



Appeal Decision

Site visit made on 15 February 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2022

Appeal Ref: APP/V4250/W/21/3283041

162 Manchester Road, Astley, Tyldesley M29 7FB

- 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 Stephen White against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/20/90529/FULL, dated 15 December 2020, was refused by notice dated 19 March 2021.
 - The development proposed is the erection of four detached dwellings following demolition of existing buildings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Stephen White against Wigan Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matter

3. Since the Council made its decision, and prior to the appeal being submitted, the Government published a revised National Planning Policy Framework (the Framework) in July 2021. All references to the Framework in this decision relate to the revised version, noting that paragraph numbers referenced by the main parties have therefore changed.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt;
 - Whether the proposal should make appropriate provision for affordable housing; and
 - If found to be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations which amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

5. The appeal site is located to the rear of the detached bungalow at 162 Manchester Road. It comprises existing single storey buildings and part of the garden of No 162. To the rear of the site is an expanse of open fields and immediately to the east is a residential development.
6. Policy CP 8 of the Wigan Local Plan, Core Strategy, Development Plan Document (September 2013) (the CS) states that development within the Green Belt will only be allowed in accordance with national planning policy.
7. The Framework states that the construction of new buildings is inappropriate however there are a number of exceptions at paragraph 149, including exception g) which is the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings). This is subject to the development not having a greater impact on the openness of the Green Belt than the existing development.
8. The Framework defines previously developed land (PDL) as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. Land that is or was last occupied by agricultural or forestry buildings and land in built-up areas such as residential gardens is excluded from the definition of PDL.
9. The Council suggests that the buildings have a lawful agricultural use. I note there is extensive planning history for the appeal site, including a refusal of prior approval for the change of use of the buildings from agricultural to residential, as the Council determined that they were last in use as a dog day care centre. Indeed, during my site visit I observed remnants of this use. The Council has however gone on to state that this use was unlawful and as the agricultural use had been interrupted the prior approval proposal therefore failed to meet the limitations of Article 3(1) and Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
10. There is no direct read across between the Class Q provisions of the GPDO and either Framework paragraph 149 or policy CP 8 of the CS, and the relevant tests and intention of this permitted development right is not a matter for me within the context of this appeal, which is determined on other factors. Furthermore, it is open to the appellant to apply for a lawful development certificate to obtain a decision on the existing lawful use.
11. Although the proposed development would cover much of the footprint of the existing buildings to be demolished, a substantial amount of the proposed built form, namely 2 of the proposed dwellings and a lengthy stretch of the access route, would extend beyond the existing footprint and onto a considerable part of the garden of No 162 which runs alongside the existing buildings. This area is clearly related to the existing bungalow and together they have a close relationship with the built form in the immediate locality which is characterised by properties sited close to Manchester Road in a largely linear pattern. The

garden area is clearly read in association with and thus located within the built-up area rather than the adjacent open land. Therefore, even if the appeal site was not last occupied by agricultural buildings, the proposal does not fall within the exception at paragraph 149 g) of the Framework as residential gardens are excluded from the definition of PDL.

12. Setting this matter aside, even if I were to find that the appeal site meets the definition of PDL, paragraph 149 g) of the Framework also requires the proposal to not have a greater impact on the openness of the Green Belt than the existing development. It is to this matter which I now turn.
13. Paragraph 137 of the Framework advises that a fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. When applying the concept of openness to the particular facts of a case, a number of factors are capable of being relevant. For the purposes of this appeal, I have considered both the visual and spatial aspects of openness.
14. The existing buildings are limited in scale and massing, being single storey and of a concentrated footprint. Conversely, the proposed development of 4 detached two-storey properties would be of a greater overall height than the existing buildings and would extend beyond the existing footprint of built form. A new access road would also be required to serve the proposed dwellings, and each would have driveways and rear gardens.
15. The collective degree of built form, along with the associated domestic activity and paraphernalia typical of residential developments, which would urbanise the site, would result in the introduction of built form where none currently exists and this would be readily apparent from public vantage points. It would also represent encroachment into what is currently natural and undeveloped land.
16. Therefore, the proposal would fail to preserve the openness of the Green Belt and would conflict with one of its purposes. Accordingly, the proposal constitutes inappropriate development in the Green Belt.

Affordable Housing

17. CS Policy CP 6, with further guidance provided in the Wigan Local Plan Affordable Housing Supplementary Planning Document (October 2013) (the SPD), seeks the provision of 25% affordable housing on all sites consisting of 10 dwellings or more, where this is viable.
18. Although the proposed development is for 4 dwellings, the Council consider that the appeal site and the adjacent residential development, with the address of Marklands Chase and hereafter referred to as such, should be considered a single development. Taken together, the Council note that they exceed the affordable housing threshold within the CS thus the required affordable housing provision or contribution ought to be provided on this basis.
19. I note there is nothing in the development plan which requires neighbouring sites to be aggregated for the purpose of assessing affordable housing. However, the three criteria drawn from the Brandlord judgment¹ should be applied in order to determine whether two development areas should be

¹ R (Westminster City Council) v First Secretary of State and Brandlord Limited [2003] J.P.L 1066

aggregated or considered to form part of a larger whole in this regard. These relate to ownership; whether the areas of land could be considered to be a single site for planning purposes; and whether the development should be treated as a single development. This 'tripartite test' provides a helpful guide, although it is not necessarily definitive since the merits of each proposal will vary.

