



Appeal Decision

Site visit made on 22 June 2020

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/P1805/W/20/3246758

Land at the rear of 43 Barkers Lane, Wythall B47 6BY

- 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 Les Wilson against the decision of Bromsgrove District Council.
 - The application Ref 19/00951/FUL, dated 9 July 2019, was refused by notice dated 6 November 2019.
 - The development proposed is change of use application to convert a caravan storage area to a caravan park.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the appellant's name from the appeal form rather than the original planning application form because it is more complete. In doing this, I am satisfied that the interests of the parties have not been compromised.

Main Issues

3. The appeal site is located within the Green Belt. Consequently, the main issues are:
 - i) whether the development represents inappropriate development within the Green Belt, having particular regard to openness;
 - ii) the effect on living conditions for future occupants, having regard to the neighbouring dog boarding facilities;
 - iii) whether the proposal should make infrastructure provision, having regard to the requirements of the development plan, and if so, whether such provision would be suitably provided, and if not, the effect of a lack of provision;
 - iv) whether the appeal site is suitable for residential development, having regard to the locational requirements of the development plan; and
 - v) the effect of the proposal on the character and appearance of the surrounding area.

Reasons

Inappropriate development

4. Paragraph 143 of the National Planning Policy Framework (the Framework) confirms that inappropriate development is, by definition, harmful to the Green Belt. Paragraph 145 of the Framework goes on to state that the construction of new buildings should be regarded as inappropriate within the Green Belt. However, exceptions to this include the 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, or would not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area.
5. In the evidence before me, the Council is of the view that because the proposal relates to the stationing of caravans rather than the erection of buildings, the exceptions identified in paragraph 145 are not relevant. Instead, they consider that the proposal represents a material change of use in the land. In this respect, Paragraph 146 of the Framework provides other forms of development which are also not inappropriate in the Green Belt, provided that they preserve its openness and do not conflict with the purposes of including land within it. This includes material changes in the use of land.
6. It is not common ground between the parties which paragraph of the Framework the proposal should be assessed against. However, what is common to both paragraphs identified above, is how development affects openness. Accordingly, I will first turn my attention to this matter in my assessment of the appeal.
7. The appeal site is currently used for the storage of up to 100 caravans. Although this number can be subject to seasonal variation, it is the maximum that can be lawfully stored at the site and based on the evidence before me, there is no requirement for the numbers to adjust with the seasons. Consequently, when considering openness, I am satisfied that my assessment should be made in relation to the upper limit.
8. In its current form, the storage of caravans on the site results in a significant level of site coverage. The caravans are laid out in a manner akin to a surface level car park and I noted on my site visit that there was very little capacity for additional vehicles. This formal and intense layout has an imposing presence when stood within the site and significantly restricts views out. Accordingly, due to the intensity of the site coverage, the site is not an open parcel of land and therefore it fails to contribute to the openness of the Green Belt in which it is located.
9. The proposal would introduce 18 caravans with a domestic layout. The structures would be demonstrably larger than those currently stored on the site but the layout would allow for some space between the buildings. This would have the effect of reducing the overall site coverage in terms of footprint. However, due to the increased size and mass of the structures, and the number proposed, they would not return the site to any semblance of openness. Accordingly, when assessed against the worst-case scenario for the existing storage use, as identified above, I find that the proposal would have a comparable effect on the openness of the Green Belt.

10. As already identified, there is dispute between the parties in relation to which paragraph of the Framework the proposal should be assessed against. However, in light of my findings in relation to openness, I am satisfied that the proposal would comply with both paragraphs 145 and 146. This is because the proposal would not have a greater impact on the openness of the Green Belt and would at least preserve the openness afforded by the site in its current form.
11. Paragraph 146 also requires an assessment against whether the proposal would conflict with the purposes of including the land within the Green Belt. On this point, due to the neutral effect of the proposal, I am satisfied that it would not represent encroachment into the countryside. Moreover, the proposal would not result in the unrestricted sprawl of large built-up areas, would not result in neighbouring towns merging into one another, would not harm the setting and special character of historic towns and would not have an effect on urban regeneration. Accordingly, the proposal would not conflict with the purposes of including the land within the Green Belt.
12. Consequently, for the reasons identified above, I conclude that the proposal would not represent inappropriate development within the Green Belt. It would therefore comply with the Green Belt protection aims of the Framework as well as Policy BDP1 of the Bromsgrove District Plan (2017) (DP) which, amongst other things, promotes the presumption in favour of sustainable development.

