



Appeal Decision

Site Visit made on 30 September 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2021

Appeal Ref: APP/Q4245/W/21/3276225

Land Between 17 And 23, Brooks Drive, Hale Barns WA15 8TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr John Kennedy against the decision of Trafford Metropolitan Borough Council.
 - The application Ref 103617/OUT/21, dated 23 February 2021, was refused by notice dated 4 May 2021.
 - The development proposed is outline planning permission for erection of three dwellings and associated access with all other matters reserved.
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Decision

1. The appeal is allowed and planning permission is granted for outline planning permission for erection of three dwellings and associated access with all other matters reserved at Land Between 17 And 23, Brooks Drive, Hale Barns WA15 8TL in accordance with the terms of the application, Ref 103617/OUT/21, dated 23 February 2021, subject to the conditions set out in the attached schedule.

Procedural Matters and Main Issues

2. The site address on the application form is incorrect. I have therefore taken the site address from the Council's decision notice, which is the same address as the appeal form.
3. The application was submitted in outline. The application form indicates that approval was sought for access, with the matters of scale, appearance, landscaping and layout reserved for future approval, the Council dealt with the application on this basis and so shall I. The appellant has provided indicative plans relating to the site layout, plot elevations and street scene to illustrate how the properties could be accommodated in the site. I have therefore taken these into account in so far as establishing whether it would be possible, in principle, to erect the dwellings on the site.
4. The appellant has submitted additional information as part of the appeal. This includes revised plans '874-P-01 Rev A and 874-P-02 Rev A' and an Arboricultural Report¹. The report has assessed the trees at the site including those within the tree preservation order (TPO174). It identified a number of trees which were unhealthy and required works. Mitigation has been proposed to protect trees during the construction phase. This has resulted in an amendment to the position and shape of driveways to plots 1 and 2 to protect trees.

¹ Appendix G – Arboricultural Report (undertaken by Lally Tree Management)

5. In considering whether to accept these amended plans, I have had regard to the '*Wheatcroft Principles*²'. That is to say, if I were to accept the amended plans, would my doing so deprive those who should have been consulted over the changed development the opportunity of such consultation. In this case, the Council's Arboricultural Officer has reviewed the information and are satisfied that it addresses the second reason for refusal. Suitably worded conditions would ensure mitigation and protection of trees at the site.
6. Consequently, I have no reason to disagree with the Council's assessment, it is my view that to accept the amended plans would not prejudice the interests of third parties. I have therefore proceeded to determine the appeal on the basis of the amended plans application. As such, the second reason for refusal falls away.
7. Therefore, taking the above into account the remaining main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework, 2021 (the Framework) and any relevant development plan policies;
 - The effect of the proposal on the openness of the Green Belt;
 - The effect of the proposal on the character and appearance of the area; and
 - If the proposal would be inappropriate development, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

8. The Framework sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 149 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it meets one or more of a list of exceptions. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
9. The exceptions are set out in paragraph 149 of the Framework, and include (e), limited infilling in villages; and (g) limited infilling or the partial or complete redevelopment of previously developed land (PDL), whether redundant or in a continuing use 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 development would contribute to meeting an identified affordable housing need.
10. Policy R4 of the Trafford Local Plan Core Strategy, 2012 (CS) sets out that the Council will continue to protect the Green Belt from inappropriate development. New development, including buildings will only be permitted within these areas where it is for one of the appropriate purposes specified in national guidance, where the proposal does not prejudice the primary purposes of the Green Belt.

