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# Appeal Decision

Site visit made on 7 December 2020 by A J Sutton BA Hons DipTP MRTPI

**by R C Kirby BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 January 2021**

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**Appeal Ref: APP/C3430/W/20/3258620**

**Wergs Farm House, Popes Lane, Wolverhampton, WV6 8TX**

- 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 G Bailey against the decision of South Staffordshire Council.
  - The application Ref 19/00609/FUL, dated 29 July 2019, was refused by notice dated 20 March 2020.
  - The development proposed is the erection of dormer bungalow.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of dormer bungalow at Wergs Farm House, Popes Lane, Wolverhampton, WV6 8TX, in accordance with the terms of the application, Ref 19/00609/FUL, dated 29 July 2019, and subject to the schedule of 8 conditions attached to this decision.

## Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

## Preliminary Matters

3. There were a number of drawings which included a proposed bungalow and a house submitted as part of the appeal to which I have had regard. I have concluded, under the principles established by the Courts in *Wheatcroft*,<sup>1</sup> that to consider such modifications would deprive those who should have been consulted on the change, the opportunity of such consultation. Accordingly, and in the interest of clarity this case has been considered on the basis of plans cited on the Council's decision notice.

## Main Issues

4. The appeal property is in the Green Belt and therefore the main issues are:
  - whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy, and
  - the effect of the proposal on the openness of the Green Belt.

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

## Reasons for Recommendation

5. The Framework states the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It requires, when considering any planning application, that substantial weight is given to any harm to the Green Belt.
6. Policy GB1 of the South Staffordshire Core Strategy Development Plan Document 2012 (Core Strategy) states that in the Green Belt development acceptable within the terms of national planning policy set out in the Framework will normally be permitted.

### *Whether Inappropriate Development*

7. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework establishes that the construction of new buildings should be regarded as inappropriate. However, paragraphs 145 and 146 of the Framework identifies exceptions to this, which include, at paragraph 145 e), limited infilling in villages.
8. Whilst the Core Strategy pre-dates the latest iteration of the Framework, this exception is partially reflected in Policy GB1 d) in respect to infilling. Unlike the Framework, a footnote to Policy GB1 provides a definition of limited infilling as *'the filling of small gaps (1 or 2 buildings) within a built up frontage of development which would not exceed the height of the existing buildings, not lead to a major increase in the developed portion of the site, or have a greater impact on the openness of the Green Belt and the purpose of including land within in it.'*
9. Further guidance on this matter, which also predates the Framework, is set out in the Green Belt and Open Countryside Supplementary Planning Document 2014 (SPD), which advises that limited infilling will be considered to be acceptable where it would not harm the character of the open countryside. For example, situations where there is a strong ribbon of development with a gap suitable for an additional building would not necessarily be harmful to the character of the open countryside.
10. The appeal site is a plot of land within the curtilage of Wergs Farm House. The large grounds currently host two well-spaced dwellings which are accessed via a long, gated drive off Popes Lane. It is bound to the west by a small residential estate and to the east by an irregular pattern of development comprising a group of dwellings and barn like buildings on Popes Lane. The northern boundary of the property is edged by Wergs Golf Course.
11. The proposal would comprise one new dwelling and therefore would be limited in scale.
12. The appeal property is part of a cluster of buildings on the district boundary with Wolverhampton. The immediate built form to the west appears suburban in terms of density and character. Whilst development on Popes Lane is different in character it is connected directly with the A41 along which the wider settlement is focused and as such appears as part of the surrounding built environment. The area forms the outer section of a continuous pattern of development around Wergs and the large village of Tettenhall. Therefore, in my

judgement the appeal site is within a cluster of buildings in a village and forms part of a strong ribbon of development.

13. The appeal property is a spacious plot which is set reasonably close to neighbouring properties, and forms part of the built-up frontage of Popes Lane. Although properties on Popes Lane are at the end of the settlement, the proposed development would be located between the existing Farm House and buildings to the south at the neighbouring property. It would not, therefore, encroach into open countryside, alter the existing line of the settlement or contribute to urban sprawl. Therefore, the proposed development, by virtue of its position, flanked by existing buildings, would not form the edge of the cluster/village or extend a ribbon of development. Given the above I conclude that the proposal would result in limited infilling in a village and would not be inappropriate development in the Green Belt.

#### *Openness of the Green Belt*

14. The introduction of a new building on the site where there is none at present would have an impact on the openness of the Green Belt, in that it would be reduced. However, the impact on openness is implicitly taken into account in the exceptions in the Framework, unless there is a specific requirement within them to consider the actual effect on it. Therefore, where the effect of the development on openness is not expressly stated as a determinative factor in gauging inappropriateness, there is no requirement in national policy to assess the impact of the development on the openness of the Green Belt.
15. In this regard the definition of infilling contained in the footnote to Core Strategy Policy GB1 and its reference to openness is inconsistent with paragraph 145 e) of the Framework. To require an assessment of the impact of a new building on the openness of the Green Belt in order to establish whether it is limited infilling in a village would be contrary to the Framework, and to Policy GB1 itself. It is not however inconsistent with paragraph 145 g) of the Framework which requires an assessment of openness where the new building includes the limited infilling of previously developed land, which is not the case in this appeal.

#### *Green Belt Conclusion*

16. As the proposal would constitute limited infill in a village for the purposes of paragraph 145 of the Framework it would not be inappropriate development in the Green Belt. As such, it would accord with Policy GB1 of the Core Strategy and the SPD. Consequently, there is no conflict with the purposes of the Green Belt set out in paragraph 134 of the Framework. There is no need to consider whether there are other considerations which would amount to very special circumstances.