Living conditions

13. The appeal site shares a common boundary with an adjacent dog boarding business and the proposed site layout would introduce new dwellings close to the boundary. Accordingly, the Council's advisor on noise considerations states that the proposal would not be compatible due to the noise that can be generated by the adjacent use. This is a concern shared by the operators of the business.
14. Dog kennelling can be a noisy activity and I note the concerns from the Council in this respect. I also note that the existing kennels are already located to the rear of existing residential properties. However, based on the evidence before me, the distance between the new dwellings and the kennels would be significantly less than other existing houses. Accordingly, future residents would be more exposed to any noise generated by the adjacent business.
15. The appellant has drawn my attention to Paragraph 182 of the Framework, specifically the section which states that '*existing business facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established*'. The suggestion being that this would provide some protection for the existing business should planning permission be granted. However, these words are preceded by the statement that '*planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities*'. It is therefore apparent that the Framework strongly advises that proposed uses should be compatible with existing uses to ensure that existing businesses are not subjected to unreasonable restrictions. This is a matter that is echoed in Policy BDP1 of the DP which requires regard to be given to the compatibility with adjoining uses and the impact on residential amenity.

16. The appellant points to the fact that no evidence has been provided to support the claims in relation to noise. No records of complaints have been provided and in addition, no evidence has been submitted to confirm how noise levels are managed by the adjacent business. However, it is not an unreasonable assumption to make that a dog boarding facility is a significant noise-generating use. As a consequence, in light of the requirements of the Framework and DP policy, I consider it appropriate that the Council have taken a cautious approach to protect the activities of the existing business.
17. No evidence has been provided by the appellant in relation to noise surveys to demonstrate that noise levels on the site are appropriate for residential development. On this basis, there can be no certainty that suggestions in relation to mature planting, triple glazing and increased insulation would have the necessary mitigating effect. This is because no baseline has been provided by the appellant against which to mitigate.
18. In the absence of such evidence, and due to the close proximity of the proposed new dwellings, I find that the noise generated by the adjacent dog boarding facility would have a likely significant and demonstrable effect on incoming occupants. This is a matter to which I afford significant weight. Accordingly, I conclude that the proposal would fail to provide suitable living conditions for future occupants. It would therefore fail to comply with Policy BDP1 of the DP which, amongst other things, considers compatibility with adjoining uses and the impact on residential amenity.

Development and infrastructure provision

19. Policy BDP8 of the DP requires that for brownfield sites accommodating less than 200 dwellings, up to 30% affordable housing will be required. Furthermore, based on the evidence before me, the policy does not allow this to be provided through the payment of commuted sums for off-site provision. The reasoned justification for the policy states that there is a significant unmet demand for affordable housing in the district. Accordingly, the provision of affordable housing is a fundamental consideration for new housing proposals.
20. In its current form, the proposal makes no provision for affordable housing. Moreover, there is no mechanism before me to secure such provision. As a consequence, the proposal would fail to contribute towards the significant unmet demand within the district. Based on the evidence before me in relation to demand, this is a significant and demonstrable shortcoming of the proposal. Accordingly, it is a matter to which I attach substantial weight.
21. The Council also state that due to the scale of the proposal, the development would also be required to make contributions towards public open space, refuse and recycling bins, GP practices, as well as necessary monitoring fees. Despite this, I have no specific evidence before me to confirm how these matters comply with the requirements of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). Specifically, this is in relation to whether the contributions are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind. In the absence of compelling evidence on these matters, I am not satisfied that they comply with the requirements of the CIL Regulations. Accordingly, I have not taken them into account in my assessment of the appeal.