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

11. In the justification text of Policy R4 (paragraph 24.6) it sets out that no new buildings other than that covered by national guidance will be allowed in the rural settlements of Dunham, Dunham Woodhouses and Warburton. It identifies these in Trafford as 'washed over' 'village settlements'. In this case, it does not identify Hale Barns as a village but, under Policy W2 as a 'Local Centre' and is towards the west from the site, separated by the Green Belt. Policy W2 relates to Town Centre, retail facilities and services to meet local needs and does not relate to the Green Belt or residential development. On this basis, I attach little weight to Policy W2 in this decision.
12. Therefore, Policy R4 is not wholly consistent with the approach or terminology of the Framework exceptions of inappropriate development as it refers to a closed list of locations. As such, in accordance with paragraph 219 of the Framework, I afford limited weight to this policy and have assessed primarily against Green Belt policy within the Framework.
13. There is no definition in the Framework in terms of 'village', 'infilling' and 'limited' and it is not identified or defined within the CS. The Council maintain that the site is located outside any village settlement or local centre and is a conurbation of Hale Barns. I have had regard to the judgement³, in considering whether a settlement is a village or whether a site is in a village as the local plan boundary of a village is not determinative for that purpose. Therefore, it is necessary to consider the situation "on the ground" as well as any relevant policies. It is a matter of judgement depending on those factors.
14. The appeal site is within the Green Belt and relates to a parcel of land to the western side of Brooks Drive located between No's 17 and 23. It would appear that it forms part of the residential garden areas of 'The Mayo'. There are remains of a former tennis court and a shed. It is separated by fencing to the original garden of the property and is significantly overgrown and unmaintained. The majority of properties along Brooks Drive are substantial detached dwellings within large plots and the wider area to the appeal site characterised by modest size detached dwellings.
15. Although falling outside the village settlement boundary on the proposals map. The site itself would be surrounded by residential development, that would not be seen in isolation from those adjacent and further along Brooks Drive. There is also a substantial amount of residential development on Hale Road and High Elm Road. There are also several local services nearby, including recreational facilities and bus stops. The centre of Hale Barnes would be a short walk from the site with good footways and lighting to access day-to-day services.
16. Moreover, it appears to me that the only separation would be along Hale Road on one side of the roadway for a short distance where the golf course extends around from the rear of the site and is screened by hedges and trees. From the evidence before me, I see no reason why it would not form part of the settlement of Hale Barns itself or be part of the local community.
17. The appeal site is a vacant plot that forms a substantial gap between existing dwellings along this part of Brooks Drive. While I note the size of the gap in the otherwise built-up frontage and that the site is not entirely enclosed by residential development on all sides. Given the number of dwellings proposed and the size of the site, I see no reason why the three dwellings could not

³ Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

- constitute small-scale development and complement the surrounding pattern of development subject to consideration of future reserved matters relating to scale, layout and appearance.
18. Furthermore, I acknowledge that the Green Belt boundary was not established until 1984, and that planning policy context differed in those years. Nonetheless, it would appear that the site has a long planning history dating back to within the 1980's, of which the principle of residential development was deemed to be acceptable within such a gap. It is not clear why the Council considers it unnecessary to explore any assumptions made on the definition of limited or infilling. Therefore, I consider that the site would fall within the definition of limited infilling.
 19. My attention has been drawn to two appeal decisions⁴. I have been provided with limited details of those cases. However, whilst recognising that the character of those areas was different including development plan policies, there are many parallels. I have, in any case, reached my own decisions on the appeal proposal on the basis of the evidence before me.
 20. There is a disagreement between parties that the site constitutes PDL for the purposes of the Framework and paragraph 149 (g). Annex 2 of the Framework sets out the definition of PDL, land which is or was occupied by a permanent structure, including the curtilage of developed land and any associated fixed surface infrastructure. It excludes land in built-up-areas such as residential gardens.
 21. Simply because a site contains structures that would meet the definition of PDL it does not mean the whole site should be considered as such. Nevertheless, I have no substantive evidence that the site is not associated with the property 'The Mayo' or its residential curtilage as garden land, albeit a fence is erected. The site also sits between dwellings and is surrounded by nearby existing residential development with a golf course behind. Therefore, on the basis of the evidence before me it would not meet the definition of PDL. It is therefore reasonable for the proposal to be considered against paragraph 149(e).
 22. For the reasons given above, I conclude that the proposed development would not be inappropriate development in the Green Belt, it would be limited infilling in a village. Although it would not strictly accord with Policy R4 of the CS in regard to the restriction of villages specified. It would be in accordance with the criterion set out at paragraph 149 (e) of the Framework.
 23. As I have found that the proposed development would not be inappropriate development in the Green Belt, there is no place for a subsequent assessment of the effect of the development on the openness of the Green Belt, or the impact on Green Belt purposes, having also regard to the judgement in the Court of Appeal⁵.
 24. Moreover, given that the proposed development would not amount to inappropriate development, there is no need for me to assess other considerations, and whether very special circumstances exist in order to justify the development.

