The Planning Inspectorate

Appeal Decision

Site visit made on 29 May 2019

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 26th July 2019

Appeal Ref: APP/P3420/W/19/3223984

The Brackens, Leycett Lane, Leycett, Newcastle Under Lyme CW3 9LS

- 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 Clive Trevor against the decision of Newcastle Under Lyme Borough Council.
- The application, ref. 18/00444/FUL, dated 8 June 2018, was refused by notice dated 2 November 2018.
- The development proposed is a detached dwelling to replace an existing workshop and storage buildings.

Decision

1. The appeal is allowed and planning permission is granted for a detached dwelling to replace an existing workshop and storage buildings; at The Brackens, Leycett Lane, Leycett, Newcastle Under Lyme CW3 9LS, in accordance with the terms of the application, Ref: 18/00444/FUL, dated 8 June 2018 subject to the conditions attached as an appendix to this Decision.

Preliminary Matters

2. Since the application was determined, a revised National Planning Policy Framework (the Framework) was issued in February 2019 and any references to the Framework within my decision are made according to this most recent version.

3. The Council advised via letter dated 3 April 2019 that it would not be advancing any evidence to support Reason for Refusal No3 which seeks provision of planning obligations for open space and that it wished to withdraw this reason for refusal. I have therefore made my decision on this basis.

4. I note that the Council has made comment at Paragraph 7.8 of their Statement of Case that during the determination of the application, the proposed dwelling was stated in the Officer Report as having a volume of 553m3. This was noted by the Council to be an error and that the actual volume proposed is 412m3. I have made my decision on this basis.

5. I note the submission of a signed declaration[1] which was sent as part of the appeal documents which provides further information regarding the history and use of the buildings on the appeal site. The document does not result in any changes to the scheme, and provides further clarification of the use which is part of one of the main matters for discussion. I find that the acceptance of this further information would be appropriate and not deprive those who should have been consulted or the opportunity of such consultation in accordance with the 'Wheatcroft Principles,.'[2] As such, I will accept this further information and will base my decision upon it.

Main issues

6. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and
- Whether the proposal would provide a suitable location for development, having regard to the housing strategy of the development plan and the sustainability of the site.

Reasons

Whether the proposal is inappropriate

7. Paragraph 145 of the Framework states that the construction of new buildings within the Green Belt should be regarded as inappropriate, unless the development falls within certain listed exceptions. The relevant exception which is sought to be applied to the appeal site in this case is of partial or complete redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt than the existing development.

8. I note that the Council have Policy S3 of the Newcastle Upon Lyme Local Plan 2011 (LP) which is not consistent with the Framework in that there is no exemption to development in the green belt with regards to previously developed land as described previously. In accordance with Paragraph 213 of the Framework I afford Policy S3 limited weight in this appeal decision.

9. The appeal site consists of three main buildings; a large timber clad building with pitched and gabled roof, a smaller and shorter timber clad building with lean-to roof and a stable block to the rear. The buildings are currently utilised for storage of domestic and commercial items. According to the appellant, the current buildings have a volume of 419m3, a footprint of 137m2 and an internal area of 119m2.

10. A letter from an accountant[3] who represents the appellant for their tax affairs; confirms that it has for the past 8 years been utilised as commercial storage for two businesses: Clive Trevor Heating and Plumbing Engineer; and Ablebathe. The declaration states that prior to the appellant owning the site, that the buildings were used by a company called HG Moors in association with the

[1] Declaration RE: The Brackens, signed by Dora Moores, Dated 19/2/2019
[2] Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]
[3] N.A.Slack Accountants, 10 August 2018, Ref:NAS/AS/T27

storage of plant machinery, repairs and vehicle repair, from the late 1960's. Based upon the evidence before me, the appeal site in my opinion would meet the definition of 'Previously Developed Land' as defined by the Framework. The Framework at 145 (g) then requires an assessment of the impact and harm caused to the openness of the Green Belt.

11. Paragraph 133 of the Framework says 'the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence.' Whilst there is no definition of 'openness' in the Framework, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development.

12. The proposed dwelling would be one and a half storeys, with first floor accommodation in the roof space and be positioned in place of the existing larger barn and would have a rectangular footprint. The volume of the site would be consolidated into the proposed dwelling, with overall a reduction in the amount of built form with the existing smaller barn and stable block removed. Whilst the proposed building would be 80 centimetres taller than the existing barn, the resultant volume of the proposed scheme would be lower at 412m3, a footprint of 119Sqm, and an internal area of 85m3.

13. Openness has been shown to have both spatial and visual dimensions. In this particular case, the scale of development would be less with a noticeable difference in the amount of built form with development concentrated on one building which allows two barns to be removed which will allow a greater open aspect. Whilst the increase in residential paraphernalia as would be typical with a dwelling would be increased, the dwelling is relatively contained amongst existing vegetation, is of an appropriate purpose and is an appropriate low-built form, design, use and scale for this particular context. In this particular circumstance the proposed scheme would preserve the level of openness currently experienced.

14. That said, in my opinion the scheme represents the development of previously developed land that would not have a greater impact to the openness of the Green Belt and therefore have 'no harm.' As such the proposed scheme would not be inappropriate development in the Green Belt.

Suitability of the site for development

15. The Council's Housing Strategy consists of Policy H1 of the Newcastle under Lyme Local Plan 2011 (LP), and Policies SP1 and ASP6 of the Newcastle under Lyme and Stoke on Trent Core Spatial Strategy 2009 (CS). The housing strategy seeks that most new dwellings are located within defined settlement boundaries in accordance with a settlement hierarchy.

16. The Council draw my attention to the weight given to housing strategy policies via the engagement of Paragraph 11 of the Framework and two appeal decisions[4] due to the Local Plan policies being significantly out of date. In these decisions, the Inspectors afforded little weight to Policies AP6 and H1 of the LP in relation to the housing delivery, supply, and the location of settlement boundaries and have instead applied the general thrust of sustainable development as noted in the Framework. This is to locate new development

[4] Appeal Refs: APP/P3420/W/18/3215969 & APP/P3420/W/18/3199376

towards settlements with a range of facilities and access to public transport. Given that in this circumstance, the green belt designation does not provide a clear reason for refusing this development, I have no reason to divert from such an approach as previously undertaken by other Inspectors, and accordingly afford little weight to Policies AP6 of the CS and H1 of the Local Plan in terms of settlement boundaries and supply. However I give substantial weight to the general thrust of sustainable development as this component of these policies are in accordance with the Framework which seeks the development of sites in sustainable locations.

17. Paragraph 78 of the Framework and relevant Case Law[5] shows that development in countryside locations can enhance or maintain the vitality of rural communities where they are suitably located, which may not only be associated with the closest settlement, but other settlements surrounding. The nearest settlement to the appeal site is Madeley Heath, approximately 300metres away and a little further on, Madeley, which is a Key Service Village which is connected to Madeley Heath by footway and lies approximately 1800 metres away. Madeley Heath contains public houses, a school, and the appeal site would be approximately 300 metres from the nearest bus stop which has half hourly services to Crewe, Hanley, Newcastle Under Lyme and Nantwich. The nearby Key Service Centre of Madeley contains a greater variety of services and facilities such as a supermarket and contains a small parade of shops and restaurants.

18. Whilst the appeal site is physically detached from the built form of Madeley Heath, the appeal site has a short median along Leycett Road which connects to a footway that has reasonable accessibility to the nearby villages. Future occupants would have alternative means of transport such as public transport, walking and cycling and not be solely reliant on a private vehicle. The development of the appeal site would be an accessible location and maintain the vitality of rural communities and based on this particular circumstance, would weigh in favour of the site being an appropriate location for development.

19. Given the above factors, in relation to the housing strategy, I conclude that the proposed development would make sufficient use of previously developed land in a reasonably accessible location which would be in line with the Framework and the general thrust of Policies H1 of the LP and ASP6 of the CS for delivering sustainable development in appropriate locations.

Other Matters

20. I note comments from neighbouring residents regarding the proposed development being constructed for profit. This is not a planning matter and has not been taken into account in the determination of this scheme.

21. I also note comments with regards to the development setting a precedent for other properties. Each planning application and appeal is judged upon its own merits, and the granting of this consent is based upon the evidence submitted and should not result in a precedent being set.

[5] Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610

22. An Aboricultural Tree Survey[6] was submitted with the application which notes that there are ten individual mature trees, three small groups and one hedgerow relevant to the appeal site. It is stated that all of the trees can be retained as a result of the development, with suggestions made for sufficient tree protection measures during the development. This is considered appropriate.

23. Whilst the Coal Mining Authority have withdrawn their initial objection, they expressed that the site may require remedial works as a result of past mining activities in the area. This is able to be satisfied via condition and as such these concerns can be adequately addressed.

Conclusions and Conditions

24. In conclusion, the appeal proposal is not considered to be inappropriate development in the Green Belt and would result in the redevelopment of previously developed land which does not cause harm to the openness of the Green Belt and is within a reasonably accessible location in close proximity to the nearby settlement of Madeley Heath and Madeley. This would be consistent with the general thrust of the housing strategy and the policies of the Framework.

25. For these reasons, and having considered all matters raised in evidence and from what I saw during my site visit, I conclude that the appeal should be allowed and planning permission granted, subject to the conditions as detailed in the annex accompanying this decision.

26. I refer to the conditions specified by the Council in their Statement of Case if the appeal was to be allowed and have considered them in accordance with the Planning Practice Guidance (PPG). It is noted that each of the proposed pre-commencement conditions were agreed with the Agent for the Appellant in reply to a Regulation 2(4) Notice of The Town and Country Planning (Pre-commencement Conditions) Regulations 2018 which was issued by the Planning Inspectorate on 15 July 2019 and responded by the Agent for the Appellant by email dated the 15 July 2019. I consider these pre-commencement and pre-occupation conditions necessary, except where specified below.

27. Suggested conditions Nos1 and 2 specify the time frame and approved plans which are necessary for the avoidance of doubt and in the interests of proper planning.

28. Suggested condition No3 relates to the submission of external materials for approval. This condition is considered necessary in order for the scheme to blend consistently into the character of the area.

29. Suggested Condition No4 relates to further details being given with regards to the proposed boundary treatment. Given the rural location, it is necessary for such a condition to allow a sympathetic boundary treatment is undertaken which meets Highways Regulations as well as be appropriate for its local context.

30. Suggested Condition No5 relates to the submission of a contract phase tree protection and aboricultural impact assessment, which was a recommendation of the aboricultural report. This report is considered necessary and to be of a pre-commencement condition given methods of protecting trees and the

[6] BS5837 Aboricultural Tree Survey 2018, By N&J Tree Service Limited

implementation of such measures are essential to be implemented before development commences.

31. Suggested Condition No6 relates to a landscaping scheme to be submitted for approval which is necessary to enable the development to blend into the local context.

32. Suggested Condition No7 relates to the access needing to be taken from the existing access which runs off a shared access which leads onto Leycett Lane. This access is shown on the approved block plan (SK03) and any diversion from this would require planning consent. As such, I do not consider this condition necessary and as such, this condition is deleted.

33. Suggested Condition No8 relates to the provision of an electric charging point for a vehicle. This would be necessary and in accordance with the Framework which seeks to promote the use of renewable energy and technologies in new development.

34. Suggested Condition No9 relates to the hours of operation of the site which is necessary and in the interests of neighbouring amenity.

35. Suggested Condition No10 relates to the erection of bird and bat boxes. Given there has been no discussion with regards to the impact upon the ecology or biodiversity of the appeal site, I am not convinced that the requirement to place bat and bird boxes would be necessary. As such, this condition is deleted.

