



Appeal Decision

Site visit made on 14 September 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2022

Appeal Ref: APP/Y3940/W/22/3298740

Land to the rear of Devizes Road, Box, Wiltshire

- 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 Brad Hughes against the decision of Wiltshire Council.
 - The application Ref PL/2021/06688, dated 2 August 2021, was refused by notice dated 10 February 2022.
 - The development proposed is the erection of a single self-build dwelling, resurfacing of Pye Lane and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the Council's Decision Notice as it provides a more concise description than that outlined on the original planning application form.
3. The Council's third reason for refusal was with respect to the impact of the proposed building on ecology and biodiversity. The appellant has submitted a drawing indicating an amended Site Location Plan, an updated Preliminary Ecology Appraisal, Shadow Habitats Regulations Assessment (April 2022), Biodiversity Net Gain Report (April 2022) and Lighting Diagram. The appellant has submitted these amendments in order to address the Council's ecology concerns. I have considered the drawings and documents under the principles established by the Courts in *Wheatcroft*¹. The Council have concerns with the inclusion of the documents on the basis that they have not been the subject of consultation.
4. In this case, the amendments to reduce the site edged red and amend typing errors in Preliminary Ecology Appraisal would be minor. The Shadow Habitats Regulations Assessment, Biodiversity Net Gain Report and Lighting Diagram is new information that was not seen by the Council and consultees during the application. However, as the additional information would not substantially alter the nature of the development, in my judgement, it would not be necessary to reconsult neighbours. Furthermore, the documents were submitted with the appeal submission in a timely manner. I am, therefore, satisfied that no party, including the Council who have viewed the additional information, would be prejudiced by my assessing the scheme with regard to it.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

Main Issues

5. The main issues are:

- Whether the proposal is inappropriate development in the Green Belt;
- the effect of the proposal on the openness of the Green Belt;
- Whether the proposed development would provide a suitable location for housing, with regard to the Council's housing strategy;
- The effect of the proposal on ecology and biodiversity; and
- if the proposal is inappropriate development 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

Inappropriate development in the Green Belt

6. Paragraph 149 of the National Planning Policy Framework 2021 (the Framework) sets out the categories of development which may be regarded as not inappropriate in the Green Belt. New buildings within the Green Belt are inappropriate unless, amongst other things, they are limited infilling in villages.
7. The site is adjacent to the settlement boundary of Box, which is identified as a Large Village. The site has recently been excluded from the settlement boundary of Box, however, a Court of Appeal judgement² determined that the village need not be the same as a settlement boundary for the purposes of the Framework. As such, whether the village has a settlement boundary or not, the matter of whether the proposal amounts to limited infilling has been assessed based on the situation on the ground. Furthermore, the appellant sets out that the definition of infill has been taken from the supporting text of Core Policy 2, which relates to small villages, but states '*infill is defined as the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling.*'
8. The Council has not disputed the definition set out above, and it seems a reasonable approach in regard to the assessment. For further clarification, I consider the definition of a 'gap' from the Collins English Dictionary, as a '*space between two things.*'
9. Devizes Road is characterised by mostly detached and semi-detached period properties fronting the road. The properties are large with spacious rear gardens with good spacing in between. The appeal site is accessed via Pye Lane, which extends to the rear of a group of properties fronting Devizes Road, before opening up to the undeveloped land that forms the appeal site. Pye Lane, therefore, does form a small gap between two residential properties fronting Devizes Road.
10. Aside from Pye Lane, a gap does also appear to be present between the dwellings known as Lyndale and Woodland View. However, this gap is mostly

² Julian Wood v The Secretary of State for Communities and Local Government and Gravesham Borough Council [2015]

filled by a detached property, which gives the impression of a gap due to being set back from the building line. Although this dwelling has a notable set back from Devizes Road, having regard to its design, scale, layout and orientation, I am of the view that it largely infills the space between these properties and conforms to the established pattern of development on Devizes Road. In my judgement, it does not establish an alternative pattern of development, which is set back from Devizes Road and fronts the byway.