⁴ APP/R0660/W/15/3013616; APP/R0660/W/16/3156493

⁵ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

Character and Appearance

25. The Council contends that the dwellings would appear to have uniformity of plot size, division, layout, design, scale and materials that are out of character with the wider street scene. As no street scene showing the relationship with neighbouring properties was provided it is not possible for them to confirm the acceptability of the height and scale of the dwellings in relation to neighbouring properties.
26. The proposal before me relates to outline planning permission, with only 'access' a matter to be considered. The Planning Practice Guidance (PPG)⁶ allows for a decision on the general principles of how a site can be developed. Outline planning permission is granted subject to conditions requiring the subsequent approval of one or more 'reserved matters'. An applicant can choose not to submit details if they are reserved for later determination. The reserved matters in this case are appearance, landscaping, layout and scale.
27. The appellant has provided proposed plans and elevations and it is clear from the evidence before me that these are indicative. Therefore, these should not be treated as such plans as if it were a full application. For matters that are reserved the mere absence of those details should not be a reason to dismiss the appeal.
28. Nevertheless, in considering whether the proposal would be at odds with the surrounding area which comprises of mostly detached dwellings that have both modest and substantial plots. Houses along Brook Drive differ in terms of height, materials and style, whilst those in the wider area are replicated in detail particularly towards the end of High Elm Road. I also observed at the time of the site visit there were differing heights of dwellings and gap sizes between boundaries of plots.
29. Despite the indicative plans showing the houses to be of a similar style, albeit finer detail features change. I am satisfied that the proposed development would broadly reflect the character of residential development within the immediate and wider area of the site. The site could accommodate three dwellings and subject to consideration of future reserved matters relating to scale, layout and appearance would address materials, design and plot layout. I see no reason why such future matters could not incorporate individual bespoke features and reflect good design.
30. Furthermore, I would disagree with the Council's assessment that the appeal site to the west has a visual relationship with the Ringway Golf Club. The site is enclosed from the golf course with hedges to be retained and would not extend further than any of the existing residential curtilages along Brooks Drive. As such there would be no encroachment or result in a detrimental impact on the visual qualities of the wider countryside landscape.
31. For the reasons given above, I conclude that there would be no significant harm to the character and appearance of the area. The proposal would not conflict with Policies R2 and L7 of the CS. Which amongst other things together seek to protect and enhance the natural environment including landscape and countryside assets; and that matters of design are appropriate in its context.

⁶ Paragraph:005 Reference ID: 14-005-20140306 Revision Date: 06 03 2014

Other Matters

32. I have considered the Council's argument that the grant of planning permission would set a precedent for other similar developments on Brooks Drive. However, no directly similar/comparable sites to which this might apply were put forward. Each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission.
33. I note that local residents have expressed additional concerns about the proposed development, including highway safety, parking, living conditions, privacy, noise and disturbance and visual pollution. However, the Council did not raise these points as reasons for refusal and I have no substantive evidence to support those concerns. The issue of impact on property values has also been raised. It is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property. The matter of any upkeep of the road are private matters between the relevant parties and not within my jurisdiction.
34. I acknowledge that construction would cause some disruption but this would be temporary and would be mitigated by a Construction Method Statement which could be the subject of a suitably worded condition.

Planning Balance

35. The Council cannot demonstrate a five-year supply of deliverable housing sites and the shortfall is described as 'substantial'. Consequently because of the provisions of footnote 8, paragraph 11 d)ii of the Framework should be applied. It requires planning permission to be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
36. As I have found above, the appeal proposal would not result in any adverse impacts including harm to the character and appearance of the area, it would secure a number of benefits and would accord with the exception set out in paragraph 149 (e) of the Framework. Accordingly, the presumption in favour of sustainable development applies and planning permission should be granted.
37. There would be a number of benefits to the appeal proposal. These include securing new residential units and boosting the supply of new homes in line with paragraph 60 of the Framework. There would also be economic benefits, although short term it would create the provision of construction jobs, purchasing of materials from local suppliers and contractors. Increased local spend and support for local services and facilities. In view of the position on housing delivery in the Borough I would accord these benefits significant weight and they add to further support to the findings I have reached above.

Conditions

38. I have considered the conditions suggested by the Council, and in light of the PPG. The appellant has made clear the conditions are deemed to be acceptable. For clarity, precision and to ensure compliance with the PPG, I have undertaken some minor editing and rationalisation.
39. I have attached conditions related to the time scale for reserved matters applications and commencement of development to ensure it is carried out in a

timely manner. It is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. I have imposed condition (5) relating to details of construction management to minimise disturbance and nuisance and protect the living conditions of nearby residents. Condition (6) is necessary to protect living conditions, Condition (7) in the interests of protecting biodiversity at the site. Condition (8) is necessary to specify the details of parking provision and cycle storage, Condition (9) to ensure satisfactory provision of refuse and recycling storage.

40. Conditions (10), (11), (12) are necessary relating to landscaping and biodiversity, including trees, as there are a number of trees on the site that would require protection during construction and in the interests of the protecting habitats and the character and appearance of the area. Conditions (13), (14) to ensure satisfactory drainage and alleviate any flood risk on the site. Condition (15) is necessary in the interests of highway safety. Condition (16), relating to electric vehicle charging points, is required in accordance with paragraph 112 e) of the Framework.
41. I have not imposed the Council's suggested condition numbered 6 as it is amalgamated within Condition (10), not necessary, and in part not enforceable.

Conclusion

42. The proposed development would not be inappropriate development in the Green Belt, and no other harm has been identified. It would not conflict with the development plan and the Framework, taken as a whole. There are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan.
43. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

K A Taylor

INSPECTOR

Appeal Ref: APP/Q4245/W/21/3276225

Land Between 17 And 23, Brooks Drive, Hale Barns, WA15 8TL

Schedule of conditions attached to outline planning permission

- 1) Details of the, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 874-P-01 Rev A; 874-P-02 Rev A; 874-P-07.
- 5) No development shall take place unless and until a Construction and Pre-Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority, including details of the proposed measures to manage and mitigate the main environmental effects. The CEMP shall address, but not be limited to the following matters:
 - a) suitable hours of construction and pre-construction activity
 - b) the parking of vehicles of site operatives and visitors
 - c) loading and unloading of plant and materials including times of access/egress
 - d) storage of plant and materials used in constructing the development
 - e) the erection and maintenance of security hoardings
 - f) measures to control the emission of dust and dirt during demolition and construction and procedures to be adopted in response to complaints of fugitive dust emissions
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works (prohibiting fires on site)
 - h) measures to prevent disturbance to adjacent dwellings from noise and vibration, including any piling activity
 - i) information on how asbestos material is to be identified and treated or disposed of in a manner that would not cause undue risk to adjacent receptors
 - j) information to be made available for members of the public.The development shall be implemented in accordance with the approved CEMP and adhered to throughout the construction period for the development.
- 6) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in

writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

- 7) No above ground works shall commence unless and until a scheme identifying opportunities for biodiversity enhancement to be incorporated into the new development have been submitted to and approved in writing by the Local Planning Authority. These should include: - Tree and hedgerow protection - Re-inspection in relation to protected mammals if work has not commenced within 12 months of the initial inspection date - Bat bricks and/or tubes within the new development - Bird boxes - Native tree and shrub planting - Bolstering and creation of new hedgerows. The development shall be carried out in accordance with the approved details and shall thereafter be retained.
- 8) Any application for Reserved Matters in relation to layout shall include a scheme for car parking and secure cycle storage. The proposed parking spaces shall be clearly dimensioned on the submitted plan and include swept path analysis. The cycle scheme shall include details of secure, covered cycle storage arrangements for a minimum two allocated cycle spaces per dwelling. The dwellings hereby permitted shall not be occupied until the approved car parking space and secure cycle storage have been provided and the car parking spaces and cycle storage shall be retained at all times thereafter.
- 9) Any application for Reserved Matters in relation to layout shall be accompanied by details of the bin stores and waste management strategy, which shall include accommodation for separate recycling receptacles for paper, glass and cans in addition to other household waste. The dwellings hereby permitted shall not be occupied until the approved bin stores have been provided and made available for use and the bin stores shall be retained thereafter.
- 10) Any application for Reserved Matters which includes landscaping shall include the following details of hard and soft landscaping as a minimum:
 - a) the formation of any banks, terraces or other earthworks, hard surfaced areas and materials, planting plans, specifications and schedules (including planting size, species and numbers/densities), existing plants / trees to be retained and a scheme for the timing / phasing of implementation works.

The landscaping works shall be carried out in accordance with the approved scheme for timing / phasing of implementation or within the next planting season following final occupation of the development hereby permitted, whichever is the sooner.

Any trees or shrubs planted or retained in accordance with this condition which are removed, uprooted, destroyed, die or become severely damaged or become seriously diseased within 5 years of planting shall be replaced within the next planting season by trees or shrubs of similar size and species to those originally required to be planted.

- 11) No clearance of trees and shrubs in preparation for (or during the course of) development shall take place during the bird nesting season (March-July inclusive) unless an ecological survey has been submitted to and approved in writing by the Local Planning Authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence

of any nesting species, then no development shall take place during the period specified above unless a mitigation strategy has first been submitted to and approved in writing by the Local Planning Authority which provides for the protection of nesting birds during the period of works on site. The mitigation strategy shall be carried out in accordance with the approved details.

- 12) No development or works of site preparation shall take place until all trees that are to be retained within or adjacent to the site have been enclosed with temporary protective fencing in accordance with BS:5837:2012 'Trees in relation to design, demolition and construction. Recommendations'. The fencing shall be retained throughout the period of construction and no activity prohibited by BS:5837:2012 shall take place within such protective fencing during the construction period.
- 13) The site shall be drained via separate systems for the disposal of foul and surface water.
- 14) The development hereby approved shall not be commenced until such time as the details of a satisfactory surface water design in accordance with the drainage hierarchy has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented and subsequently maintained, in accordance with the timing/phasing arrangements embodied within the scheme.
- 15) No dwelling hereby permitted shall be occupied until the means of access and the areas for the movement, loading, unloading and parking of vehicles have been provided, constructed and surfaced in complete accordance with the plans hereby approved.
- 16) No dwelling hereby permitted shall be occupied until a scheme for the provision and implementation of electric vehicle charging points has first been submitted to and approved in writing by the Local Planning Authority. Development shall proceed in accordance with the approved scheme and the electric vehicle charging points shall be retained thereafter.

- END OF SCHEDULE -