20. In terms of ownership, within the planning application form the appellant signed certificate A which indicates that they were the sole owner of any part of the land or building to which the application relates. The Council has raised concern that, in a previous application for 5 detached dwellings at the appeal site, the appellant signed certificate B in respect of ownership and served notice on the developers of Marklands Chase. The appellant has since confirmed that they previously entered into an Option Agreement with the developers of Marklands Chase, for the purchase of the land to the rear of No 162, however the option period ended prior to the submission of the planning application relating to this appeal and it was not extended.
21. I acknowledge that the notice of the Option Agreement was not formally removed from the register of title for some time, close to the refusal date of the appeal proposal, hence the Council's conclusion in this regard. Nevertheless, even though the adjacent developers may have been beneficiaries of any development at the appeal site and thus had a legal interest, I am satisfied that, based on the up-to-date information before me, the appeal site is currently in separate ownership from the adjacent development.
22. The appeal site and Marklands Chase are currently independent of one another. The appeal site is accessed from Manchester Road via a shared driveway with No 162 and an adjacent building, whereas Marklands Chase has a separate access point slightly further along Manchester Road to the east. There are defined boundary treatments along the shared boundaries, with a fence and driveway of the property within the north-west corner of Marklands Chase immediately bounding the appeal buildings. From the information before me, it does not appear that both areas ever formed a single site.
23. However, the appeal proposal is entirely dependent on Marklands Chase. The layout of the proposed development requires the extension and alteration of the existing access route within Marklands Chase, including the driveway of an existing property. Utilising the layout of Marklands Chase, namely the access route and layout, appears to be designed in such a way by choice, rather than to overcome any particular circumstances within the appeal site. Furthermore, the proposal would be of a similar design to the existing properties.
24. Whilst I agree it seems logical for the proposed dwellings to be of a similar design to Marklands Chase, and this would not be reason in itself to treat the two areas as being a single development, it further cements the appeal sites interdependence on the adjacent development. The appeal site would have no clear relationship with No 162 as it currently does now. Given this integration, I consider that the appeal site and Marklands Chase would be read as a single development.
25. In terms of the timeline of events, based on the information before me it appears that outline permission was granted for 10 dwellings at Marklands Chase in April 2017, with reserved matters approval being subsequently

granted in January 2019. Following this, the Option Agreement was entered into with the developers of Marklands Chase in October 2019. A planning application was submitted at the appeal site for the erection of 5 dwellings following demolition of the existing buildings and alterations to the service road for the adjacent development. This was withdrawn in July 2020. I note that the option period also ended in July 2020. Accordingly, it seems to me that the development of dwellings at the appeal site was borne out of the Marklands Chase development, with a clear intention to include the appeal site with the adjoining development.

26. Even though the Option Agreement has ceased, and Marklands Chase appears to be largely completed and occupied, the developers still retain a presence on site with ongoing construction at the entrance and advertisement hoardings promoting the units. As such, and given the timeline of events, I can see no reason why an interest in the appeal site from the developers of Marklands Chase could not be acquired in the future, which would therefore frustrate the Council's affordable housing policy objectives.
27. Therefore, my findings of separate ownerships and sites makes no real difference as, taking into account the overall impression of the two sites and the appeal proposals interdependency with Marklands Chase, it would remain that the appeal site appears and functions as part of Marklands Chase. As such, I consider that the proposal represents a phased addition to the adjacent development.
28. Although the Council did not request a viability assessment, this is for the appellant to provide if relevant. In the absence of any provision or mechanism to provide affordable housing or an assessment which demonstrates that the provision of affordable housing would render the proposed development unviable, the proposal conflicts with Policies CP 6 and CP 18 of the CS, the SPD and the Framework.
29. Saved Policy R1E of the Wigan Replacement Unitary Development Plan (April 2006) is referenced in the Council's decision notice and concerns open space provision and contributions. The appellant indicates that a financial contribution is reasonable in this regard, however this has no bearing on the main issue of affordable housing.

Other Considerations

30. The Framework advises that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. 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.
31. The proposed dwellings would make a small contribution towards local housing supply. The proposal would also create temporary employment opportunities during construction and there would be associated spending in the local area from future residents on subsequent occupation of the dwellings. I afford limited weight to these benefits due to the small scale of the proposal.

The Green Belt Balance

32. The proposal would constitute inappropriate development and would cause harm to the openness and purposes of the Green Belt, to which substantial

weight is given. The lack of affordable housing provision is a further harm to which I afford considerable weight. The other considerations in support of the proposal, whether taken individually or cumulatively, do not clearly outweigh the harm I have identified.

33. Consequently, the very special circumstances necessary to justify the development do not exist. As such, the proposal would fail to accord with CP 8 of the CS and the Framework.

Other Matter

34. I acknowledge the appellant's concerns that the Council failed to engage with them in any meaningful way during the processing of the planning application however these are not relevant matters for the appeal process. In determining the appeal, I have only had regard to the planning merits of the proposal.

Conclusion

35. The proposal conflicts with the development plan taken as a whole and there are no material considerations, including the Framework, that indicate a decision should be made other than in accordance with it. I therefore conclude that the appeal should be dismissed.

H Ellison

INSPECTOR