11. With the above in mind, the gaps described above are small, but neither of them is appropriate nor large enough for a dwelling. The appeal site is a space that exists to the rear of the residential properties fronting Devizes Road, but the proposed development would not fill a gap, but form a dwelling directly to the rear of the built form, and at a higher level. Although I acknowledge that the appeal site does sit between rear gardens that front Devizes Road, these are large spacious gardens that remain predominantly open. Consequently, on the ground, the proposed dwelling would not appear to fill a small space between two things, and its siting and orientation would mean it would be largely at odds with the existing pattern of development.
12. Accordingly, it does not follow that the proposed development would appear as an 'infill' within a small gap in the village. I accept that a form of backland development could, in certain circumstances, also be an infill development, but for the same reasons as set out above this is not the case in this instance. Furthermore, as I have concluded that the proposed development would not represent an infill development, whether or not it is within the village of Box would not alter my view on whether it complies with paragraph 149 (e) of the Framework.
13. For these reasons the proposed development would not represent limited infilling in a village. From the evidence before me I have also found no reason to believe that it would meet any of the other exception criteria identified in the Framework. Accordingly, the proposal is inappropriate development, which, by its very definition, is harmful to the Green Belt and should not be approved except in very special circumstances. It would therefore fail to accord with paragraph 149 of the Framework.

Effect on Openness

14. Turning to openness, paragraph 133 of the Framework states that the 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. Openness has both a visual and spatial dimension and the absence of visual intrusion does not mean that there is no impact on the openness of the Green Belt.
15. The land is relatively open and free from buildings, as such, by reason of its siting, volume and height, the erection of a dwelling would reduce the visual and spatial aspect of the site. The construction of a two-storey dwelling on the site would result in built development where there is presently none, inevitably leading to a loss of visual and spatial openness. In wider visual terms, the new dwelling would be set back from the highway and would be mostly screened by the existing dwellings, trees and vegetation. However, it would still be visible from vantage points on Devizes Road, and the adjoining byway, which would therefore exacerbate the impact on the visual openness of the Green Belt.

Suitable location for housing

16. The site closely adjoins but is located outside of the defined settlement boundary of Box, a Large Village, as defined in the Wiltshire Core Strategy 2015 (CS) and Wiltshire Housing Site Allocations Plan 2020 (AP). As the site lies outside any residential settlement boundary, it is defined for planning purposes as being in the countryside.
17. Core Policies 1 and 2 of the CS set out the settlement and delivery strategy for Wiltshire. Core Policy 11 of the CS lists the recognised settlements for planning purposes for the Corsham Community Area. There is a general presumption against development outside the defined limits of the Principal Settlements, Market Towns, Local Service Centres and Large Villages.
18. Saved Policy H4 of the North Wiltshire Local Plan 2011 (LP) is relevant in the instance that the site is outside any recognised settlement boundary. It states that new dwellings will be permitted provided that the dwelling is connected to an agricultural, forestry or other rural based enterprises, or it is a replacement dwelling. There is no evidence that the site is one of the exceptions set out within Saved Policy H4 of the LP. As such, the proposed development would not meet any of the exceptions where residential development in the countryside is permitted in the development plan.
19. Saved Policy H4 of the LP is not entirely inconsistent with paragraph 80 of the Framework, which also permits conversions of redundant buildings, subdivision of residential buildings and designs of exceptional quality. However, the site is not a remote location. Accordingly, the site is not 'isolated' for the purposes of paragraph 80 of the Framework and none of its exceptions apply.
20. I acknowledge that the site has been recently removed from the settlement boundary of Box. Notwithstanding the reasons for this, the changes to the settlement boundary have been through a process of review, prior to the reviewed settlement boundary being formally adopted as part of the development plan. Therefore, the site is outside the amended settlement boundary of Box, and applications for planning permission must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. To allow new build housing in this location would be contrary to the policies of the development plan, which undermines the Council's development spatial strategy.
21. Accordingly, the proposed development would not be a suitable location for housing, with specific regard to the housing development strategy. As such, the proposal would be contrary to Core Policies 1, 2 and 11 of the CS and Saved Policy H4 of the LP, which encourage new development to occur within existing settlement boundaries of towns and villages in rural areas to achieve a sustainable pattern of development. These policies also limit development outside of settlement boundaries to justified exceptions. The proposed development would also be contrary to the objectives of Section 5 contained within the Framework.

