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## Appeal Decision

Site visit made on 10 April 2017

**by Alexander Walker MPlan MRTPI**

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

**Decision date: 5<sup>th</sup> May 2017**

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**Appeal Ref: APP/T2350/W/16/3164118**  
**30 Barker Lane, Blackburn BB2 7ED**

- 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 Lee Wallbank against the decision of Ribble Valley Borough Council.
  - The application Ref 3/2016/0346, dated 13 April 2016, was refused by notice dated 16 June 2016.
  - The development proposed is the erection of two detached houses following demolition of existing house.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of two detached houses following demolition of existing house at 30 Barker Lane, Blackburn BB2 7ED in accordance with the terms of the application, Ref 3/2016/0346, dated 13 April 2016, subject to the condition contained within the schedule to this decision.

### Application for costs

2. An application for costs was made by Ribble Valley Borough Council against Mr Lee Wallbank. In addition, an application for costs was made by Mr Lee Wallbank against Ribble Valley Borough Council. These applications are the subject of separate Decisions.

### Main Issues

3. The main issues in this appeal are as follows:
  - Whether the development would be inappropriate development in the Green Belt;
  - The effect of the development on the openness and character of the Green Belt;
  - Whether the development would accord with the Council's housing strategy; and
  - 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

### *Inappropriateness*

4. The appeal site lies within the Green Belt. Paragraph 79 of the National Planning Policy Framework (the Framework) states that the essential characteristics of Green Belts are their permanence and openness. Paragraph 89 of the Framework states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. However, there are exceptions to this presumption against development in the Green Belt, including *limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan*.
5. The proposal would involve the demolition of the existing dwelling and its replacement with two dwellings. The Council argue that as the existing dwelling would be demolished, it cannot be considered as infilling as it would be a rebuild. However, I do not agree with this view. There are dwellings either side of the appeal site and therefore if the existing dwelling was to be demolished, the site would still be an infill plot. The Framework does not preclude demolition in terms of infill. The key word that should placate the Council's concern that it would allow single dwellings to be replaced by multiple units is 'limited'. Furthermore, each case is to be accessed on its own merits, taking account of the overall area. In this instance, I am satisfied that the proposal would be limited infilling.
6. I have had regard to the appellant's contention that the site should be defined as within the urban boundary of Blackburn. Section 38(6) of the *Planning and Compulsory Purchase Act 2004*, requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. For the purposes of the development plan, the appeal site falls outside any defined settlement.
7. Although there is no definition of limited infilling or villages in the Framework, the Council confirm that villages are defined in the Ribble Valley Borough Council Core Strategy (CS) 2008 – 2028 as *'the smaller settlements within the borough and for the purposes of this study, this relates to all settlements in the borough excluding Clitheroe, Longridge and Wilpshire'*. Whilst the CS also defines defined settlements, there is no evidence that the appeal site falls within a defined settlement as identified in the CS. Notwithstanding the appeal sites proximity to Blackburn, it does not fall within a defined settlement within the Borough.
8. Nevertheless, the Court of Appeal judgment *Julian Wood v The Secretary of State for Communities and Local Government and Gravesham Borough Council [2015]* determined that the 'village' in paragraph 89 of the Framework need not be the same as the settlement boundary, depending on the situation 'on the ground'. In that case the Inspector had described a site that was surrounded on all sides by housing, but was not within the settlement boundary. The Court found that he had misdirected himself in concluding that the site did not lie in a village but outside the boundary.
9. The appeal site comprises a detached bungalow set within extensive grounds. The property forms part of a linear development that straddles either side of Barker Lane extending off the A6119 to the south, on the other side of which is the large urban settlement of Blackburn. The southern section of this linear

development is generally of a tighter form, similar to that on the opposite side of the A6119. The northern section, within which the appeal site is located, comprises properties that are generally larger in size, set back from the road and set within large gardens. Nevertheless, there is a clear continuation of the built form from the junction of Barker Lane and the A6119. Whilst this is intersected by the administrative boundary between Ribbles Valley Borough Council and Blackburn and Darwen Council, on the ground this is only identifiable by way of a sign.

10. Therefore, notwithstanding the sites allocation within the development plan I find that it forms part of a continuation of the settlement of Blackburn. I note that the exception in paragraph 89, bullet 5 refers to villages. Whilst Blackburn is larger than a village, given the unusual circumstances of the appeal site in that it forms part of a built-form that straddles the administrative boundary between two local planning authorities, I find that it is acceptable to consider it falling within a village for the purposes of paragraph 89 of the Framework.
11. I find therefore that the proposal satisfies the exception set out in paragraph 89, bullet five of the Framework and therefore is not considered to be inappropriate development in the Green Belt. As such, it complies with policy EN1 of the CS, which seeks to protect the Green Belt from inappropriate development.

