



Appeal Decision

Site Visit made on 12 October 2021

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/T3725/W/21/3275734

Land to the north of Bakers Lane, Knowle, Solihull

- 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 and Mrs Variach against the decision of Warwick District Council.
 - The application Ref W/20/1428, dated 20 January 2021, was refused by notice dated 24 November 2020.
 - The development proposed is a replacement dwelling and associated landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs was made by Mr and Mrs Variach against Warwick District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. For clarity on the location of the appeal site, I have taken the above address from the Council's decision notice.
4. The Council's decision was based on a proposal that included erection of an attached double garage. That scheme was revised during the course of the planning application, although the Council chose not to re-consult on it. Amongst other matters, the revisions removed the proposed double garage and reduced the extent of hard landscaping around the proposed dwelling, in seeking to address some of the Council's concerns.
5. Whilst the amended scheme reduced the extent of the proposal, I consider the changes would not be substantial. Applying the Wheatcroft Principles¹, as the parties who made representations to the planning application were notified and had the opportunity to comment on the amended scheme at appeal, I have determined the appeal on the basis of the revised plans².
6. The appeal site contains an existing barn which was granted prior approval for change of use to a dwelling in 2020 (Council Ref W/20/0231)³ ('the prior approval scheme'). This has not been implemented. A previous planning permission to move the barn five metres away from the rear site boundary and alterations to its roof slope was granted in 2017 (Council Ref W/17/0793). That

¹ As established in *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

² Plan Refs 471_AR_320_001-D; 471_AR_320_010-G; and 471_AR_220_010-B

³ Granted under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015

permission has not been implemented and whilst the appellants may have sought to extend the time limit for its implementation, no robust evidence is before me to confirm whether such an extension was granted. Although there may be potential for that permission to be re-established in future, on the evidence before me that permission is not extant and therefore carries limited weight. Planning permission for erection of a new timber stable building, adjacent to the existing barn, was granted in 2010 (Council Ref W/10/0079). That permission has been implemented by construction of the concrete slab base. Although the development has not been completed, that permission remains extant.

7. I am satisfied that, in the absence of an alternative proposal, it would be likely that the prior approval scheme would be implemented. I accept that construction of the stables could reasonably be completed alongside the prior approval scheme, adding to the total floorspace permissible on site, albeit that the stable buildings would not form part of the residential floorspace. If this appeal were allowed, the stables could not be implemented at the same time as the appeal scheme, due to overlapping footprints. Moreover, in the circumstances of this case, a condition could reasonably be imposed requiring removal of the existing barn prior to occupation of the appeal scheme.
8. Accordingly, the prior approval scheme and construction of the stables represent an alternative, rather than additional proposal, with a real prospect of being implemented. With reference to the Court of Appeal judgment in *Mansell v Tonbridge and Malling BC & Others [2017] EWCA Civ 1314* it represents a valid fallback position ('the fallback position'), to which I afford considerable weight. I have had regard to the various appeal cases put forward by the appellants, many of which seek to demonstrate the validity of the fallback position which, in any event, I find is justified in this instance.

Main Issues

9. The main issues are:

- whether or not the proposal is inappropriate development in the Green Belt;
- 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;
- whether the location of the proposal is acceptable with regard to access to facilities;
- if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development in the Green Belt

10. Policy DS18 of the Warwick District Local Plan 2011-2019 (adopted 2017) ('LP') requires application of national planning policy for proposals in the Green Belt. Paragraph 147 of the National Planning Policy Framework 2021 ('the Framework') confirms that inappropriate development is, by definition, harmful

to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework sets out a number of exceptions to inappropriate development in the Green Belt. Paragraph 149 d) specifies that replacement of a building would not be inappropriate development, provided the new building is in the same use and not materially larger than the one it replaces.