22. The appellant has not disputed the need for mitigation. However, as identified above, there is no means to secure this through the appeal. Instead, it has been suggested that a condition could be used to secure the provision of a legal agreement. Despite this, advice within the Planning Practice Guidance (PPG) is quite clear on this matter. This states that such an approach is unlikely to be appropriate in the majority of cases and that only in exceptional circumstances may a negatively worded condition requiring a planning obligation to be entered into before certain development can commence be appropriate. However, the proposal is not a particularly complex development and I have no compelling evidence before me to suggest that delivery would be at serious risk without the use of such a condition. Consequently, the use of a condition to secure the necessary mitigation would be wholly at odds with the advice contained within the PPG.
23. Accordingly, for the reasons identified above, I conclude that the provision of affordable housing in line with the requirements of the development plan is necessary and that this has not been adequately provided for through this appeal. Moreover, a lack of provision would prevent the proposal from helping the district meet its specific affordable housing needs. It would therefore fail to accord with Policies BDP6, BDP8 and BDP25 of the DP which relate to infrastructure provision for new development, including the requirements for affordable housing. This matter attracts significant weight against the proposal.

Location

24. Policy BDP2 of the DP establishes the development hierarchy for the district. It confirms the four main facets to the delivery of housing to meet the needs of the district. Firstly, it confirms that development should be directed to sites which are not in the designated Green Belt. Beyond that, the policy directs housing development to Expansions Sites and Development Sites as identified by the development plan, and, exceptionally, affordable housing in or on the edge of settlements in the Green Belt.
25. As identified above, the proposal would not provide any affordable housing. In addition, it would not accord with the other facets for housing delivery identified within the policy. Accordingly, the proposal would fail to comply with the locational requirements of the local plan.
26. My attention has been drawn to walking distances to bus services and other facilities. This has the effect of making the site relatively accessible and this weighs in favour of the proposal. However, the policy does not make reference to such matters and as a consequence, having regard to the locational requirements of the plan, I conclude that the appeal site would not represent a suitable site for housing. It would therefore fail to comply with Policy BDP2 of the DP which establishes the settlement hierarchy for the district.

Character and appearance

27. The appeal site is located beyond an established row of houses. These properties and their associated gardens have the effect of creating a pleasing suburban environment. However, the appeal site presents a very contrasting appearance. The storage of caravans covers a significant proportion of the site, and whilst the vehicles are individually small, cumulatively, they combine to create a sprawling visual mass. Accordingly, the intense site coverage does not

contribute in a positive manner to the character and appearance of the surrounding area.

28. The proposal would replace the large number of smaller caravans with a smaller number of larger structures. Accordingly, although there would be more space between the structures, the site would still be used in a relatively intense manner. However, the proposal would also introduce a more domestic use onto the site and in this respect, it would be more comparable to the houses which back onto the site. This is a modest betterment that the proposal would bring, to which I attach some limited weight.
29. Consequently, I conclude that the proposal would not harm the character and appearance of the surrounding area. It would therefore accord with Policy BDP1 of the DP which, amongst other things, considers the effect of development on visual amenity.

Planning Balance

30. The Council have confirmed that they do not have a 5 year supply of deliverable housing sites. Consequently, the requirements of Paragraph 11 of the Framework are engaged. This states that where the policies which are most important for determining the application are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
31. In terms of benefits, the proposal would make a modest contribution to the housing supply in the district in a broadly sustainable location. In addition, due to its domestic nature, the proposal would make a modest visual improvement to the character and appearance of the area. However, these are only modest benefits due to the scale of the proposal and this limits the weight that I attach to them in my assessment of the appeal. Cumulatively therefore, I only attach a moderate degree of weight to these matters.
32. Regarding the openness of the Green Belt, as identified above, the proposal would have a neutral effect. However, the lack of harm is not the same as a benefit and therefore this matter does not weigh in favour of the proposal.
33. Despite the housing provision, the proposal would fail to provide affordable housing as required by the development plan. This is a significant and demonstrable shortfall of the proposal and as a consequence, I attach significant weight to this matter. The development would also fail to provide suitable living conditions for future occupants having regard to the neighbouring dog boarding use. This is a further matter to which I attribute significant weight. That the proposal would also fail to accord with the locational requirements of the development plan also attracts some limited weight against the appeal. Cumulatively, therefore, the harm associated with the adverse effects of the proposal weigh very significantly against the development.
34. Consequently, for the reasons identified above, cumulatively, I am satisfied that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Accordingly, the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

35. For the reasons identified above, the appeal is dismissed, and planning permission is refused.

Martin Chandler

INSPECTOR