



Appeal Decision

Site visit made on 31 October 2016

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 15th December 2016

Appeal Ref: APP/P1805/W/16/3156565

Lyndell, Bell Green Lane, Wythall, Worcestershire B38 0DJ

- 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 Declan Keane against the decision of Bromsgrove District Council.
 - The application Ref 15/1084, dated 24 December 2015, was refused by notice dated 17 February 2016.
 - The development proposed is demolition of existing buildings and erection of new dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of a new dwelling at Lyndell, Bell Green Lane, Wythall, Worcestershire B38 0DJ in accordance with the terms of the application Ref 15/1084, dated 24 December 2015, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The parties have submitted a Statement of Common Ground (the SCG). This contains updated information in respect of the sizes of buildings and the distances between them.
3. The SCG also includes a copy of the planning permission for development on the appeal site comprising a bungalow granted in 1966 (the 1966 permission) Ref BR/893/65 with an accompanying plan. The existing bungalow is similar to that shown on the 1966 application plan, other than the then motor garage is shown now as living accommodation and a dressing room extension has been added. The 1966 site layout plan also depicts a Cottage, annotated as "to be demolished" and a stable on the boundary, which is not shown on the current appeal plans and which did not exist on the appeal site at the time of my visit.

Main Issues

4. I consider the main issues are whether or not the proposal would be inappropriate development in the Green Belt; the effect of the proposal on the openness of the Green Belt and, if the development is inappropriate, whether the 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 necessary to justify the development.

Reasons

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for
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planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this appeal the development plan is the Bromsgrove District Local Plan 2004 (the LP) as long as the Saved Policies are consistent with the National Planning Policy Framework (the Framework). Weight can also be given to the emerging Bromsgrove District Plan 2011–2030 (the BDP) as the consultation period on the Main Modifications recommended by the Examining Inspector published in July 2016 (the MMs) has now ended.

6. The site is in the West Midlands Green Belt. The Framework is a material consideration. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Of the five stated purposes the most relevant purpose in relation to this appeal is to assist in safeguarding the countryside from encroachment.
7. Policy DS13 of the LP seeks to protect the character of the area including, amongst other things, the Green Belt. Policy DS2 of the LP provides for the replacement of existing dwellings subject to the provisions of Policy S12. Policy S12 requires a replacement to be of a similar scale and character to the original dwelling and says a replacement that is significantly larger than the original dwelling, taking into account volume and/or floor area, may not be acceptable. There is no indication in any of these policies as to whether outbuildings should be taken into account when considering a proposal for a replacement dwelling in the Green Belt. The Council considers paragraph 89 of the Framework to be more up to date. This says that, other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. The replacement of a building, provided the new building is in the same use and is not materially larger than the one it replaces, is one of the listed exceptions at bullet point 4.
8. A comparison of size is necessary to establish whether a proposed building is materially larger¹. The appeal site contains a roughly T-shaped single storey bungalow and three outbuildings. The outbuildings are: a stable/store some 3.8m from the bungalow; a double garage some 10.85m from the bungalow and a small green house some 7.3m from the bungalow. The proposed development would include the removal of all the buildings on the appeal site and the proposed building would contain garaging. The parties do not agree whether the removal of the outbuildings should be taken into account in assessing size.
9. The Council cites the Budhdeo² case, where the Inspector considered that the removal of outbuildings should not be taken into account as they did not form part of the 'original' dwelling and could be replaced under permitted development rights³. I do not have all the information that was before my colleague Inspector and I have no information about the proximity of the outbuildings in that case to the original dwelling. However, that Inspector in accepting the Council's calculation did, it seems to me, include the existing garage when making his assessment of the increase in size. Also, in my view, it would be possible to remove permitted development rights by planning condition and to require the removal of any extensions or outbuildings that had

¹ The Queen on the Application of Heath and Hampstead Society and Messrs Alex and Thalys Vlachos and London Borough of Camden [2008] EWCA Civ 193

² Shamir Budhdeo & Kalpna Budhdeo v Secretary of State, Harrow Council, 11 January 2016

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

been constructed on the site between the grant of planning permission and the commencement of development of a replacement building.

