



Appeal Decisions

Site visit made on 21 August 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 24 December 2019

Appeal Ref: APP/V4630/W/19/3228364

65 Wood Lane, Streetly, Walsall, West Midlands B74 3LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Ian Huskisson against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 17/1384 dated 30 April 2018 sought approval of details pursuant to condition No 3 of an outline planning permission Ref 16/0325 granted on 15 November 2016.
 - The application was refused by notice dated 26 February 2019.
 - The outline planning permission dated the 15 November 2016 relates to "removal of mobile caravan unit, demolition of garage, alterations to residential curtilage and erection of a single dwelling and associated works- Access only for consideration".
 - The details for which approval is sought are: scale, appearance, layout and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. Applications for costs were made by both parties against each other. The costs applications are the subject of separate Decisions.

Procedural Matters

1. A revised National Planning Policy Framework (the Framework) was published in February 2019. However, as any policies that are material to this decision have not fundamentally changed in the Framework, I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.
2. The appeal proposal relates to the refusal of the reserved matters application following the grant of outline permission on the 15 November 2016 with only access approved with matters of scale, appearance, layout and landscaping reserved.

Main Issues

3. The main issues are
 - Whether the proposal is inappropriate development within the Green Belt for the purposes of the Framework and relevant development plan policies

- The effect of the proposal on the openness of the Green Belt
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify development.

Reasons

Whether the proposal is inappropriate development within the Green Belt

4. The appeal site is situated to the north western side of Wood Lane and is made up of a modest wooden mobile home, with a larger garage and storage building to the rear. Access to the appeal site is from a long narrow track between dwellings on Wood Lane. To the south, there are stables, storage buildings and paddocks that use the same track for access. There are open fields to the west, a wood and fields to the north. There are mature trees to particularly to the north of the appeal site.
5. The Framework identifies that the fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. The Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions set out in Paragraph 145 of the Framework.
6. Policy GB1 of the Walsall Site Allocation Document states that inappropriate development as defined in the Framework will not be supported in the Green Belt unless very special circumstances exist which clearly outweigh the potential harm to the Green Belt. The policy is therefore largely consistent with the Framework. Although the Council has referred to a number of other policies in the reasons for refusal, I do not find them particularly relevant and the Council has not referred to them in any other supporting documents.
7. Outline permission was granted in November 2016 for the removal of the existing mobile caravan unit, demolition of block work garage/store alterations to the existing residential curtilage, and erection for a single dwelling and associated works. The modest mobile home is to the front of the appeal site with an oblong shape brick garage behind the mobile home. There are a number of mature trees close to the mobile home.
8. The outline application was considering the principle of development together with access. Although a build zone at 200 square metres was indicated at outline stage, the indicative plan is not listed as an approved plan in the outline permission and a build zone of 200 square metres was therefore not part of the outline planning permission.
9. The exception contained in Paragraph 145 d) of the Framework refers to a replacement building provided the new building is in the same use and not materially larger than the one that it replaces. The appeal proposal is for a 2 storey 4 bedroom detached dwelling. The appeal dwelling would have a main gable roof, twin gable projecting features and a side chimney. The appeal building would be around 18.8 metres wide.
10. The existing buildings are modest in size. The mobile home is side - on to the front of the appeal site and is made up of largely dark wood with a pitched

roof. There are mature tall trees to the side of the mobile home which soften its appearance. The taller garage building is behind the mobile home and is partially screened by it and has a flat corrugated roof and a modest number of windows. The trees to the side of the mobile home also partially screen the garage and there are other trees to the other side of the garage building.

11. The original building volume is around 764m³ if the small extension to the mobile home of around 21m³ is included. The volume of the appeal proposal would be 1046 m³, representing an increase of around 282 metres³. It is not the case that any increase over and above the current volume would automatically be materially larger. However, whilst, the footprint of the appeal proposal is slightly smaller, the overall mass and scale are increased. The appellant refers to a percentage increase of approximately 37% and that the height of the appeal proposal would be around 7.8 metres with the highest part of the existing building being around 5.4 metres. It would be around 18.9 metres wide.
12. The appeal proposal has been reduced in size as the proposed design was originally 9 metres in height and had a footprint of 175 square metres and now has a footprint of around 154 square metres. The appellant considers that any reasonable size of house would be policy compliant but that is not the appropriate test and a presumption in favour of sustainable development does not override the need to assess the appeal proposal in terms of the relevant exception that applies to the appeal proposal in the Green Belt.
13. The appeal dwelling would be a taller single building of greater mass and volume than the existing modest buildings. Whilst the reduction is noted, I do consider having regard to scale, size and percentage increase in volume that the appeal building would be materially larger than the buildings that it would replace.
14. The appellant seeks to rely upon an appeal decision in Kent¹ in support of its argument that a 50% increase should be the threshold and that the appeal proposal percentage proposed is less than 50%. However, the Council has not adopted a percentage increase approach to assess whether or not an appeal proposal and it is not appropriate to simply adopt the policy of another Council. Whilst the appellant considers that there are similarities between the decision and the appeal proposal, each case has to be assessed on its own merits and in the appeal decision, the Inspector found that the proposed dwelling would not be materially larger or taller than that to be replaced, which is not the case here.
15. The appellant considers that the Council's emphasis has been on size rather than scale. However, the Framework test refers to a building not being materially larger and in making that assessment, matters such as scale, mass and size are relevant and the appellant own definition of scale includes height width and length in relation to its surroundings. The increase in volume is relevant as the appeal proposal is within the Green Belt and any new building would need to fall within an exception set out in Paragraph 145 of the Framework in order to not be inappropriate. The outline planning permission accepted the principle of development only and any appeal dwelling has to fall within a relevant exception.

