
Appeal Decision

Site visit made on 23 October 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 15th November 2017

Appeal Ref: APP/P1805/W/17/3180045

Westfield House, Packhorse Lane, Hollywood, Wythall B47 5DQ

- 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 Derek Kilminster against the decision of Bromsgrove District Council.
 - The application Ref 17/00364/FUL, dated 4 April 2017, was refused by notice dated 12 June 2017.
 - The development proposed is a new dwelling in side garden.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal is inappropriate development in the Green Belt having regard to relevant development plan and national planning policies, taking into account the effect on the openness of the Green Belt and the purposes of including land within it;
 - The effect of the development on biodiversity; and
 - If the development would be inappropriate development, 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

Inappropriate Development, Openness and Green Belt Purposes

3. 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 or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), 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*. Policy BDP4 of the Bromsgrove District Plan (the LP)

2017 similarly seeks to prevent new buildings within the Green Belt in line with the Framework.

4. The appellant argues that whilst the Framework and the LP allow limited infilling in villages, the final bullet point of paragraph 89 of the Framework and Policy BDP4.4 (g) allow a more generalised form of infill development. However, unlike limited infilling in villages, this more generalised infilling must satisfy a two-step test. First it must be considered infill development, and then secondly, it must not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
5. There is no definition of limited infilling in the Framework. Furthermore, there is no evidence to suggest there is such a definition in the development plan. Accordingly, I have based my assessment on the evidence before me and my own observations. The appeal site forms part of the extensive garden associated with Westfield House. The plot is set between Westfield House and Jasmine Cottage and currently comprises a large lawned area and contains a number of trees and shrubs. Packhorse Lane comprises a number of properties within the vicinity of the appeal site. Properties are sporadically positioned along both sides of the Lane with generous spacing between them and range greatly in their size and style. In my experience, infilling typically involves a plot that lies within a built up frontage of a number of properties. Whilst the appeal site does sit between two existing properties, I do not consider that they represent a built up frontage. Accordingly, I do not consider that the site represents infill development as envisaged by Policy BDP4 of the LP or the Framework.
6. Notwithstanding my finding that the site does not represent infill development, Policy BDP4 and the Framework also permit the partial or complete redevelopment of previously developed sites. The appeal site is currently a garden in a non-built-up area and as such, in accordance with the Framework, it is previously developed land and therefore satisfies the first test of the final bullet point of paragraph 89 of the Framework and Policy BDP4.4 (g).
7. Therefore, in order to be satisfied that the proposal is not inappropriate development in the Green Belt, the second test – *...whether the proposal would have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development* – must be met.
8. The Framework indicates that openness is an essential characteristic of the Green Belt with a key objective being to keep land permanently open. 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.
9. The proposed dwelling would be a large, two-storey detached property. Whilst large, it would be in keeping with the neighbouring substantial properties, which vary in terms of their design and size. Existing vegetation on the boundary with the adjacent road would assist in partially screening the dwelling from public view, which could be enhanced with additional planting. Overall, I do not find that the proposal would represent a visually intrusive form of development.
10. Despite my finding that no visual harm arises from the development, the erosion of three-dimensional space arising from the overall size of the dwelling

and the introduction of built form where there is currently none would in itself result in an erosion of openness, which would conflict with paragraph 79 of the Framework which identifies openness as an essential characteristic of Green Belts. Accordingly, I attribute significant weight to the effect it would have on openness.

11. I note the appellant's argument that whilst the proposal would have some impact on the openness of the Green Belt this must be viewed in the context of the character of the surroundings. I have found that the proposal would not be visually intrusive and it would be in keeping with the surrounding built form. However, as I have referred to above, openness is both visual and spatial. As a result of the erosion of the spatial aspect of openness, this in itself would significantly harm the Green Belt.
12. The addition of the dwelling on what was previously garden land would introduce a built form where there was previously none. I acknowledge that the garden is in domestic use associated with the existing dwelling. However, there is no evidence before me that the site is within a settlement as defined in the development plan. Accordingly, it is considered to be open countryside for the purposes of planning. The addition of the dwelling would intensify the existing built form of the locality and represent an encroachment into the countryside.
13. Consequently, it would fail to preserve the openness of the Green Belt and conflict with the purposes of including land within it, in particular safeguarding the countryside from encroachment. Therefore, the proposal would fail the second test.
14. I find therefore that the proposal does not satisfy any of the exceptions set out in Policy BDP4 of the LP or paragraphs 89 of the Framework. I find therefore that it is inappropriate development, which, by its very definition, is harmful to the Green Belt and should not be approved except in very special circumstances¹. It would also conflict with Policy BDP1 of the LP, which highlights the importance of land designated as Green Belt.
15. In their reasons for refusal, the Council have also cited Policy BDP9 of the LP. The proposal is not for a rural exceptions site and as such I do not consider this policy to be relevant. In addition, they have also cited Policy BDP15. However, based on the evidence before me, there is no indication as to how this policy relates to the erection of a dwelling in the Green Belt. Accordingly, I find that this policy is also not relevant.

Biodiversity

16. Paragraph 99 of Circular 06/2005 'Biodiversity and Geological Conservation-statutory obligations and their impact within the planning system' ODPM states that developers should not be required to carry out surveys for protected species unless there is a reasonable likelihood of the species being present and affected by development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted.

¹ Paragraph 87 of the Framework

17. The Council states that the site is a rural location with a number of trees within it and as such a Preliminary Ecological Appraisal was sought from the appellant to assess the effects of the proposal on protected species. The appellant asserts that any necessary surveys can be conditioned. However, as there are a number of trees on site which the dwelling would be within proximity of I consider that there is a reasonable likelihood of protected species being present and affected by the proposal.
18. I find therefore that in the absence of an ecological assessment it is not possible to ascertain the effect the dwelling would have on protected species. Therefore, the proposal would fail to comply with Policy BDP21 of the LP and paragraph 118 of the Framework, which seek to protect and enhance biodiversity.

Other Considerations

19. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from inappropriate development in the Green Belt, the erosion of openness and the conflict with the purposes of including land within it so as to provide the very special circumstances required to justify a grant of planning permission.
20. The appellant argues that the site forms part of the curtilage of Westfield House and therefore buildings could be erected on the site under permitted development rights. Whilst this may be the case, there is no evidence before me to indicate that any such buildings would have a greater impact on the openness of the Green Belt than the proposed dwelling. Accordingly, I attribute this matter limited weight.
21. I note that the site is in the ownership of the appellant and he confirms that the site can be developed without delay. I have had regard to the Council's housing requirement of providing 7000 new homes over the plan period up to 2030. Whilst the proposal may be able to be developed quickly, there is no evidence to suggest that the Council is not on track to meet its housing target. In any event, the provision of a single dwelling would have a very limited effect on the housing supply, even when considering the Council's commitment to assisting Birmingham meeting its requirements. Nevertheless, it still weighs in favour of the proposal.
22. However, I find that these matters, individually or cumulatively, do not amount to the very special circumstances required to clearly outweigh the harm to the Green Belt.

Conclusion

23. The appeal scheme has harmful implications for the Green Belt in terms of inappropriate development, the erosion of the openness of the Green Belt and the conflict with the purpose of including land within it. In accordance with national policy, such harm carries substantial weight, which the other considerations put forward by the appellant do not clearly outweigh. Consequently, the very special circumstances necessary to justify the

development do not exist. Furthermore, it has potentially harmful implications on biodiversity and protected species.

24. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR