



Appeal Decision

Hearing held on 7 September 2022

Site visit made on 7 September 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2022

Appeal Ref: APP/P1805/W/22/3298793

Barn South of East Worcestershire Farm, Icknield Street, Headley Heath B38 0EP

- 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 Andrew Lovatt against the decision of Bromsgrove District Council.
 - The application Ref 21/01240/FUL, dated 27 July 2021, was refused by notice dated 12 November 2021.
 - The development proposed is reconstruction of barn for conversion to residence.
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Decision

1. The appeal is allowed and planning permission is granted for reconstruction of barn for conversion to residence, at Barn South of East Worcestershire Farm, Icknield Street, Headley Heath B38 0EP in accordance with the terms of the application, Ref 21/01240/FUL, dated 27 July 2021, subject to the attached schedule of conditions.

Main Issues

2. The Council's concerns outlined in its Officer Report regarding compliance with Policy BD2 of the Bromsgrove District Plan 2011-2030 (Adopted January 2017) (BDP) ultimately relate to the location of the development outside of a defined settlement, within the Green Belt. I have therefore considered this in the main issues relevant to the Green Belt. Compliance with the remaining policies listed in its second reason for refusal are dealt with in the third main issue regarding accessibility of the appeal site.
3. With the above in mind, the main issues are:
 - whether the development would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt;
 - whether the proposed development would be accessible to local services and facilities; and
 - if the development is inappropriate within the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

4. The National Planning Policy Framework (the Framework) sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
5. The wording of the Framework is the most up to date expression of national policy on development in the Green Belt. Policy BDP4 of the BDP includes exceptions close to the wording of paragraph 149 of the Framework and further detail on how they should be interpreted in a local context. It does not repeat the other forms of development in paragraph 150 of the Framework that are also not inappropriate development. Nevertheless, it is reasonably consistent with the Framework, so I afford it considerable weight in relation to the matters relevant to this main issue.
6. Paragraph 149 sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate development, unless it meets one or more listed exceptions and the impact on openness is already taken into account, unless there is a specific separate requirement to consider it.
7. The proposal is for a new dwelling on land that does not contain permanent buildings and is outside of a Green Belt village, so would not meet any of the exceptions listed in the Framework or BDP Policy BDP4. Moreover, the Council's Settlement Hierarchy sets out circumstances where housing development would be permitted in the district. Headley Heath is a hamlet but the appeal site is situated a short distance to the west. It therefore lies in the open countryside within the Green Belt, so would not be situated within a defined settlement outside of the Green Belt. The proposal would therefore also conflict with BDP Policy BDP2, as it would not be for any of the types of development listed under the policy.
8. The aspect of the appeal scheme concerning the reconstructed barn would therefore amount to inappropriate development, as agreed in the Statement of Common Ground (SoCG). For the purposes of the second main issue, I have therefore not considered further its impact on the openness of the Green Belt.
9. The proposal also includes a relatively small area of land to the north, east, and south of the proposed building for residential use in connection with the building. As the existing use of land is agricultural, this would amount to a material change of use of land. This is covered by Paragraph 150(e) of the Framework and uses are 'not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it' [my emphasis]. A finding regarding inappropriate development in respect of the use of land is therefore only possible following consideration of the impact on openness in the second main issue.
10. Paragraph 138 of the Framework clarifies that the Green Belt serves five purposes, including to assist in safeguarding the countryside from encroachment. Given that the proposal would be for development that is not intrinsically linked to the countryside, it would be a form of development that would encroach into it. While this impact would be modest, it would conflict with the purposes of including land within the Green Belt. Nevertheless, the conclusion on whether the proposal would accord with the aforementioned

exceptions, and not be inappropriate development overall, would hinge on if the appeal scheme would harm the openness of the Green Belt, which I address in the next main issue.

Openness

11. Paragraph 137 of the Framework outlines that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics thereof being their openness and permanence. The physical presence of built forms may affect openness, which can also have a visual element.
12. The appeal site is adjacent to the eastern side of Icknield Street and is visible within the surrounding landscape from nearby roads and footpaths, including Public Right of Way No 537, to the west. Domestic paraphernalia, including parked vehicles, on the land proposed to be used in connection with the building would therefore be conspicuous within its surroundings and introduce permanent development within part of the appellant's landholding where this does not, currently, exist. This would equate to harmful visual effects associated with the proposal.
13. The proposed use of land would therefore result in a harmful loss of openness of the Green Belt in visual terms. While this harm would not be significant, openness cannot be preserved if there is a finding that there would be an adverse impact on it, of any kind. The proposed use of land would therefore be contrary to the main aims of Green Belt policy at local and national levels, which I have set out above, including inappropriate development.