Ecology and Biodiversity

22. There is dispute between the Council and the appellant over whether the site is a deciduous woodland and would be considered as a priority habitat. Furthermore, no dormice surveys were carried out and there was no evidence of

biodiversity enhancements. The appellant had also not provided an assessment to determine whether the proposal would be likely to have a significant effect on the Bath & Bradford on Avon Bats Special Area of Conservation (SAC). As indicated in the preliminary matters, the appellant has submitted an amended Site Location Plan, an updated Preliminary Ecology Appraisal, Shadow Habitats Regulations Assessment (April 2022), Biodiversity Net Gain Report (April 2022) and Lighting Diagram to address these matters.

23. I have had regard to the Council's position on the site being a priority habitat. However, the appellant's Preliminary Ecology Appraisal (PEA) indicates that the site is largely made up of grassland, with only the perimeter of the site forming a wooded area. Based on my observations on site, I would agree with these conclusions, and determine that the appeal site, at present, does not appear as a deciduous woodland, which would be classed as a priority habitat. The wooded area would also not form part of the garden. The application would not result in the loss of trees from the nearby wooded area, or any habitat that would be present beneath. The proposed lighting diagram submitted would ensure light levels from the development would avoid the wooded area.
24. Although the PEA suggests dormice could be present in the woodland, it did not identify the presence of dormice on the site. Furthermore, as the proposed development would not result in the loss of any trees or the woodland area adjacent, no further dormice survey is proposed. Based on the evidence before me, I think the appellant has provided sufficient evidence to demonstrate that a specific dormice survey would not be necessary in this instance. In addition, the additional information submitted does demonstrate that a biodiversity net gain assessment through enhancements would be achievable. As the land is within the appellant's control, these enhancements could be secured by way of a planning condition.
25. Consequently, I am of the judgement that the site does not form a priority habitat, and no further dormice surveys would be required. In addition, sufficient enhancements are proposed to demonstrate that the scheme would not result in a net loss in biodiversity.
26. Notwithstanding the above, it is accepted by the Council and the appellant that the appeal site is within numerous Core Roost Zones of the Bath & Bradford on Avon Bats Special Area of Conservation (SAC), and within 600m of the Box Mine Site of Special Scientific Interest (SSSI). The grassland, watercourses, scrub and woodland surrounding the SAC are used by bats for feeding and commuting. Although these habitats are not included in the SAC designation, they are vital to support the bats which are features of the SAC. As such, the Habitat Regulations would require an assessment to determine whether the proposal would be likely to have a significant effect on the SAC.
27. In this case, this is likely to include potential effects on the feeding and commuting of Bats from the increased residential activity such as lighting, noise, and impact upon the nearby woodland and watercourses. As the competent decision-making authority, if I had been minded to allow the appeal, it would have been necessary for me to consider the proposed mitigation set out in the Shadow Habitats Regulations Assessment, and complete an Appropriate Assessment for this scheme.
28. However, as I have already identified harm to the Green Belt and the Council's housing strategy, undertaking my own Appropriate Assessment would not alter

the outcome of the appeal. On that basis, there is no need to examine this matter further for the purposes of making my decision.

Other Considerations

29. I turn now to address other considerations that, potentially, might outweigh harm arising from inappropriate development in the Green Belt, the erosion of openness and the conflict with the housing strategy to provide the very special circumstances required to justify a grant of planning permission.
30. The Council cannot demonstrate a five-year supply of deliverable housing land. However, Paragraph 11 of the Framework informs that the presumption in favour of sustainable development is not engaged where the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 of the Framework advises that such policies include those relating to the Green Belt. Therefore, the provisions of paragraph 11 of the Framework are not engaged.
31. Part of the appellant's case is also that proposal would be a self-build proposal as described under The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016). However, a condition to secure self-build schemes is not sufficient in this regard, and a section 106 legal agreement or a Unilateral Undertaking would be the most appropriate method to secure such matters. As there is no planning obligation before me, there is no mechanism in place to ensure that the proposed scheme would be for a self-build. As such, the proposal would be considered as an open market dwelling. Consequently, although there are no specific policies dealing with self-build proposals, paragraph 11 of the Framework would not be engaged.
32. The appellant has also provided an example of a linked appeal where the provision of self-build developments in the scheme was given great importance.³ However, the previous appeal was for a much larger residential scheme where a number of matters, including the provision for the self-build plots, were secured through a planning obligation. As such, the example is not comparable to the appeal scheme before me, and I have attributed limited weight to this matter in my assessment.
33. Notwithstanding my findings above, I have had regard to the material considerations that have been brought to my attention. In particular, the appellant has set out that the development would result the provision of a new dwelling, as self-build property. The appellant also points to the proposal having a social and economic benefit that would arise from the construction period and the potential future spending of occupants. It is also said that the proposal would enhance Pye Lane, increase biodiversity on the land and comply with nine out of the 11 development plan policies considered.
34. The proposal is for a single dwelling, which would provide only a limited uplift in housing supply in an area where the shortfall is small. As indicated above, although a self-build property is indicated, there is no mechanism to secure the proposal in this manner. The construction benefits would be short term and the social and economic support to the area would be small. The works to Pye Lane would be a neutral impact upon its appearance, and the biodiversity uplift would