#### **Other Matter**

17. Although not cited as a reason for refusal the officer's report states that the proposal would fail to comply with Policy EQ11 of the Core Strategy with regard the impact on the character of the area. Reference was also made to the Council's Design Guide which was not submitted as part of the appeal.
18. The plot currently hosts two dwellings of distinctly different character which benefit from space around the properties. Whilst the proposed dwelling would be positioned close to the existing Farm House, resulting in a loss of space at

this aspect. However, the landscaped setting of the host dwelling would remain and would provide the setting for the new dwelling. The pattern of development would be altered within the plot by an addition of the modestly sized dwelling; however, the sense of spaciousness would not be detrimentally eroded given the extensive size of the grounds. The existing Farm House has a relatively low profile, however, it is two storeys, as are other surrounding dwellings which have a more traditional pitch height. As such the proposed 1 ½ storey dwelling would not appear of a disproportionate height compared to neighbouring properties. Furthermore, despite its proximity to the existing dwelling, it would not appear out of character in its wider setting which is distinguished by its irregular pattern of built form.

19. It is therefore concluded that the proposed development would not have a harmful effect on the character and appearance of the area and would not be in conflict with Policy EQ11 of the Core Strategy which states that development proposals must seek, amongst other matter, to achieve creative and sustainable designs that take into account local character and distinctiveness.
20. I have had regard to comments regarding adverse effects of the development on the living conditions of occupants of Wergs Farm Cottage. The proposed development would face the side elevation of the Cottage. However, it would be set in line with the existing Farm House, and some distance from the Cottage. It would therefore not result in a material change of living conditions for occupiers of the Cottage which is already afforded an open aspect in the plot and are overlooked by the existing Farm House.

### **Conditions**

21. The Council has suggested a number of conditions in the eventuality that the appeal is allowed to which I have had regard.
22. Accordance with the approved plans is necessary in the interest of certainty, as is the approval of external surface materials in the interest of character and appearance. A landscaping/boundary treatment scheme is reasonable and necessary to protect the character of the site and wildlife in the area.
23. In accordance with the Planning Practice Guidance, the appellant has provided written agreement for the terms of a pre-commencement condition regarding root protection areas which is necessary to safeguard trees during the construction phase.
24. The suggested condition to ensure the ongoing protection of retained trees is also considered necessary for certainty and in the interest of the character of the area and the environment. However, no substantive evidence has been provided to demonstrate why the suggested time period is necessary. I have therefore altered this to a 5 year period which is normally a reasonable amount of time for such matters.
25. Conditions relating to lighting and ecology are also necessary and reasonable to secure biodiversity enhancements.

### **Conclusion and Recommendation**

26. For the reasons given above, and having regard to all matters raised, I recommend that the appeal should be allowed.

*A J Sutton*

APPEAL PLANNING OFFICER

### **Inspector's Decision**

27. I have considered all the submitted evidence and concur that the appeal should be allowed with the suggested conditions.

*R C Kirby*

INSPECTOR

**Schedule of Conditions:**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan No. 19 09 02A and Proposed Amended House Type No.19 09 04.
- 3) No works above damp-proof level shall take place until details 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. The development shall be carried out in accordance with the approved details and retained thereafter.
- 4) The development hereby approved shall not be occupied until an external lighting scheme has been submitted to and approved in writing by the local planning authority. The scheme shall be designed in accordance with Bat Conservation Trust / Institution of Lighting Professionals Guidance Note 08/18 Bats and artificial lighting in the UK and shall include a lighting contour plan that demonstrates there will be minimal impact on receptor habitats such as trees and adjoining woodland. The development shall be carried out in accordance with the approved details and retained thereafter.
- 5) The development hereby approved shall not be occupied until details of the type and location of biodiversity enhancement measures including the type of bat box to be installed as per 6.1.3 of the Ecological Appraisal and location of a house sparrow terrace to be installed on the north or east side of the dwelling hereby approved has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and maintained as such thereafter.
- 6) Prior to the commencement of any development works, an Arboriculture Method Statement (AMS) detailing how any approved construction works will be carried out shall be submitted to and agreed in writing by the local planning authority. The AMS shall include details on when and how the works will take place and be managed and how the trees, shrubs and hedgerows will be adequately protected during such a process. The retained trees, shrubs and hedges on the site shall be protected by fencing constructed in accordance with BS 5837:2012 (trees in relation to design, demolition and construction - recommendations) in positions previously agreed with the local planning authority during all construction phases. The fencing shall be retained throughout the development of the site in the approved positions.
- 7) Within 1 month of any development commencing on the site a landscape scheme including native hedges and planting to provide nectar, seeds and berries shall be submitted to the local planning authority for approval in writing, the scheme shall also include any means of enclosure and shall incorporate 13 x 13cm gaps so that hedgehogs can gain access. The approved scheme shall be implemented concurrently with the development and completed within 12 months of the completion of the development. The local planning authority shall be notified when the scheme has been completed and the scheme shall be maintained in accordance with the approved scheme thereafter. Any plant failures that

occur during the first 5 years of the notified completion date of the scheme shall be replaced with similar size plant and species within the next available planting season (after failure), unless the local planning authority gives written consent to any variation.

- 8) No retained trees on the site shall be topped, looped, cut down, uprooted or destroyed other than in accordance with the approved plans and particulars for a period of 5 years following completion of the development without the prior written consent of the local planning authority. Any pruning shall be carried out in accordance with British Standard BS 3998:2010 Tree Works. If a retained tree is removed or dies within 5 years of completion of the development it shall be replaced with the same species (or alternative agreed with the local planning authority) within 12 months of its removal and as close to the original position as possible (or elsewhere in a position agreed with the local planning authority). The retained and any replacement planting shall be maintained for a period of 5 years respectively from completion of the development or time of planting.