11. The appellants submit that the proposal satisfies paragraph 149 d) of the Framework, as the barn that it is replacing has prior approval for its use as a dwelling, the existing and proposed uses thereby being the same. However, the exception would only apply where the new building is in the same use as the current building. Whilst the potential to convert the barn to residential use has been established through the prior approval scheme, it has not yet been implemented. Therefore, the exception in paragraph 149 d) cannot apply here. Consequently, with regard to inappropriateness, I have not considered whether the proposal would be materially larger than the existing building or the fallback position.
12. The appellants also consider that the proposal satisfies paragraph 149 g) of the Framework which allows for proposed new buildings on previously developed land where the proposal would not have a greater impact on the openness of the Green Belt than the existing development. Previously developed land is defined in the glossary of the Framework and excludes that which is or was last occupied by agricultural or forestry buildings. As the appeal site presently accommodates an agricultural building, this is specifically excluded from the definition of previously developed land. Accordingly, the proposal cannot be said to satisfy the exception allowed by paragraph 149 g) of the Framework.
13. Consequently, the proposed dwelling would not fall into any of the exceptions listed in paragraph 149 of the Framework and would therefore constitute inappropriate development.

Effect on the openness of the Green Belt

14. Openness is an essential characteristic of the Green Belt that has both spatial and visual aspects, a matter that was confirmed in *Turner v SSCLG & East Dorset Council [2016] EWCA Civ 446*. Aside from the existing barn and the concrete base of the stable building, the site is currently without distinguishing features, and is bounded by a simple post and rail fence. Consequently, the openness of the Green Belt is clearly perceptible around the barn.
15. The appeal scheme is indicated as having a footprint of 190m². In contrast, the footprint of the existing barn is stated as 176m², excluding the potential addition of a mezzanine which would not increase the overall bulk of the building. The stable is not currently in existence above slab level and therefore presently has limited implications for openness. Therefore, in broad terms, in comparison to the site in its existing state, the proposed building would result in only a slight increase in building footprint.
16. The relative bulk of the proposal in comparison to the existing barn is indicated on plan Ref 471_AR_220_010-B. Only a proportion of the building's footprint would be two storey, and consequently it is possible that some of the proposal's elevations would appear less substantial than the existing barn. However, the south east elevation of the proposal would have a noticeably taller and wider first floor profile than the barn. Though the proposal would be

set back from the boundary with the access track, there are relatively open views of the site from the nearby canal towpath. From there, a visual and spatial loss of openness would be clearly perceptible. In addition, whilst the existing barn is positioned against a band of vegetation and trees that run along the rear boundary of the site, the proposal would be set forwards of the boundary, extending the built development further across the site. This would further emphasise the loss of openness in this view.

17. Provision of an area of land on the opposite side of the access track as a wildflower meadow, retaining its existing post and rail boundary fence, would have a neutral effect on openness. However, the appeal scheme also proposes to incorporate a significant parcel of land immediately around the proposed dwelling and most notably to the west, as garden land. Additional landscaping is proposed that would soften the appearance of the proposal, along with replacement of the fencing with a ha-ha. However, there would be a range of other new features including a patio, an area for barbeques and an outdoor gym/shower.
18. Final details of landscaping could be addressed via planning condition. Nevertheless, maintenance of a substantial area of land to domestic standard and the likely presence of associated residential paraphernalia, would visually diminish the sense of openness of the site by a considerable degree. Consequently, the proposal as a whole would result in a notable reduction to the openness of the Green Belt in visual and spatial terms.
19. LP Policy H14 permits extensions to dwellings in the open countryside unless they result in disproportionate additions. Whilst not directly applicable to a proposed new dwelling, the supporting text to the policy indicates a disproportionate addition would amount to an increase in floorspace of more than 30 per cent for dwellings in the Green Belt. In respect of the fallback position, the appellants submit that the total proposed floor area would amount to an increase of 8% compared to the fallback scheme, and a less than 4% increase in building volume, and therefore that the proposal would not be materially larger. However, although the difference in floorspace and volumes is limited, as reasoned above, the harm I have identified to openness is a function of a combination of factors, not limited to a numerical comparison of floor area and volumes.
20. Although implementation of the stables would increase agricultural floorspace on site, the stables would be positioned in line with the barn. They would also be comparatively lower in height, helping to reduce their effect on openness. Having regard to the Brampton Villa appeal decision (Ref APP/P4415/W/17/3174191), whilst amounting to one building rather than two, and thereby focusing built development on one part of the site, the proposal would be noticeably taller than the stables and the existing barn. The effect of this increased height on openness would be emphasised by the proposed flat roof form.
21. In addition, there would be a substantial difference in the relative sizes of the garden space for the prior approval scheme and that of the appeal scheme. The garden of the prior approval scheme would be limited by restrictions under Schedule 2, Part 3, Class Q of the GDPO. Moreover, there would be no domestic garden space associated with the stable. In contrast, notwithstanding the neutral effect of the wildflower meadow on openness, the appeal scheme

garden would incorporate a significant parcel of land. The visual change to openness from maintenance of such a large area of land to domestic standard, and introduction of associated residential paraphernalia, would consequently be far greater than for the prior approval scheme. Whilst comprising more extensive hardstanding, the fallback position would consequently maintain a greater degree of openness within the site.

22. The fallback position would have a lesser effect on openness than the appeal scheme. Consequently, the fallback position does not change my findings in relation to the effect of the proposal on openness.

Character and appearance

23. The site sits in a pleasant rural landscape, surrounded by fields, many of which appear to be used as paddocks. The existing barn is largely screened from its access track due to existing trees and vegetation to the rear of the site and along one side of the track. Due to existing mature vegetation along both sides of the footpath running northwards from the site, there is limited visibility of the barn from there. However, the site is broadly flat and adjacent fields slope slightly downwards towards the canal. As a result, there are relatively open views of the side elevation of the existing barn from the canal towpath. The pitched tiled roofs of two other nearby buildings are also visible in some views of the barn. The site and barn can also be glimpsed from Bakers Lane where there is a gap in the vegetation for an access track, between the site access and the canal.
24. The existing site has a functional, agricultural character, in keeping with its rural surroundings. The existing barn is not a building of particular note. However, its form, colour and materials create a pleasing simplicity which blends with its surroundings and is not intrusive in views from the road and footpaths. In contrast, the appeal scheme introduces a part single storey, part two storey dwelling with a considerably more complex form. Due to its siting, it would be visible in the surrounding area and would be prominent in the landscape.
25. Whilst the choice of pale brick at ground floor level would not appear intrusive, the louvres at first floor level, large scale side facing windows and flat roof design would emphasise the height and prominence of the two storey elements of the building. This would jar with the pleasing predominance of pitched roofs in the locality. Although large openings are typical on rural buildings such as barns, these tend to be at ground floor rather than first floor level. There are other buildings in the vicinity that may be of a comparable or even larger scale in terms of height and footprint. However, these are positioned in less prominent locations due to topography and natural screening. As such, their scale is less readily perceived from the surrounding area.
26. In comparison to the existing site, the combined effect of a taller building, of greater complexity of form and design, together with domestic garden landscaping and residential paraphernalia extending over a greater proportion of the site, would diminish the positive contribution that the site makes to the open countryside here. The full circumstances of the precedent examples provided by the appellants are not before me. However, on the whole, these show buildings with pitched roofs and of a considerably simpler form that is more in keeping with a rural setting.

27. The Council's decision notice makes reference to the Barn Conversion Guidance which is understood to comprise the supplementary planning guidance titled 'Agricultural Buildings and Conversions – Barns (September 2010)'. Although principles of design within the guidance address rural locations such as this, it deals only with conversion of existing buildings and therefore does not apply here. Similarly, LP Policy BE4 on conversion of rural buildings is not relevant to consideration of this appeal scheme.
28. Whilst the fallback position would result in a change in the character of part of the site to residential, the effect of that change would be tempered by such use being contained within a building of agricultural appearance and with a comparatively smaller domestic garden. Consequently, the fallback position would have a less harmful effect on the character and appearance of the area, being of a style and scale that would blend with the agricultural landscape rather than appearing unduly prominent and at odds with it.
29. I conclude that the proposal would harm the character and appearance of the area. It would therefore be contrary to LP Policy H13 which supports replacement dwellings where they are not materially larger than the existing dwelling and have no greater effect on character and openness of the rural area. It would be contrary to LP Policy BE1 which supports proposals that make a positive contribution to the character of the area through good layout and design. It would also be contrary to LP Policy NE4 which seeks to ensure proposals contribute positively to landscape character. The proposal would also be contrary to paragraph 130 of the Framework which seeks to ensure developments are sympathetic to local character and their surrounding landscape setting.

