

# Appeal Decision

Site Visit made on 19 January 2021

**by M Russell BA (Hons) DipTP MRTPI**

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

**Decision date: 15 February 2021**

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**Appeal Ref: APP/P1805/W/20/3262086**

**Land off Dayhouse Bank and Fordraught, Dayhouse Bank,  
Romsley B62 0EU**

- 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 Bahar against the decision of Bromsgrove District Council.
  - The application Ref 20/00192/FUL, dated 12 February 2020, was refused by notice dated 22 June 2020.
  - The development proposed is erection of five-bed dwellinghouse together with associated landscape works.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The original description on the planning application form included the words 'comprising a highly innovative and outstanding design, with a particular focus on sustainability'. This is not a description of development, rather they are matters that I have considered as part of my assessment. I have therefore removed this superfluous text from the description of development.
3. The appellant has provided a Transport Impact Assessment and Speed Survey as well as a Noise Impact Assessment as part of their appeal submission. I have given the Council an opportunity to comment on these documents. Therefore, I consider no party would be prejudiced by me taking this information into consideration as part of my assessment.

## Main Issues

4. The main issues are:
  - (i) 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.
  - (ii) The effect on the openness of the Green Belt.
  - (iii) Whether or not the proposal would provide safe and sustainable access.
  - (iv) Whether the proposal would provide acceptable living conditions for neighbouring occupiers with regards to privacy and future occupiers of the development with regards to noise.
  - (v) If the proposal would be inappropriate, 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 the development.

## **Reasons**

### *Whether the proposal inappropriate development in the Green Belt*

5. Policy BDP4 (Green Belt) of the Bromsgrove District Plan (DP) (2017) and the Framework both state that the development of new buildings in the Green Belt is inappropriate except in a number of exceptions. One exception in Policy BDP4 is 'limited infilling in Green Belt settlements'.
6. The appeal site forms part of a field and is not occupied by any buildings. It shares a boundary with the residential property at The Cottage to one side and there are other buildings opposite the site on Fordraught and further along Old House Lane. Even so, the extent of the wider field and the intervening roads at Fordraught and Old House Lane clearly distinguish the site from sitting within a distinct settlement footprint. On the contrary, the development pattern and the distinctly open and rural characteristics of the site confirm that the site is undoubtedly part of the countryside. Therefore, the development would not meet the requirements of the DP with regards to being infilling in the settlement.
7. It is self-evident from the position of the site in the countryside and the number of dwellings and level of services at Dayhouse Bank and Fordraught that the appeal site is not located in a village. Therefore, the proposal would not meet the requirements of Paragraph 145 e) 'limited infilling in villages' nor any other the other exceptions in the Framework.
8. To conclude, the development constitutes inappropriate development in the Green Belt when assessed against national policy in the Framework and the relevant policies in the Development Plan.

### *The effect on the openness of the Green Belt*

9. Paragraph 133 of the Framework sets out the essential characteristics of Green Belts, which are their openness and permanence. It has been held in the High Court that openness is epitomised by the lack of buildings or development. Openness is a separate issue from the effect of a development on the character and appearance of an area.
10. When approaching the site from the east on Old House Lane, there are distant glimpses of The Cottage, which sits beyond the field that the appeal site forms part of. The development would reduce the intervening distance between Old House Lane and domestic built form in this view. The position of the proposal to the side of the neighbouring dwelling at The Cottage, aligned with the bulk and height of the development would combine to reduce openness from a visual perspective for passers-by on Old House Lane and Fordraught.
11. Visual impact is only part of the assessment of the impact of the proposal on openness. My assessment must also take the spatial impact into consideration. The footprint, height and volume of the dwelling and the extent of the gravel surface associated with the proposed access would result in encroachment of development into the countryside. In that regard, the development would undoubtedly affect openness when compared with the current undeveloped nature of the site.

12. For the above reasons, the development would not preserve the openness of the Green Belt and would conflict with the purposes of including land in it. In that regard the development would conflict with the aims to preserve the openness of the Green Belt in Policies BDP1 (Sustainable Development Principles), BDP4 (Green Belt) and BDP15 (Rural Renaissance) of the DP and national policy in the Framework.

