



Appeal Decision

Site visit made on 22 February 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2022

Appeal Ref: APP/P1805/W/21/3279554

1 Clewshaw Cottage, Clewshaw Lane, Wythall B38 0EE

- 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 Lucas against the decision of Bromsgrove District Council.
 - The application Ref 20/01371/FUL, dated 2 November 2020, was refused by notice dated 22 January 2021.
 - The development proposed is described as 'Construction of a four-bedroom dwelling below ground level on residential land east of 1 Clewshaw Cottage, to replace the existing shed/garage/workshop, office, kennel, reed beds and planned games room under 18/01569/CPL.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined, a revised National Planning Policy Framework (the 'Framework') was published on 20 July 2021. It officially replaces the previous version published in February 2019. However, as any policies that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version of the Framework and new paragraph numbers in reaching my decision.

Main Issues

3. As the site is within the West Midlands Green Belt, the main issues are:-
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies and its effect upon openness and reasons for including land within it,
 - Whether the appeal site would be a suitable location for housing with regard to local and national policies, and
 - If the proposed development constitutes inappropriate development in the Green Belt, 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 the scheme is inappropriate development in the Green Belt

4. The Framework identifies that the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 147 of the Framework states that 'inappropriate development' in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 regards the construction of new buildings in the Green Belt as inappropriate development, subject to a number of listed exceptions.
5. The appeal site comprises part of the land at Clewshaw Cottage, an extended semi-detached two-storey dwelling. The parcel of land is to the side and set behind a hedge parallel to Clewshaw Lane. There is a detached timber-clad garage/shed outbuilding, two reed beds, and a small timber shed as an 'office'. There are fields to the side and rear of the site.
6. The proposal would involve demolition of the timber outbuilding and removal of the sunken reed beds and office shed. A new timber-clad garage and foyer building would be erected approximately on the site of the existing outbuilding, which would provide access to a subterranean dwelling. The underground 'L' shaped floor plan would extend under ground to the east and south of the new timber building. There would also be a sunken courtyard garden and integral greenhouse.
7. There is no dispute between the parties that the site constitutes previously developed land under Framework exception 149g) for *"...the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would have a greater impact on openness of the Green Belt than the existing development."*
8. Policy BDP4 (Green Belt) of the Bromsgrove District Plan (the 'District Plan') seeks to protect the Green Belt from inappropriate development unless the development falls within one of the listed exceptions that are similar to those in Framework paragraphs 149 and 150. I am therefore satisfied that Policy BDP4 is broadly consistent with the Framework.
9. There is no definition of openness in the Framework or the development plan. However, caselaw has established that it requires consideration of both spatial and visual aspects.
10. The proposed garage/foyer building would have a rectangular floorplan that would be slightly smaller than the 'L' shaped floor plan of the existing outbuilding. However, the ridge height of the pitched roof would be about 0.4 metres taller than the roof of the existing building. I concur with the Council that overall the new garage/foyer building would not have a greater impact on the visual or spatial openness of the Green Belt compared to the existing outbuilding. Nonetheless, the substantial subterranean floor area and integral greenhouse element of the proposed dwelling would have a larger floor area than the existing development on site and reduce spatial openness.
11. The underground part of the dwelling would not be externally visible from the Clewshaw Lane or by users of public footpaths in the vicinity. However, it would be visible from the adjacent field, as would the gabion stone retaining walls,

the sunken courtyard garden, integral greenhouse and full height glazing. Furthermore, light from inside the dwelling would also emanate up from the ground, particularly at night. This would affect visual openness.

12. One of the existing vehicular access points currently serving Clewshaw Cottage would be blocked up. A new vehicular access would be created for the proposed dwelling by the partial removal of roadside hedge further along Clewshaw Lane. This would lead to a reinforced grass driveway, turning and parking area. The gap created in the hedge for the access would open up views of the site. Furthermore, the introduction of semi-hardstanding, albeit reinforced grass, and additional parking would also further reduce visual and spatial openness.
13. The creation of a separate dwelling and garden would introduce some form of additional boundary fencing, as illustrated in the appellant's submitted images, and additional domestic paraphernalia to the site. The domestication of this part of the site would further reduce openness and undermine the fundamental aim of keeping land permanently open.
14. The proposed 'fallback' gym, garage and greenhouse buildings are not physically present on site, as was evident on my visit. Therefore they cannot be considered as 'existing' development on site and cannot be included for comparison purposes of proposed and existing development under exception 149g). I have also excluded the kennel from any openness considerations as this is located in the garden of the existing Clewshaw Cottage and the plans show it would remain there and not be located within the appeal site itself. Removing the reed beds, the small office shed and reducing the length of the proposed garage/foyer building would not affect my considerations of the overall impact on openness.
15. Drawing all the above points together, I consider the proposed development would have a greater impact on Green Belt openness than the existing development on site and would conflict with one of the purposes of including land within the Green Belt in respect of the safeguarding of the countryside from encroachment. Consequently, the proposal would not fall within exception 149g) of the Framework or District Plan Policy BDP4.4g) and would therefore constitute inappropriate development in the Green Belt.