Whether the location is acceptable with regard to access to facilities

30. The site is located within open countryside, not within or adjoining a village or other settlement. LP Policy H1 seeks to restrict development in such locations unless certain criteria are met. The proposal does not satisfy any of those criteria, as it would not be for rural affordable housing, rural worker accommodation, or relate to use of a heritage asset, or re-use of redundant or disused buildings (criterion e. i-iv). Nor is it advanced as a scheme of very exceptional quality or of an innovative nature (criterion e. v). Paragraph 80 of the Framework resists development of isolated homes in the countryside unless certain criteria are met, similar to those expressed in LP Policy H1, and including developments that would involve subdivision of an existing residential building. This is not the case here.
31. LP Policy H1 seeks to ensure a sustainable pattern of development, focusing new development on urban areas where there is greater access to local services and facilities, and consequently less reliance on travel by private car. Given the countryside location of the site, remote from nearby settlements and without evidence of good accessibility to public transport, the appeal scheme would not be consistent with Policy H1 objectives. It would consequently result in greater reliance on travel by car and increased emissions.
32. Considered in isolation, the location of the proposal would not be acceptable with regard to access to facilities. It would therefore fail to meet the requirements of LP Policy H1 and paragraph 80 of the Framework as set out above. However, given the presence of the fallback position, I am satisfied that the proposal would amount to a broadly similar intensity of use as the prior

approval scheme. As such the sustainability effects of occupancy of the prior approval scheme would be equivalent to those associated with occupancy of the appeal scheme, and in the same area of the countryside.

33. Accordingly, I find that the appeal scheme would result in no significant effects in relation to the accessibility of the site to nearby facilities compared with the prior approval scheme. Although conflict would arise with LP Policy H1 and with relevant elements of the Framework, the harm arising from this conflict is outweighed by the existence of the fallback position. I cannot therefore conclude other than that the location of the site is acceptable with regard to access to facilities.

Other considerations

34. The appellants submit that the proposal should be treated as a replacement dwelling, and that it therefore accords with LP Policy H13. The Shrewley Gate Nursery scheme and a recently revised scheme on that site (Ref W/20/0290 and W/21/0446) was considered by the Council to amount to a replacement dwelling under this policy. There appears to have been some inconsistency in the Council's approach with respect to that policy, and consequently their consideration of the impacts of the development on the Green Belt. However, the full details of the Shrewley Gate Nursery site and circumstances of those proposals are not before me. In any event, I must consider the appeal scheme on its own merits.
35. A condition could be applied so that the appeal proposal could not be occupied until the barn had been removed, thus ensuring it was a replacement rather than additional dwelling to the prior approval scheme. Nevertheless, given my findings that the appeal scheme would reduce openness and harm the character and appearance of the area, such a condition would not be sufficient to meet the requirements of LP Policy H13.
36. On the evidence before me, the proposal would not unacceptably harm nearby trees and there could be some small benefit to trees by moving built development further within the site. The proposal incorporates green roofs and could have other biodiversity benefits, including through planting of the wildflower meadow, extension of the hedgerow and provision of new trees. In the absence of further detail on these potential benefits I afford them limited weight. The appeal scheme could be designed to achieve energy efficiency, low energy use, and could be adaptable for the lifetime of the development. There is also an absence of objections from statutory consultees on matters such as highways, ecology and waste management. These are neutral considerations. It would have a broadly neutral effect on housing supply in comparison to the fallback position.

Conclusion

37. I have identified that the proposal would be inappropriate development and by definition would harm the Green Belt. It would also harm openness of the Green Belt and in accordance with paragraph 148 of the Framework I afford substantial weight to this harm. The proposal would result in harm to the character and appearance of the area, in conflict with LP Policies BE1, NE4 and H13. It would be neutral in respect of LP Policy H1 due to the presence of the fallback position.

38. Although there could be small benefits to trees and some biodiversity enhancements associated with the appeal scheme, the harm to the Green Belt would not be clearly outweighed by the other considerations. Therefore, the very special circumstances necessary to justify inappropriate development in the Green Belt have not been demonstrated. The proposal would consequently conflict with LP Policy DS18 in respect of development in the Green Belt.
39. For the reasons given, I conclude that the appeal should be dismissed.

Rachel Hall

INSPECTOR