Accessibility

14. The Framework seeks to restrict housing in rural areas to locations where it will enhance or maintain the vitality of rural communities. There are other dwellings and agricultural buildings within relatively close proximity of the appeal site, but the proposal would do little more than add to existing development in the open countryside and future residents would be obliged to travel to Hawkesley and Drakes Cross, where the local shops, facilities and services are situated that would meet their day-to-day needs. The closest stops for regular bus services to Birmingham are situated in Longdales Road, just under a mile to the west of the site.
15. The local road network lacks street lighting and dedicated footways but there is a bridleway which leads to Drakes Cross, a short distance from the site and also public rights of way opposite. Icknield Street is part of National Cycle Network Route 55 from Birmingham to Redditch, so the principle of its use by cyclists is accepted as being appropriate.
16. While pedestrians may choose to step from carriageways onto grass verges alongside them, these routes would not be convenient or realistic ones for people wishing to walk or cycle after dark or during inclement weather, particularly to access public transport. Future occupants of the proposed development would therefore be likely to travel regularly by private motorised transport to access, amongst other things, retail, employment, and healthcare.
17. The Framework suggests that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. At the Hearing, the appellant suggested that the agricultural use of the site would continue in the absence of

the proposal, which would require animals to be tended to on a regular basis throughout the day, thereby requiring numerous trips to the site from another location. The proposed residence would have one bedroom so, at worst, the proposal would only be likely to lead to a small increase in vehicular traffic from the site due to a mixed agricultural and residential use, which the council accepted would not be of great concern to it. Furthermore, while there would be no means to ensure future occupants would be obliged to utilise it, the proposal would also include an electric vehicle recharging point, which is deemed to be a sustainable mode of transport by the Framework.

18. With the above in mind, the proposal would be unlikely to lead to a harmful increase in the amount of unsustainable journeys made from the appeal site. I therefore conclude that it would be accessible to services and facilities. Hence, the proposal would accord with Policy BDP1 and paragraphs 7 and 79 of the Framework.

Other Considerations

19. The original barn situated on the site was approved for conversion to a dwelling¹ under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. This entailed demolition of timber framed lean-to structures and alteration of the remaining single-storey barn of masonry construction to include a replacement roof, installation of doors and windows, and repairs to sections of brickwork.
20. The appellant and his wife purchased the site in order to implement the prior approval but, in May 2021, storms removed the roof of the original barn and subsequently damaged other parts of the building, leading to its partial collapse. At the Hearing, the appellant confirmed he is accredited, by the Institute of Occupational Safety and Health, to assess risks in the workplace to ensure work is carried out safely. Having regard to this and advice sought from other parties with relevant building experience, he determined that the damage caused to the barn and its proximity of the building to the road presented an imminent danger to the lives of persons walking by or trespassing on the land, so required demolition.
21. The appellant accepted that the prior approval can no longer be implemented and is not a formal fallback position, but the approved works were delayed by the Covid-19 pandemic and, had the storm not occurred, there is a greater than theoretical possibility that these would have been completed.
22. The appeal proposal would be constructed on the footings laid following demolition of the original barn and it would not differ in its footprint, height, or roof pitch to the prior approval scheme, including the extent of land forming domestic curtilage. For the reasons outlined in the first main issue, I did not need to reach a conclusion regarding openness and this was not a relevant consideration under the application for prior approval. Nevertheless, I am mindful that the effect of the rebuilt barn on openness would be identical to the repaired and converted barn, had these works been possible to implement.
23. Moreover, of the bricks salvaged from the demolition of the original building, the appellant estimates that around 1500 could be used in the construction of the proposed building. This would accord with aim set out in the Council's High

¹ Planning Reference: 18/00904/CUPRIO, approved on 9 October 2018.

Quality Design SPD² to reuse materials. The appellant's Personal Statement indicates the roadside wall would be replaced with original bricks if reusable.

24. While I do not doubt the proposal would be an improvement on a site featuring waste deposited by unrelated parties, its clearance could have occurred with the re-use of the land for agricultural purposes. However, I accept that the site clearance works undertaken include removal of vegetation obscuring visibility from the existing field access to the south, which amounts to an improvement to the highway safety for users of the site and Icknield Street. The appellant has also undertaken considerable planting of the boundaries of the site, including to the site frontage, and proposes to plant numerous trees within the site.
25. There would be some limited economic benefits associated with the construction phase of the proposed development.
26. Due to the continued agricultural use of part of the land surrounding the proposal, residential presence at the site would be likely to result in a modest reduction in traffic to and from this location from a home elsewhere. My finding in relation to the accessibility of the proposal to services and facilities is also regarded as an absence of harm is not counted as a positive consideration in support of the scheme.
27. It is agreed in the SoCG that, as of January 2022, the Council's Housing Land Supply position stands at 4.6 years. Although there is still insufficient supply, given the scale of the proposal, it would only make a limited contribution to addressing this shortfall.