³ Appeal Decisions References: APP/B1930/W/20/3265925 and APP/C1950/W/20/3265926

only be limited. I would attribute limited weight to these matters. In my judgement, compliance with other relevant development plan policies is essential, and would not be considered a benefit of the proposed scheme.

Green Belt balance

35. In considering the substantial weight given to the harm to the Green Belt, to my mind, the benefits outlined above do not clearly outweigh the harm to the Green Belt. These benefits would also not outweigh the harm to the housing strategy. Therefore, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist and the development would conflict with the Framework and the relevant policies of the development plan outlined above.

Other matters

36. The site is located within Cotswold Area of Outstanding Natural Beauty (AONB). In line with the statutory duty of s85(1) of the CROW Act 2000, I have given weight to the conservation (and enhancement) of the landscape and scenic beauty of the AONB. However, the changes would mostly be viewed within the context of the site and hidden from wider viewpoints in the landscape. Accordingly, I do not find that the proposed scheme would be harmful to the wider landscape of the AONB, and therefore it would conserve the landscape and scenic beauty of the AONB.
37. As the site is located within Box Conservation Area (Conservation Area) and close to Lamb House and Lamb Cottage (Listed Buildings), I have had regard to the statutory duty in Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, when making my decision.
38. Based on my observations, Lamb Cottage and Lamb House (Listed Buildings) are period properties that front Devizes Road with a set back and landscaped frontage close to Pye Lane. Mature trees are visible to the rear, providing a verdant setting, which adds value to the heritage asset. Although Pye Lane is close and forms part of the appeal site, in my judgement, it does not add significance to the setting of the Listed Buildings. Furthermore, the trees visible to the back of the Listed Buildings adjoin the byway, but do not form part of the application site. As such, the appeal site does not form a positive aspect of the setting or add to their significance as heritage assets.
39. There is no specific appraisal for the Conservation Area, but based on my observations, the significance of the Conservation Area appears to be centred around the historic core of the village, which is largely defined by the architectural quality of the period buildings and the verdant countryside setting. As already indicated, the appeal site sits within the Conservation Area, to the rear of the dwellings fronting the Devizes Road, comprising a sloped grassed area bordered by some broadleaved wooded areas. For these reasons, the appeal site forms part of the verdant backdrop, which adds value to the significance to the character and appearance of the Conservation Area.
40. The formation of the dwelling would result in engineering works to accommodate the proposed development, which would urbanise the site and alter the character and appearance of the undeveloped land. The position, scale and height of the proposed dwelling, coupled with retention of vegetation to the

east would preserve the architectural quality of the buildings to the front and limit the impact upon the verdant backdrop, which adds to significance of the Conservation area. However, as the proposed development would urbanise the undeveloped site, which adds to the significance of the Conservation Area as a heritage asset, this harm is considered to be minor less than substantial harm.

41. Paragraph 202 of the Framework is applicable in these instances and indicates that less than substantial harm to heritage assets should be weighed against the public benefits of the proposal. The proposed development would be considered a windfall site that would contribute a new dwelling to the local housing stock. There would also be social and economic benefits from the construction, in terms of additional expenditure in the local economy and the creation of construction jobs. In this instance, the public benefits would be sufficient to outweigh the minor less than substantial harm that I have identified. In coming to this conclusion, I have given considerable weight and importance to paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
42. I also note that the appellant feels frustrated with the policy changes that have led to the proposed development being considered differently to pre application submissions. However, any previous discussions at pre application stage or decisions prior to changes in adopted development plan policy are not matters that affect my findings on the main issues in this case.

Conclusion

43. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

M. P. Howell

INSPECTOR