#### *Openness and character*

12. The Framework states that the essential characteristics of Green Belt are their openness and their permanence. Openness has both a visual and spatial dimension and the absence of visual intrusion does not, in itself, mean that there is no impact on the openness of the Green Belt.
13. The replacement of the existing single storey dwelling with two, two-storey dwellings would inevitably have some effect on the openness of the Green Belt. However, I have concluded that it would represent limited infilling in a village which is an accepted exception in the Framework. Accordingly the effect on openness would not be so significant that it would cause any material harm to this part of the Green Belt.
14. In terms of the effect on the character and appearance of the area, the dwellings would follow the established building lines of properties on this side of Barker Lane. Although large, the dwellings would be sympathetic to the surrounding properties, which themselves are diverse in terms of their size and design. Whilst the proposal will have a greater effect on the area than the existing dwelling, in that they would be larger than the existing dwelling and would be more prominent in the streetscene, I am satisfied that their appropriate size and design would not have any significantly harmful effect on the character or appearance of the area. As such, it would comply with Policies EN2 and DMG2 of the CS, which, amongst other matters, seeks to ensure that new development is in keeping with the character of the landscape and is of a high standard of building design.

#### *Housing Strategy*

15. The glossary of the CS provides a definition of open countryside, which defines it as '*a designation currently defined within the proposals map of the RV Districtwide Plan mainly of land outside Settlement Areas but not*

*designated Greenbelt or AONB*'. The Council argues that this definition allows land to be designated as both open countryside and Green Belt. However, that is not how the definition is read. It clearly states that open countryside is land that is outside Settlement Areas but not designated Green Belt. If it were to mean land outside settlement boundaries then it would not need to make any reference to the Green Belt or AONB.

16. I note that the proposal map referred to me by the Council identifies the site falling within an area defined as EN1 (Green Belt) and EN2 (Open Countryside) and as such there is some conflict between the LP and the proposals map. However, the proposal map appears to be part of the Emerging Housing and Economic Development DPD. As I understand, the Council is currently reviewing settlement boundaries as part of the DPD. However, given that the revised boundaries have not been adopted and, as indicated by the appellant, there are outstanding objections to them, I attribute limited weight to the DPD and the proposal map. Given that the CS is adopted I attribute it substantial weight.
17. In light of the above, as the appeal site is located within the Green Belt, it cannot be also designated as open countryside for the purposes of the development plan. I note that Inspectors in previous appeals have considered sites to fall within both the open countryside and the Green Belt. However, as the Council admit, this argument has not been raised before.
18. Policies DS1 and DMG2 of the LP sets out the Council's strategic aim of focusing development towards the principal settlements and Tier 1 villages. In Tier 2 villages and outside the defined settlement areas development must meet at least one of a list of requirements. The proposal would not comply with any of these requirements. However, Policy EN1 of the LP allows development in the Green Belt providing it is not inappropriate, whilst it does not explicitly state what inappropriate development is, the Framework does.
19. Therefore, whilst the proposal would not strictly accord with Policies DS1 and DMG2 of the LP, it would comply with EN1 of the LP and paragraph 89 of the Framework.
20. The Council also refer to Policy DMH3 of the CS. However, as I have found that the site is not within the open countryside as defined in the CS, this policy is not relevant.

### **Other Matters**

21. I have had regard to the concerns raised regarding the effect of the development on the living conditions of the occupants of the neighbouring residential property, No 28 Barker Lane, with regard to loss of light and outlook. However, I am satisfied that there would be sufficient distance between the properties to ensure that there would not be any adverse effects with regard to these matters.
22. I have also had regard to the effect of the driveway on highway safety. Whilst it would be closer to that of No 28, there is sufficient visibility in both directions from both driveways. The only likely occurrence when visibility would be restricted is when cars are exiting the two sites at the same time. However, such occurrences are likely to be infrequent and in any event I am satisfied

that it would not represent a severe risk to highway safety. Furthermore, the proposal would provide adequate off-street parking and during my site visit I observed that neighbouring properties also have adequate parking provision. Therefore, the proposal would not result in any significant increase in on-street parking to the detriment of highway safety.

23. I have had regard to the previous appeals<sup>1</sup> referred to me by the Council. However, based on the evidence before me, none of these schemes related to a site that formed part of a larger settlement, albeit not one defined in the LP. In particular, the site at Broadhead Farm was far detached from any surrounding built form. Accordingly, I find that these schemes are not directly comparable to the proposal before me and as such I attribute them only limited weight.
24. I acknowledge the Council's concern that in allowing the proposal it would set a precedent and that they would find it difficult to resist other similar development. I have not been presented with any directly similar or comparable sites to which this might apply. Each application and appeal must be determined on its own merits, and a generalised concern of this nature does not justify withholding permission in this case.