Personal Circumstances

28. The appellant and his wife currently reside on the site in an unlawful caravan, which is their only home. They are at risk of being made homeless were the appeal to be dismissed and the caravan subsequently required to be removed. This is due to the financial expenditure exhausted in obtaining the site; carrying out initial site clearance and groundworks; reseeding, fencing and planting; the installation of utilities and animal shelters; and purchasing a machine store, construction materials (some of which can no longer be used due to the date of their purchase) and fixtures and fittings. Moreover, they would not be able to purchase another property in the locality to enable access for looking after livestock on the land and only have sufficient savings to complete the project. They are also unlikely to be able to recoup any of their outgoings on the project and their personal circumstances would affect their eligibility for a mortgage. This could have a direct harmful effect on the health of the appellant.
29. The property would be low maintenance, which would assist the appellant and his wife in later years of their lives. I also appreciate that there is support for the appeal scheme from the Parish Council and several parishioners.

Planning Balance

30. The appeal scheme is inappropriate development in the Green Belt. This is harmful by definition. The proposed use of land would reduce the Green Belt's openness which gives rise to additional harm. These harms render the appeal

² Adopted June 2019.

scheme contrary to the aims of BDP Policies BDP2 and BDP4, and the relevant sections of the Framework.

31. Paragraph 148 of the Framework advises that substantial weight should be given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is 'clearly outweighed by other considerations.'
32. The scale of the development would be the minimum necessary to achieve the benefits outlined in 'other considerations', as it would be a modest structure that would be constructed to a size identical to the previously approved conversion. This does not therefore lessen the weight to attach to these other considerations.
33. Cumulatively, I also afford substantial weight to the 'other considerations' advanced in support of the appeal scheme. I therefore find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.

Conditions

34. In addition to the standard time limit for the appeal, in the interests of clarity I have specified the approved plans. A condition for the proposed materials of construction is necessary to protect the character and appearance of the area. Conditions are also necessary in the interests of highway safety regarding surfacing of the access adjacent to Icknield Street and space for parking of a vehicle.
35. I have not included a condition for visibility from the access as, at the Hearing, the Council accepted that the existing access had already been improved to the south by the appellant and it had reservations that the Highway Authority's requirement to the north could not be achieved over land in the control of a third-party. I am also mindful that the Council also did not object to the extent of traffic from the site. That condition would therefore not be reasonable or necessary.
36. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The planning condition agreed in the SoCG would enable the Council it to retain a measure of control over the future development of the site to protect against harm to the openness of the Green Belt. Given the elevated location and visibility of the site in the landscape, future development of the appeal site, enabled by full permitted development rights, could result in greater harm to the openness of the Green Belt than similar development associated with other houses within the locality. A condition removing such rights would therefore be relevant to planning and the development permitted.
37. In its consultation response to the Council, North Worcestershire Water Management suggested a condition for the finished floor level to be raised above the site, due to the risk of run-off from the highway. However, the proposal is on ground elevated above the highway, so a condition would not appear to be necessary on such grounds. They also suggested that details of surface water drainage should be agreed, but I am mindful that such matters

are also required to be considered under the Building Regulations. I have therefore not included conditions regarding these matters.

38. Similarly, the focus of planning decisions should not be the control of issues subject to approvals under other regimes and should assume these regimes will operate effectively. Moreover, the Building Regulations were updated with new requirements for electric vehicle charging points, which took effect from 15 June 2022. Conditions for the installation of such points would therefore not be necessary in this regard.
39. In light of my finding regarding the other considerations outlined above, the circumstances that affected the appellant's ability to implement the prior approval could have occurred to another owner. With that in mind, the condition suggested at the Hearing, by the appellant, for a personal permission would not be necessary.
40. As I outlined above, the existing building on site was demolished and foundations for the proposed development have already been implemented. Despite the fact that these have been undertaken without permission, the conditions requested by the Council's Historic Environment Advisor would not be reasonable in these circumstances.

Conclusion

41. The proposal would be contrary to the aspect of the development plan that refers to development in the Green Belt. However, the Framework is a material consideration and this indicates that the proposed development should be determined other than in accordance with the development plan. Accordingly, for the reasons given, I conclude that the appeal should be allowed.

Paul Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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| Mr Andrew Lovatt | Appellant |
| Mrs Wendy Lovatt | Appellant's Wife |
| 42. Mr Jack Smyth | Barrister, Wallace, Robinson and Morgan |

FOR THE LOCAL PLANNING AUTHORITY:

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| Mr Paul Lester | Principal Planning Officer |
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DOCUMENTS SUBMITTED AT THE HEARING:

Signed Statement of Common Ground.

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 0455/P/1, 0455/P/2 and 0455/P/3.
- 3) Prior to their first installation, details of the form, colour and finish of the materials to be used externally on the walls and roof of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
- 4) The development hereby approved shall not be occupied until the first 5 metres of the access into the development, measured from the edge of the carriageway, has been surfaced in a bound material.
- 5) The development hereby approved shall not be occupied until an area has been laid out within the curtilage of the dwelling for the parking of 1 car at a gradient not exceeding 1 in 8. This area shall thereafter be retained for the purpose of parking a vehicle only.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development included within Schedule 2, Part 1, Classes A to E shall be carried out without express planning permission first being obtained from the local planning authority.

End of Schedule