*Safe and sustainable access*

13. Paragraph 109 of the Framework states that 'development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety'.
14. The vehicular access point to the development would be sited at the junction of Fordraught with Old House Lane and on a slight incline for any drivers that would be exiting the site. At the time of my visit vehicles travelling along Old House Lane regularly passed the access point. I recognise this only provides a snapshot of traffic levels in the area.
15. The appellant's Transport Statement (TS) confirms that, based on the vehicle speed readings recorded, the Manual for Streets (2007) (MfS 1) would suggest visibility requirements of 2.4 metres (m) x 52.3 m to/from the southwest and 2.4m x 53.6m to/from the northeast at the proposed access point on to Old House Lane. These suggested splay dimensions are not disputed by the Council. However, the visibility splays in the TS before me indicate that only a 27.0m visibility splay would be provided to the southwest for drivers exiting the site.
16. I acknowledge that the access has been in continual use by for access to the existing properties on Fordraught Lane and that no injuries or accidents have been recorded in the vicinity of the site despite the route previously having been subject to a 40mph speed limit. My attention has also been drawn to the suggestion in Manual for Streets 2 that failure to provide visibility at priority junctions in accordance with the values recommended in MfS1 does not necessarily result in increased risk or injury collisions.
17. I also observed during my site visit the extent to which boundary vegetation and the gradient of the road restricted visibility of oncoming traffic approaching from the southwest. The additional dwelling would marginally increase the use of the access point above existing levels. Nevertheless, even a small increase in vehicular activity has the potential to increase levels of risk on Old House Lane. The speed survey results indicate that despite the reduction to the speed limit on Old House Lane, 85<sup>th</sup> percentile vehicle speeds are still close to 35mph. The visibility splay provided to the southwest would also be significantly below the recommended distance. On balance, I am not persuaded that the development would not have an unacceptable impact on highway safety.
18. Paragraph 108 of the Framework includes amongst other things that developments should ensure that appropriate opportunities to promote sustainable transport modes should be taken up and that safe and suitable access to the site can be achieved for all users.
19. The evidence before me indicates that the nearest bus stops and services and facilities suitable for meeting day to day needs are not conveniently located or accessible by a lit footpath from the site. Therefore, occupants of the dwelling

would be unlikely to walk or cycle to such services and facilities, particularly during inclement weather or at times of the year where hours of daylight are shorter. Consequently, it is likely that occupiers of the dwelling would be heavily reliant on a private motor vehicle. These constraints to the accessibility of the site in terms of alternative modes of transport are consistent with the fact that Dayhouse Bank is not listed in the settlement hierarchy in Policy BDP2 of the DP as being a sustainable location for new development to be directed.

20. I conclude that the development would have an unacceptable impact on highway safety and would not provide sustainable access opportunities for future occupants. In that particular regard the development would conflict with the sustainable development aims of Policies BDP1 (Sustainable Development Principles) and BDP2 (Settlement Hierarchy) of the DP and the sustainability and highway safety aims of the Framework.
21. The Council's decision also refers to BDP16 of the DP. I have not been provided with a copy of this policy. Even so, this does not override the conflict with the DP and the Framework identified above.

*Living conditions for neighbouring occupiers and future occupiers of the dwelling*

22. The position and height of the 'green roof amenity area', in close proximity to the boundary with The Cottage, would create the potential for occupiers of the development to overlook the private rear garden serving this neighbouring dwelling. The measurement of 22.0 metres provided by the appellant does not correspond with the nearest edge of the area where occupants of the development would be able to stand in an elevated position close to the shared boundary. From what I saw on site, the height of existing planting varies along this boundary. No details have been provided as to the comparative height of the proposed 'gradient hedge' with the 'green roof amenity area' nor whether supplementary planting would be required to provide effective screening. In the event that supplementary planting was required, it is likely that this would take time to establish. Therefore, I am not persuaded by the evidence before me that the development would not be harmful to the privacy of occupants of The Cottage.
23. My attention has been drawn to existing opportunities for overlooking between properties at Dayhouse Bank. However, the distance between windows serving existing neighbouring properties is not comparable to the potential overlooking impact from the development given this would be much closer and would offer a more direct line of sight into the rear garden at The Cottage.
24. The rear boundary of the appeal site adjoins the vegetated bank of the M5 motorway. At the time of my visit the sound of traffic from the M5 was clearly audible and above levels that would usually be expected within a residential environment. The appellant's noise assessment gave average noise measurements of LAeq,16hr 68 dB during the hours of 07:00 – 23:00 and LAeq,8hr 64 dB between the hours of 23:00 – 07:00. Significantly, the Noise Assessment (NA) confirms that the daytime noise levels recorded were above the Significantly Observed Adverse Effect Level (SOAEL) for outdoor living spaces. The NA also confirms that based on its findings, mitigation would be required to reduce noise levels both within the building and in external amenity areas.

25. I acknowledge that it may be possible to attenuate noise levels internally depending on the glazing and ventilation system incorporated. Even so, the NA confirms that noise levels to the private rear outdoor space would be above the World Health Organisation guideline value for external amenity of LAeq,16hour 55dB and that it is unlikely that this can reasonably be mitigated. In that regard, the noise levels would be likely to be significantly harmful to the living conditions of future occupiers in terms of the use of private external areas to the rear of the dwelling. The external areas to the front of the dwelling would be primarily used for parking and access and would not provide adequate compensation in terms of recreational garden space. Furthermore, the awareness of the potential future occupier of the potential noise levels and the existence of neighbouring properties living within this noise environment does not justify the harm identified.
26. I conclude, the development would have a significantly harmful impact on the living conditions of neighbouring occupiers and future occupants of the development. In that regard, the development would conflict with Policy BDP1 (Sustainable Development Principles) which amongst other things includes that in considering proposals for development that regard be had to the impact on residential amenity. The development would also conflict with Paragraph 127 of the Framework which amongst other things requires that development creates places with a high standard of amenity for existing and future users.
27. The Council's decision also refers to Policy BDP19 (High Quality Design) of the DP. I have not been provided with a copy of this policy. Even so, this does not override the conflict with the DP and the Framework identified above.

