent to such journeys.

26. Notwithstanding traffic conditions on Coopers Lane Road, I consider that these factors in combination would significantly inhibit the attractiveness of options for travel on foot and by bus for all but the most willing and able, particularly at night or in poor weather. I have significant doubt that occupiers would undertake such journeys from the site regularly.

27. Facilities and services including in Potters Bar and Cuffley would be within reasonable cycle distance from the site, and the appellant has provided survey data indicating that there are existing cycle movements along Coopers Lane Road. Northaw and Cuffley Bridleway 17 could also be used for much of the distance towards Potters Bar. However, cycle journeys would at least in part be along relatively narrow and unlit sections of lanes including Coopers Lane Road where the appellant's traffic count data indicates 85th percentile speeds in excess of 40mph. In my view, this would deter many cyclists, particularly those who were less experienced or confident, and during the winter. I also have no firm details of traffic flows or speeds on the routes beyond Coopers Lane Road to demonstrate that these are suitable for cycling. I am not therefore persuaded that conditions would be generally favourable so as to encourage cycling overall.

28. I accept that cycling could be an option for some, but I find given these factors that opportunities to access services and facilities to meet the day-to-day needs of future occupiers of the development by means other than the private vehicle would be limited. Accordingly, there would be significant reliance on private vehicles, and while the appellant refers to a willingness to install an electric vehicle charging point, there is no mechanism before me that could reasonably require occupiers to utilise it once installed.

29. Journeys to reach services from the site would be fairly short, helping to minimise the environmental impact of travel by private vehicle. The number of journeys is also likely to be limited given the small scale of the proposal, and there is no firm evidence that there would be unacceptable harm to highway safety or convenience. These factors would moderate the adverse effects of the proposal. I also recognise that the Framework comments that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that sites to meet business and community needs in rural areas may have to be found in locations that are not well served by public transport.

30. Even so, I find that the likely degree of reliance on private vehicles would be contrary to the Framework insofar as it highlights accessible services to meet needs as a key aspect of sustainable development; and advocates identifying and pursuing opportunities to promote walking, cycling and public transport, actively managing patterns of growth to support this objective. It would also conflict with Policies H2, GBSP2 and SD1 of the DP insofar as they together broadly seek development to be sustainably located for services and facilities by transport modes other than the car. The adverse impact would be limited, but I therefore conclude that the development would not be in a suitable location having regard to the accessibility of services and facilities.

Other Considerations

31. There is no dispute between the parties that works have commenced on site to implement the S73 development. Construction had been paused at the time of my visit at a relatively early stage, but the appellant advises that this is because of tax implications associated with whether construction activity would relate to a pool or dwelling. Although of different nature and use to the dwelling now proposed, I have no firm reason to doubt the appellant's evidence that sufficient funds are in place to proceed with the S73 development and that it would be completed if permission is not granted for a dwelling. Having regard to the evidence before me, I am satisfied that there is a real prospect of the S73 being implemented in full should the current appeal be dismissed. I have therefore taken the S73 into account as a realistic fallback position.
32. The proposed dwelling would be of comparable footprint and depth below ground to the S73 fallback development. However, the S73 scheme also included additional built form above-ground level which is not part of the appeal scheme. While of single-storey height and relatively modest overall scale, the above ground part of the S73 development would notably diminish openness on the site in both spatial and visual terms. Given that the appeal development dwelling would not include building above-ground, I find that the effect of the built form on the openness of the site and Green Belt would be significantly reduced in comparison to the fallback.
33. I recognise that the appeal proposes an additional dwelling rather than an outbuilding to No 5. The more intense use of the site together with the separate plot and elements such as the garden, parking and bin storage associated with this use would cause some harm to the openness of the Green Belt in both spatial and visual terms that would not result from the S73 development. There would also be some harm to the character and appearance of the area. However, I have found that the harm in these regards would be limited, and in my judgement it would in each instance be outweighed by the reduced built form on the site. In my assessment, the overall impact of the appeal development on the openness of the Green Belt, and detriment to the character and appearance of the area, would therefore be no more than would result from the S73. I therefore afford considerable weight to the fallback position.
34. In addition, the Council advises that it is unable to demonstrate a 5-year supply of deliverable housing. The proposal would make effective use of previously developed land to deliver an additional dwelling, and would accord with objectives within the Framework seeking to significantly boost the supply of housing. The contribution to housing supply would be very limited given the small scale of the development, but would nevertheless be important given the housing undersupply position, and I afford it great weight.
35. The dwelling is also proposed to significantly outperform current standards for energy consumption, efficiency and emissions. There would be further social and economic benefits associated with the construction and occupation of the dwelling, including support for local services which could help to sustain the vitality of rural communities. However, these benefits would be limited by the modest scale of the development, and would further be temporary in the case of construction-stage benefits. I give them limited weight.