Location for housing

16. District Plan Policy BDP2 (Settlement Hierarchy) seeks to focus new development in locations in accordance with the district's settlement hierarchy shown in Table 2, in order to promote sustainable communities, patterns of development and reduce the need to travel. District Plan Policy BDP1 (Sustainable Development Principles) states that for new development consideration will be had, amongst other things, to accessibility to public transport.
17. These policies are broadly consistent with the Framework, which states that to promote sustainable development in the rural areas housing should be located where it will enhance or maintain the vitality of rural communities (paragraph 79); seek opportunities to promote walking, cycling and public transport (paragraph 104), and by limiting the need to travel and offering a genuine choice of transport modes (paragraph 105).

18. Wythall (including Drakes Cross, Grimes Hill and Hollywood) is identified as a 'large' settlement. However, I saw on my visit that the appeal site was some distance from the main built up form of the settlement and any services and facilities in Wythall and Drakes Cross. Being surrounded by fields the site was clearly in the countryside.
19. The appellant advises that within 2 kilometres there are a number of facilities including a nursery, a small animal supplies and basic foodstuff store, a Spar, a Post Office, farm shop and a community club. Larger supermarkets are some 3–4 kilometres away.
20. The Council has not refused the proposal on technical highway grounds – the Highways Authority's objection to the proposal is based on sustainability principles and accessibility to local services and facilities. However, distance and proximity to services and facilities is not the only factor to consider. The nature and type of route to them will have an effect on their suitability and likelihood of them being used.
21. Clewshaw Lane has no pavements or street lights although the Highway Code does not prohibit walking along such roads. There were grass verges either side, whose ground was uneven and which would be worse in wet and muddy conditions. I note the results of the appellant's traffic speed survey, but as I walked along the grass verges it did not feel a particularly safe or a pleasant experience, and would be less so in the dark.
22. Grass verge walking may not be a problem for recreational walkers with boots and rucksacks but it would be unsuitable for those with mobility issues or people with children in prams and pushchairs, or walking with bags of shopping. At the end of Clewshaw Lane, one would have to cross Middle Lane without any crossing facility or pedestrian refuge before being able to join a pavement along Silver Street to progress towards the Post Office or Spar at Drakes Cross for example.
23. The nearby long-distance North Worcestershire Path and other nearby Public Rights of Way routes cross fields and would be unlikely to provide viable walking routes to access day-to-day services and facilities. People will generally cycle further distances for local amenities than they will walk. I note there is a Sustrans long-distance cycling Route 55 nearby, but it does not follow Clewshaw Lane. From what I saw on my visit, the nature of Clewshaw Lane is not conducive to walking or cycling to access day-to-day services and facilities, especially in the dark or inclement weather.
24. There are no bus stops along Clewshaw Lane, but I am informed the nearest one is over 0.4 kilometres away. As already described, walking along Clewshaw Lane to a bus stop is an unlikely prospect. The nearest railway station at Wythall is over about 3.6 kilometres away, but no public transport links to it. The appellant mentions a Dial-a-Ride service at Wythall and a 'Bromsgrove Urban and Rural Transport'. I have not been supplied with any substantive evidence of the routes, frequency of these services or who is eligible to use them. In my experience, these tend to be specialist transport services for those for whom conventional transport is not suitable.
25. I find the site is not well served by, or accessible to, public transport and the nature of Clewshaw Lane would not encourage walking or cycling for day-to-day local services and facilities some distance away. Therefore, the site does

not offer a genuine choice of transport modes and future occupiers would be reliant on the private car to access day-to-day facilities, even if car journeys are relatively short. Future occupiers may well have electric cars that would help off-set general car use, but ownership of electric cars would be difficult to control or insist upon.