¹ APP/G2245/A/13/2191751

16. For these reasons, the appeal proposal would be inappropriate development, which is, by definition, harmful to the Green Belt.

Openness

17. A fundamental aim of the Green Belt policy in the Framework is to keep land permanently open. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect. Spatially, the replacement of two buildings with a materially larger single building would have a greater impact on openness than the existing buildings. The appellant considers that the proposal would only be visible from his land as he owns land to the west and would not be visually prominent and that this is unusual. However, there is no guarantee that the land and the appeal site will always remain in the same ownership and the scale of the dwelling will inevitably lead to a loss of openness for the reasons stated.
18. I do not consider that a condition requiring replanting would necessarily enhance the openness of the appeal site. I do not agree that an assessment of the treatment of external areas is more important than an assessment of footprint and volume. Whilst, the proposed footprint may be smaller than the existing footprint by 2 square metres, it is not the case that a smaller footprint would automatically increase openness as the increases in volume and mass also has to be considered. The existing buildings do not appear out of place within the site whereas a new larger building would be in contrast to the existing buildings.
19. I consider that the proposal would result in a significant loss of openness which would harm of the Green Belt, undermining the fundamental aim of keeping land permanently open and would impact upon the related Green Belt purpose to assist in safeguarding the countryside from encroachment, contrary to the relevant expectations of the Framework.

Other Considerations

20. The appellant has previously set out a number of matters which he considers to be very special circumstances. I have, however, already considered some of these matters for example in the context of openness.
21. There is no dispute between the parties that a certificate of lawful development has been issued for the existing buildings. However, the issue of a certificate does not affect the assessment of the appeal proposal and is therefore a matter of neutral weight.
22. I have not found that replacing two mismatched buildings with the appeal dwelling would improve the openness of the Green Belt and closing the existing paved area is not significant. I have considered this point with regard to openness and it is a matter of neutral weight.
23. The appellant states that the height of the appeal proposal is less than the existing building and the footprint increase is de minimis. However, the height is not less than the existing buildings and the footprint is said to be smaller by 2 square metres. Nevertheless, footprint in itself is not a determinative matters in assessing the scale of development within the Green Belt. This is a matter of limited weight.

24. The appellant refers to the height of the building being required to meet building regulation requirements as a result of choosing a two storey design. However, matters such as the height, overall width and mass are still matters of choice for the appellant and the appeal dwelling is still required to comply with the Framework and local policy. This is a matter of limited weight.
25. With regard to visibility, I have addressed this issue as part of the assessment of openness. The ownership by the appellant of adjoining land is not relevant to the appeal proposal before me as land ownership can change at any time and the land is outside the appeal site. Whilst the appellant considers that he could apply for a larger building by increasing the size of the application site by demolishing further buildings, that is not the application that is before me. Whilst the appellant refers to this as a fall-back position, no such application has been made and any new application would be subject to the same Green Belt policies and openness assessment. I therefore attach this limited weight.
26. The appellant considers that the existing footprint and size is not inappropriate and therefore that part of the size of the appeal dwelling does not require very special circumstances. However, the Council has indicated that it considers the appeal proposal is inappropriate development, rather than that part of the appeal proposal is not inappropriate. It is not possible to build part of the appeal dwelling. Any assessment of very special circumstances would apply to the whole of the appeal proposal.
27. I have dealt with the increase in volume as part of my assessment of whether or not the appeal proposal is materially larger. The appellant states that a 37% increase is not unreasonable taking into account the design improvements. As the appeal proposal is a new dwelling, it is not clear how there are design improvements when the existing buildings would be demolished. The overall design of the appeal dwelling is linked to the mass and scale issues and I attach limited weight to the design.
28. I have addressed the issue of proposed replanting with regard to openness. However, there is limited detail about how replanting would integrate with the character of the appeal site in the Green Belt. Alterations to the external areas around the appeal proposal by way of replanting are unlikely to increase the openness to such an extent to overcome the scale and mass of the appeal proposal. The appellant has also stated that planting could be carried out whatever the size of the house and I therefore attach limited weight to replanting.

Other Matters

29. Reference is made by the appellant to a planning application for Aldridge Rugby Football Club in 2009 which confirmed that very special circumstances can be applied where a building is materially larger. The principle of applying very special circumstances is not disputed. However, each application will have to be assessed with regard to its own particular merits including its own very special circumstances.
30. The absence of objections to the appeal proposal does not alter my findings. The appellant considers that the Council has not addressed matters of appearance, layout and landscaping and that four out of five reserved matters are agreed. The Council has addressed appearance, layout and landscaping in its delegated report and states that layout and landscaping are acceptable.

With regard to design, the Council has referred to the design with reference to the scale and mass of the proposal which is linked to the Council's reason for refusal but has not advanced a separate reason for refusal on the grounds of design. However, irrespective of the Council's view on the other reserved matters, scale is in dispute between the parties.

Conclusion

31. The Framework indicates that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The appeal proposal would be inappropriate development in the terms set out in the Framework and would lead to a significant loss of openness to the Green Belt. The other considerations before me do not clearly outweigh the harm to the Green Belt, to which substantial weight is to be given. Consequently, very special circumstances do not exist. The appeal proposal would also be contrary to Policy GB1 of the Walsall Site Allocation Document. Therefore, for all the reasons given, I conclude that the appeal should be dismissed.

E Griffin

INSPECTOR