Planning Balance and Conclusion

36. Drawing matters together, the proposed development would cause limited harm to the openness of the Green Belt, and would cause harm by virtue of inappropriateness. In accordance with the Framework, I give this harm substantial weight. The proposal would additionally cause some limited harm to the character and appearance of the area, and I have found that the dwelling would not be in a suitable location having regard to its accessibility to services and facilities, although the resulting harm would again be limited.
37. However, the harm to the openness of the Green Belt and to the character and appearance of the area would be no more than would arise under the S73 fallback. In combination with the provision of an additional dwelling in an area where there is a lack of identified housing supply and the further limited economic and social benefits associated with the development, I find that these are other considerations sufficient to clearly outweigh the cumulative harms that I have identified and amount to the very special circumstances necessary to justify the development in the Green Belt. On this basis, policies within the Framework relating to land designated as Green Belt do not provide a clear reason for refusing the development proposed.
38. In the absence of a five year supply of deliverable housing, the Framework indicates that the policies which are most important for determining the application are deemed to be out-of-date. As a consequence, the presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework is engaged. In light of my findings above, there are no policies in the Framework that protect areas or assets of particular importance which would provide a clear reason for refusing the development. The presumption therefore provides that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
39. The location of the site would lead to a reliance on private vehicle and would be contrary to Policies H2, GBSP2 and SD1 of the DP. Insofar as they seek to actively manage patterns of growth and promote sustainable travel, these policies are broadly consistent with the Framework. However, the level of harm would be slight. Furthermore, the lack of a 5 year supply of housing indicates that the strategy within the DP of concentrating development in the main towns and settlements is not currently meeting housing needs. The weight that I afford to the conflict with these policies is therefore reduced.
40. I have also found that there would be some harm to the character and appearance of the area contrary to Policies D1 and D2 of the DP which are broadly consistent with requirements in the Framework for development that is sympathetic to local character. Nevertheless, the harm would be modest and localised. Moreover, I consider the proposal would be no more harmful than the S73 fallback overall in this regard.
41. Conversely, the proposal would make a limited but still important contribution to the supply of housing which attracts great weight, and there would be further limited social, economic and environmental benefits.
42. The adverse impacts of the development would be modest, and in the context of paragraph 11(d) of the Framework, I find that these adverse impacts would not significantly and demonstrably outweigh the benefits when assessed

against the policies in the Framework taken as a whole. The presumption in favour of sustainable development therefore applies and is a material consideration that weighs in favour of the proposal. While the development would result in some conflict with Policies D1, D2, H2, GBSP2 and SD1 of the DP, I conclude that there are thus material considerations which indicate that the appeal should be allowed, notwithstanding the conflict with the development plan.

Conditions

43. I have considered suggested conditions against the tests within the Framework. I have made minor amendments where necessary for clarity, brevity or to ensure compliance with the relevant tests.
44. In addition to the standard time limit, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. A condition requiring further details of hard and soft landscaping, and implementation of the approved scheme is necessary in the interests of the character and appearance of the area and the living conditions of neighbouring occupiers. This is a pre-commencement condition as details need to be agreed before any works take place to ensure that they are satisfactory given the subterranean nature of the dwelling, and the appellant has provided written agreement to the condition. I have also attached a condition to require that works are carried out in accordance with the submitted Arboricultural Method Statement and Tree Protection Plan to ensure that trees are safeguarded and in the interests of the character and appearance of the area.

Conclusion

45. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise amended under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: TD255/PL/001 Rev A, TD255/PL2/102 Rev A, TD255/PL2/103 Rev A, TD255/PL2/202 Rev A, TD255/PL2/203 Rev A, TD255/PL/205 Rev A, 3067.PottersBar.TD.AIP Rev D and 3067.PottersBar.TD.TPP Rev G.
- 3) No development shall take place until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of:
 - a) means of enclosure and boundary treatments;
 - b) hard surfacing, other hard landscape features and materials;
 - c) existing trees, hedges or other soft features to be retained; and

- d) planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing.

The means of enclosure and boundary treatments and hard surfacing, other hard landscape features and materials shall be carried out in accordance with the approved details before the development is first occupied.

The landscaping works shall be carried out in accordance with the approved details and the guidance contained in British Standard 8545: 2014 in the first planting and seeding seasons following the first occupation of the development, and any plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 4) The development shall be carried out in accordance with the Arboricultural Method Statement and Tree Protection Plan (drawing no 3067.PottersBar.TD.TPP Revision G) throughout the construction period.