10. In the Tandridge⁴ case, referred to by the appellant, it was held that, notwithstanding the precise wording of bullet point 4 of Paragraph 89 of the Framework, there is no reason why the principle of redevelopment should not apply to a group of buildings being replaced by one. It was a matter of judgement for the Inspector. It seems to me that the question of whether “a building” could be read as excluding more than one building in all cases was not specifically addressed in the Budhdeo case.
11. In relation to the development which is the subject of the appeal before me, the outbuildings within the site are domestic in scale, are part of the same planning unit and are ancillary to the residential use of the existing dwelling. I recognise that the existing garage is some 11m from the dwelling. However, all the buildings are grouped around the driveway. In my judgement, for the reasons set out above, I consider that in this case the loss of the outbuildings and the dwelling, and their replacement by a single appropriately sized dwelling, would not be at odds with the fundamental aim of Green Belt policy, which is to keep land permanently open. I also see no reason why the greenhouse should not be included, although due to its small size it makes comparatively little difference in the calculations.
12. External measurements are appropriate as an expression of the size of a building in the environment. However, the parties do not agree on the measurements for the proposed dwelling.
13. The Council calculates the proposed floor area as about 411.7 m² compared to the appellant’s figure of 346.6 m². Using the Council’s figures, the proposed dwelling would be some 32.7% larger in floor area than the combined floor area of the existing buildings on the appeal site but the overall footprint would be less at 273.8 m² compared to the combined footprints of the existing buildings which total some 319.7 m². On this basis I consider the floor area of the proposed dwelling would not be materially larger than the combined floor area of all the buildings.
14. The parties agree the volume of the combined buildings as about 1054 m³ and the appellant calculates the volume of the proposed dwelling would be about 1111 m³. The Council has been unable to provide a comparable calculation, but considers the volume of the proposed building would be higher. Even were this to be the case it seems to me that by volume the proposed dwelling would be unlikely to be materially larger than the combined volume of the existing buildings on the appeal site.
15. Following Tandridge, the exercise should not merely be an arithmetical one. The proposed building would be part single and part two storey, with a mono pitched roof over part and flat roofs over the remainder. At its highest point, the mono pitched roof would be about 1.35m higher than the ridge of the existing bungalow. However, the proposed building would be set below existing ground level so that there would be a perceived height increase of only about 0.2m as seen from the bridleway adjacent to the site. Part of the existing bungalow has a flat roof, but mainly it is a combination of pitched and

⁴ Tandridge District Council v Secretary of State for Communities and Local Government [2015] EWHC 2503 (Admin)

- hipped roofs. In my view, the proposed building would appear less bulky than the existing bungalow and buildings even though accommodation would be provided in part over two floors whereas the existing dwelling is single storey.
16. I acknowledge the Council's view that no outbuildings should be taken into account and that on that basis the increase in floor space would be about 92%. However, for the reasons set out above I consider it appropriate to take account of all the buildings on the site. Moreover, the effect on openness would be offset by the removal of the other buildings and as the proposed building would be dug in to the existing ground level.
 17. Paragraph 90 of the Framework says that certain other forms of development, including engineering operations, are not inappropriate development provided they preserve the openness of the Green Belt. The excavation works/creation of gabions would amount to an engineering operation. However, the gabions would be about 700 mm high and the excavated material would be distributed over the adjacent paddock raising levels by about 50 mm. I conclude that neither of these operations would be significant in appearance and the openness of the Green Belt would be preserved. Accordingly the engineering operations would not be inappropriate development in the Green Belt.
 18. Pulling together all the above points I conclude, on balance, that the proposed building would not be materially larger than the buildings being replaced and that the proposal as a whole would therefore not be inappropriate development in the Green Belt. Accordingly it would not undermine the openness of the Green Belt or the purposes of including land within it.
 19. The appellant asserts that the appeal site also falls within the definition of previously developed land in the Framework and as held in the Dartford⁵ case. On that basis, it is suggested that the proposal could also fall within the parameters of the second part of bullet point 6 of Paragraph 89 of the Framework. Even were I to agree that was the correct approach, the outcome would be the same, since I have found that the proposed development would not have a greater impact on the openness of the Green Belt.
 20. The appeal site is in the countryside and there are open fields around it. The existing dwelling is largely hidden from public view, although parts can be seen from the adjacent bridleway. The proposed mono pitched roof is not a traditional feature in the locality. However, it would not be prominent in the landscape and the proposed design includes sedum roofs which would soften the built form. Overall I find no harm in terms of the design and appearance of the proposed dwelling and therefore no conflict with the development plan or the Framework which require, amongst other things, that new development should respect the local character of the area.
 21. For the above reasons I conclude that the proposed development would not conflict with Policies DS13, DS2 or S12 of the LP, Policy BDP4.4 of the emerging BDP or the principles of the Framework. As I have found that the proposal is not inappropriate development in the Green Belt it is not necessary for me to consider whether there are very special circumstances necessary to justify it.