### **Conditions**

25. I have had regard to the various conditions that have been suggested by the Council. For the avoidance of doubt it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
26. In the interests of the character and appearance of the area conditions are appropriate regarding materials, boundary treatment, landscaping, the protection of existing trees and external lighting.
27. In the interests of highway safety, conditions regarding parking spaces and manoeuvring areas are necessary.
28. In the interests of protecting birds and bats conditions are required regarding the provision of bird and bat boxes.
29. To safeguard the living conditions of neighbouring residents conditions are necessary regarding hours of operation, balcony screening, obscure glazing and the submission of a Construction Method Statement.
30. I do not, however, find there to be exceptional circumstances that would justify the removal of permitted development rights.
31. I have had regard to the Council's concern that the driveway could affect the root protection zone of nearby trees and the appellant's rebuttal that conditions regarding surface materials or digging processes could adequately deal with this. I am satisfied that such concerns can be addressed by way of a landscaping condition as I have imposed.
32. It is essential that the requirements of conditions 8, 13 and 15 are agreed prior to the development commencing to ensure an acceptable form of development in respect of safeguarding protected species, preserving the character and appearance of the area and residential amenity.

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<sup>1</sup> Appeal Refs APP/T2350/W/16/3153754, APP/T2350/W/16/3064545 and APP/T2350/W/16/3150944

## **Conclusion**

33. For the reasons given above, having regard to all matters raised, the appeal is allowed.

*Alexander Walker*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, 15.125 03 A, 15.125 04 B, 15.125 05 A and 15.125 06 A.
- 3) No construction works shall commence until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No construction works shall commence until details at a scale of not less than 1:20 of the proposed boundary walling, gates and fencing have been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) No construction works shall commence until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include all hard surfaced areas, including the proposed surface treatment and car parking spaces and manoeuvring areas, and the type, species, siting, planting distances and programme of planting of any trees and shrubs. The scheme shall also indicate and specify all existing trees on the land which shall be retained in their entirety, unless otherwise agreed in writing by the local planning authority, together with measures for their protection in the course of development. The development shall be carried out in accordance with the approved details.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of three 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.
- 7) The car parking spaces and manoeuvring areas agreed under the approval of condition 5 of this decision notice shall be made available for use prior to the first occupation of either dwellinghouse hereby permitted, and shall be permanently maintained thereafter clear of any obstruction to their designated purpose.

- 8) No development shall take place until details of the provisions to be made for building dependent species of conservation concern, artificial bird nesting boxes and artificial bat roosting sites have been submitted to, and approved in writing by the local planning authority. The details shall be submitted on a dwelling/building dependent bird/bat species development site plan and include details of the numbers of artificial bird nesting boxes and artificial bat roosting sites. The details shall also identify the actual wall and roof elevations into which the above provisions shall be incorporated. The approved artificial bird/bat boxes shall be incorporated into the dwellings during the actual construction phase before the dwelling is first brought into use and retained thereafter.
- 9) No demolition, building or engineering operations within the site or deliveries to and from the site shall take place other than between 07:30 hours and 18:00 hours Monday to Friday and 08:30 hours and 14:00 hours on Saturdays, and not at all on Sundays or Bank Holidays.
- 10) No construction works shall commence until details of the foul drainage scheme have been submitted to and approved in writing by the local planning authority. Foul and surface water shall be drained on separate systems. The dwelling shall not be occupied until the approved foul drainage scheme has been completed to serve that building, in accordance with the approved details. The development shall be completed, maintained and managed in accordance with the approved details.
- 11) Prior to the first occupation of the hereby approved dwellings, all terrace/balcony areas to the rear of both dwellings shall be fitted with a minimum 1.7m high opaque or obscure glazed privacy screens along both side elevations in accordance with details to be submitted to and approved in writing by the local planning authority. The approved screens shall be retained at all times thereafter.
- 12) Prior to the first occupation of the hereby approved dwellings, all ground and first floor windows in the side elevations of Plot 1 and the south elevation of Plot 2 shall all be fitted with obscure glazing (which shall have an obscurity rating of not less than 4 on the Pilkington glass obscurity rating or equivalent scale) and shall be non-opening, unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. The windows shall be retained as such in perpetuity.
- 13) No development shall take place until all the existing trees within, or directly adjacent, to the site (except those shown to be removed on the approved plans), have been enclosed with temporary protective fencing in accordance with BS 5837: 2012 Trees in relation to design, demolition and construction – Recommendations. The fencing shall be retained during the period of construction and no work, excavation, tipping, or stacking/storage of materials shall take place within such protective fencing during the construction period.
- 14) Details of any external lighting shall be submitted to and approved in writing by the local planning authority prior to its installation. Only the approved lighting shall be installed.

- 15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

- Timing of delivery of all off site highway works
- The parking of vehicles of site operatives and visitors
- The loading and unloading of plant and materials
- The storage of plant and materials used in constructing the development
- The erection and maintenance of security hoarding
- Wheel washing facilities and road sweeper
- Details of working hours
- Contact details for the site manager
- Periods when plant and materials trips should not be made to and from the site (mainly peak hours but the developer to identify times when trips of this nature should not be made)
- Routes to be used by vehicles carrying plant and materials to and from the site
- Measures to ensure that construction and delivery vehicles do not impede access to adjoining properties.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.