26. Taking these various factors together, I find the appeal site is not a suitable location for housing with regard to local and national policies that seek to promote sustainable patterns of development or transport, and it would undermine the Council's spatial and settlement strategy for the location of housing. Accordingly it would be contrary to District Plan Policies BDP1 and BDP2 whose aims are outlined above. It would also be contrary to the Framework.
27. I have been advised of a number of examples of housing developments the Council has granted in Green Belt locations without pavements or street lighting, or similar proximity to facilities and amenities. From the submitted evidence I see that a number involve the conversion of existing buildings into dwellings. Others involve the demolition of sizeable buildings and removal of large areas of hardstanding, before the sites are redeveloped for housing. They are also in different parts of the district. None were examples of underground dwellings. Whilst consistency in decision making is important, all decisions turn on their own particular circumstances based on the facts before each decision-maker at the time. I am therefore unable to make any meaningful comparisons to the appeal scheme before me, which in any event I must consider on its own merits.
28. Whilst future and existing occupiers can exercise their personal choice and preference for where they live, planning permission runs with the land and planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration.

Other Considerations and Green Belt Balance

29. The development represents inappropriate development in the Green Belt and I have found harm to its openness and conflict with one of the Green Belt purposes. Inappropriate development is, by definition, harmful to the Green Belt, and paragraph 148 of the Framework requires that substantial weight must be given to any harm. In addition, the development would be in an unsuitable location that would undermine the Council's housing strategy and national policy guidance, and weighs against the proposal. These are serious planning objections. Therefore, inappropriate development should not be approved except in very special circumstances, which will not exist unless the harm to the Green Belt, by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
30. The appellant advances a number of other considerations to support his appeal. Three certificates of lawfulness for proposed development (LDCs) have been granted at the site for three detached outbuildings to provide a gym, games, steam and sauna building, a garage, and a greenhouse for use with Clewshaw Cottage. The appellant considers there would be a benefit in consolidating them into a single building as they would have a greater impact. A LDC is not a planning permission so the planning merits of each building did not fall to be considered. The three LDCs would be ancillary to the existing use of Clewshaw

Cottage, and hence would be for a very different purpose to a separate dwelling. I am not satisfied that there would be a greater than theoretical possibility that the erection of the three outbuildings would take place as an alternative to the proposed dwelling. Therefore, in my view, the LDCs are not a realistic fallback to which I can give much weight.

31. I am aware that Class Q¹ permits the conversion of certain agricultural buildings to residential use without a sustainable transport test. However, the proposal before me is not for a Class Q development and therefore this comparison is not relevant to the appeal before me.
32. Location and transport are only part of the broader picture of sustainable development. As the Framework explains, it involves three interdependent objectives – economic, spatial and environmental. There would be some environmental benefits from the proposed ground source heat pump, rainwater collection, electric vehicle charging points, sedum roof and associated reductions in carbon. Laudable as these are they are not uncommon measures, alone or in combination, and I give them moderate weight. I acknowledge that the Covid-19 pandemic may well have altered how some people live and work, and that the increased use of technology may have reduced the frequency or need for some people to commute to work. However, this is not unique to this proposal and therefore I afford it limited weight.
33. There would be some economic uplift to the local economy during construction from jobs and the purchase of building materials, and longer-term local spend from future occupiers. There would be some social benefits from additional residents to support local services in the area. However, these benefits would be very limited given that only one dwelling is proposed.
34. I understand the appellant is a first-time, non-professional self-builder who has been on the Council's Self-Build register since October 2017. He informs me the Council is failing to grant permission for enough serviced plots to meet demand. The Council has not commented. Whilst non-delivery does count in favour of the proposal, this in itself does not justify allowing harmful development in an unsuitable location. The Council has not confirmed if it has a five year supply of housing land. A shortfall would trigger paragraph 11d) of the Framework. This would weigh in favour of the proposal, albeit moderately due to the small scale nature of the proposal for a single dwelling.
35. I find that these other considerations taken together do not clearly outweigh the totality of the harm to the Green Belt or outweigh the harm to the Council's housing strategy designed to promote sustainable patterns of development. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist.

Conclusion

36. Accordingly, the proposed development would conflict with District Plan Policies BDP1, BDP2 and BDP4. There are no other considerations which outweigh this finding. For the reasons given, the appeal should not succeed.

K. Stephens INSPECTOR

¹ of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)