36. Suggested Condition No 11 repeats Condition No 12 and is therefore not necessary and is deleted.

37. Suggested Condition No12 relates to a Scheme of Intrusive Site Investigations for Coal Mining as suggested by the Coal Mining Authority. This is necessary to be undertaken and is necessary to be a pre-commencement condition given that this information is needed prior to the commencement of works on site in order to agree any mitigatory works, if needed.

38. Suggested Condition No13 relates to a site investigation into land contamination. Given the existing commercial use of the site, and the proposed residential use, this condition is considered necessary and necessary for a pre-commencement condition given the need to undertake these investigations before the commencement of the development.

39. Suggested Condition No14 runs from No13 in the case of there being found to be contamination, that sufficient implementation of the land contamination report recommendations can be undertaken.

J Somers

INSPECTOR

Annex: Schedule of Conditions

Included within the list is condition 7as recommended by the Highway Authority because of concerns about an additional dwelling using this access. Subject to this condition the appeal proposal is unlikely to lead to any significant highway safety implications

1. The development must be begun not later than the expiration of three years beginning with the date of this permission.

2. The development hereby permitted shall be carried out in accordance with the following approved plans submitted with the application:-
- Drawing no. SK03 rev C – Block Plan
- Drawing no. SK05 rev B – Site Sections Existing and Proposed
- Drawing no. SK06 rev B – Floor Plans and Elevations as proposed

3. Above slab-level construction of the dwellinghouse hereby approved shall not be commenced until full and precise details of the facing and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved details.

4. Prior to the occupation of the dwellinghouse hereby approved full and precise details (height and appearance) of the proposed boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved details.

5. Prior to the commencement of the development a contract phase Tree Protection Plan and Arboricultural Impact Assessment to BS5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

6. Prior to the occupation of any of the dwellings hereby approved, full and precise details of a soft landscaping scheme for the site (including tree retention and replacement tree planting) shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding season after completion of the development, or within 18 months of the commencement of the development, whichever is the sooner and any trees or 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 a similar size and species unless the Local Planning Authority gives written consent to any variation.

7. At least one of the car parking spaces must be provided with a fully operational dedicated electric vehicle charging point. Charge points shall be a minimum of 32Amp with Type 2 Mennekes connections, Mode 3 (on a dedicated circuit).

8. All demolition and construction works associated with the approved development shall be carried out only between the following hours:
   • 08 00 Hours and 18 00 Hours on Mondays to Fridays
   • 08 00 and 13 00 Hours on Saturdays and; at no time on Sundays and Bank Holidays

9. Prior to the occupation of any of the dwellings hereby permitted an appropriate number of bat and bird boxes shall be erected within the site. A qualified ecologist shall determine the number and location and the boxes. The boxes shall be installed prior to the occupation of all of the dwellings.

10. Prior to the commencement of the construction of any dwelling the following shall have taken place:
    - the Scheme of Intrusive Site Investigation for Coal Mining, as approved under condition 11 above, shall have been carried out in strict accordance with the approved details;
    - a report of findings arising from the intrusive site investigations shall have been submitted to and approved in writing by the Local Planning Authority; and
    - a scheme of remedial works to address the findings of the intrusive site investigations shall have been fully implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.

11. The scope of a site investigation to assess the nature and extent of any land contamination on site shall be submitted to, and approved in writing by, the local planning authority. Site investigation works shall be undertaken by competent persons and in accordance with the requirements of: BS10175 (2011) + A2 (2017) Investigation of Potentially Contaminated Sites - Code of Practice and BS8576 (2013) Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds. The findings of the site investigation shall be used to assess the potential risks from land contamination to: human health, controlled waters, property, ecological systems, archaeological sites and ancient monuments. The development hereby permitted shall not begin until a report of the results of the site investigation works, together with a risk assessment has been submitted to, and approved in writing by, the local planning authority.

12. In the event that contamination is identified under Condition 13 above, the development hereby permitted shall not begin until a detailed remediation scheme to bring the site to a condition suitable for its intended use has been submitted to and approved in writing by the local planning authority. The scheme shall include all remediation works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The remediation works shall be carried out in accordance with the approved details and a verification report which demonstrates its effectiveness shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development.