⁵ Dartford Borough Council v Secretary of State for Communities & Local Government (CO/4129/2015)

22. The accompanying text to Policy BDP4.4(c) of the emerging BDP has been amended to omit reference to curtilage buildings being within 5m of the original dwelling (MM27). As this relates to extensions to buildings it has not led me to any different conclusion in relation to the appeal before me.

Conclusions and Conditions

23. For the reasons set out above, and taking into account all other relevant matters raised I conclude that the appeal should succeed.
24. I have considered the conditions proposed by the Council. Where appropriate I have amended them in the light of the Framework and the Planning Practice Guidance. As well as the standard condition specifying the time limits for commencement of development, compliance with the approved plans is necessary to provide certainty. Materials, landscape and tree protection conditions are necessary in the interests of character and appearance.
25. The appellant has indicated a willingness to surrender permitted development rights and this is necessary in the interests of continued preservation of the openness of the Green Belt. For the same reason, I am also imposing a condition relating to the demolition of the existing buildings on the site. Given that this demolition is an integral part of the appeal proposal and is outlined on the relevant plans, I do not consider that any party would be prejudiced by its imposition. I am also imposing a condition requiring the removal of any curtilage buildings which may be constructed on the site under permitted development rights prior to commencement of the development hereby permitted to protect the openness of the Green Belt.
26. In the interests of protected species, the recommendations in the Ecological Appraisal should be implemented although it is not necessary to list these in detail in the schedule. Appropriate parking and turning space is required within the site to ensure that the adjacent access and bridleway are not obstructed.

SDHarley

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/ Drawings:
 - DHK/15/BGL/004 Illustrative Artistic Impression
 - DHK/15/BGL/002 House Type: Design Plans and Elevations
 - DHK/15/BGL/003 Proposed Side Elevations
 - DHK/15/BGL/001 General Arrangement Drawing
 - DHK.15.LHH.GB.001 and DHK.15.LHH.EB.003 Existing Building Details – All to be demolished.
- 3) No development shall take place until details/samples of the materials to be used in the construction of the external surfaces of the building 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 of the dwelling hereby permitted shall commence until the existing dwelling, stable/store, double garage and green house, as shown on plans DHK.15.LHH.GB.001 and DHK.15.LHH.EB.003, together with any other buildings constructed under the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order) have been demolished.
- 5) The dwelling hereby permitted shall not be occupied until works have been completed in strict accordance with the recommendations set out in the Ecological Appraisal dated May 2015 by Guma LTD.
- 6) The dwelling hereby permitted shall not be occupied until works have been completed in accordance with the recommendations of the Lockhart Garratt Arboricultural Report reference 15-0941 4278 01, version 3, dated December 2015.
- 7) Any area of the proposed driveway that falls within the BS5837:2012 recommended Root Protection Area of the T1 Oak tree and section G15 must be installed and constructed using a suitable grade of Cellular No Dig ground support material and method of construction.
- 8) Prior to the commencement of works on site, including site clearance, demolition, excavations or the importing of machinery or materials, an Arboricultural Method Statement or similar detailed schedule of tree protection works, including a plan showing the routes and specification of any ground installed utility services, in accordance with British Standard BS5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be maintained as detailed until all development has been completed.
- 9) Before the commencement on site of any works which are the subject of this permission, a scheme of landscaping and planting shall be submitted to, and approved by the Local Planning Authority in writing. The scheme shall include the following:-
 - a) full details of all existing physical and landscape features on the site including the position, species and spread of all trees and major shrubs clearly distinguishing between those features to be retained and those to be removed;
 - b) full details of all proposed fencing, screen walls, hedges, hard surfacing, earth moulding, tree and shrub planting where appropriate. This should include a mixture of native and non-native species to provide feed and nectar opportunities throughout the year.

The approved landscaping and planting shall be carried out within the first planting season following substantial completion of the dwelling or prior to the first occupation of the dwelling whichever is the earlier.

Any trees/shrubs/hedges removed, dying, being severely damaged or becoming seriously diseased within 5 years of the date of the original planting shall be replaced in the next planting season by plants of similar size and species to those originally planted.

- 10) No development shall take place until a scheme for the provision of turning facilities, vehicle parking spaces and bicycle storage within the site has been submitted to and approved in writing by the local planning authority. The dwelling hereby permitted shall not be occupied until the approved scheme has been implemented. The approved turning and parking spaces and bicycle storage shall be reserved solely for vehicles and bicycles in connection with the use of the dwelling house.
- 11) The development hereby permitted shall not be brought into use until the turning area and parking facilities shown on the approved plan have been properly consolidated, surfaced, and drained.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order) no development included within Schedule 2, Part 1, Classes A to E shall be carried out on the site without the prior written permission of the local planning authority.

.....END OF CONDITIONS SCHEDULE.....