#### *Other considerations*

28. The Council acknowledges that it has a shortfall in terms of being able to demonstrate a 5-year housing land supply. In the circumstances the development plan is not up-to-date and paragraph 11d of the Framework is engaged. Permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The policies referred to include those relating to the protection of the Green Belt. I will come back to this matter in my Planning Balance and Conclusion.
29. In terms of the Green Belt review, the Council has confirmed that this is at an early stage and forms part of their Local Plan Review process. The piecemeal development of Green Belt land, such as is proposed in this appeal, would be inconsistent with the plan-led approach endorsed by the Framework. I have therefore assessed the appeal on the basis of the current Green Belt status of the site.
30. Paragraph 131 of the Framework states that great weight should be given to outstanding or innovative designs which promote high levels of sustainability. The dwelling would be of a contemporary design and my attention has been drawn to the sustainable credentials of the proposal. These include solar slate tiles and a biomass boiler allowing for on-site energy production and storage. The main structural elements would be made from prefabricated panels with low carbon embodiment. The appellant also intends that the dwelling would have low water consumption and a rainwater collection system incorporated into the landscaping, albeit a detailed drainage strategy has not been provided to demonstrate how this would be achieved. Whilst the environmentally

sustainable design approach is commendable, the features proposed are relatively well-known techniques for achieving sustainable construction. I therefore do not find the proposal to be of outstanding or innovative design. Even so, I attach some positive weight in terms of the provision of a dwelling and the boost to the Council's housing numbers, albeit this would be limited in the context of a single dwelling.

31. I attach limited weight to the benefits associated with a single dwelling in terms of local employment associated with the construction of the dwelling, expenditure of future occupants in the local economy and in terms of council tax payments. Whether or not the development would add value to surrounding properties is not a material planning consideration in the determination of this appeal.
32. A condition could be attached requiring delivery of the biodiversity enhancements indicated in the appellant's Preliminary Ecological Appraisal. However, given the scale of the development it is unlikely that any biodiversity net gain would be of a significant magnitude. Therefore, I attach limited weight any ecological benefits that would result from the development.
33. The evidence before me indicates that the site is located in an area of low flood risk. Whilst details of a Sustainable Drainage System (SuDS) have not been provided, that this would not preclude opportunities for SuDS from being fully explored as part of a condition. Given the low flood risk, I consider it likely that a suitable drainage solution which does not result in increased surface water leaving the site could be achieved.
34. The proposed layout indicates that two parking spaces would be provided. I am satisfied that there would be room to the front of the dwelling to facilitate the turning of private motor vehicles within the site and that a further parking space could be provided to the front of the dwelling in order to comply with the County Council's parking standards. Final details of the parking layout could be conditioned.
35. Whilst I acknowledge the Council's concerns in respect of the limited parking opportunities on adjoining roads, I consider it likely that the arrangements could be made to ensure the site could accommodate on site operative requirements and deliveries to facilitate the development. Therefore, I am satisfied that a Construction Environmental Management Plan could be reasonably secured by condition.
36. Even though matters relating to drainage, parking for occupants and site management during construction could be satisfactorily addressed, the acceptability of these usually expected development management requirements carries neutral weight.

### **Planning Balance and Conclusion**

37. The development constitutes inappropriate development in the Green Belt. The Framework states that inappropriate development is by definition harmful to the Green Belt and should only be approved in very special circumstances. Moreover, I have found that the proposal would be harmful to the openness of the Green Belt. This Green Belt harm is a matter to which I attach substantial weight in decision making terms in line with Paragraph 144 of the Framework. 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. This is a high hurdle for a development proposal to overcome.

38. I have also found that the development would be unacceptable in respect of matters relating to highway safety, accessibility and the living conditions of future occupants and neighbouring occupiers. In these regards there is significant other harm in addition to the Green Belt harm identified.
39. For the reasons set out above, I have found that other considerations advanced in favour of the proposal would carry limited weight in its favour. In conclusion and on balance, the substantial weight to be given to Green Belt harm is not clearly outweighed by these other considerations and therefore the very special circumstances needed to justify the proposed development do not exist.
40. Consequently, the proposed development would conflict with the Framework insofar as, amongst other things, it seeks to ensure that Green Belts keep land permanently open, and this provides a clear reason for refusing the development proposed in line with paragraph 11(d) (i) of the Framework. For these reasons too, no considerations have been advanced that would justify a decision other than in accordance with the development plan, with which in terms of Policies BDP1 (Sustainable Development Principles), BDP2 (Settlement Hierarchy), BDP4 (Green Belt) and BDP15 (Rural Renaissance) the appeal scheme would clearly conflict.
41. For the reasons given the overall conclusion is therefore that the appeal should be dismissed.

*M Russell*

INSPECTOR