



Appeal Decision

Site visit made on 31 August 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2022

Appeal Ref: APP/D0121/W/22/3295116

Atcost Barn, Glen Farm, Sandy Lane, Lower Failand BS8 3SE

- 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 Paul Wilson against the decision of North Somerset Council.
 - The application Ref 21/P/1931/FUL, dated 5 July 2021, was refused by notice dated 24 January 2022.
 - The development proposed is described on the application form as, "Replacement of existing building to create new dwelling including building operations (alterations to Prior Approval ref: 19/P/1343/CQA for the change of use of an agricultural building (Sui Generis Use) to 1no. dwelling house (Use class C3))".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A revised description of development was agreed between the Council and the appellant: "Demolition of existing agricultural building and erection of 1 no. dwelling". I have used this description in my consideration of the appeal since it best describes the proposed development in precise and concise terms.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt;
 - whether the appeal site is in a suitable location for new housing, having regard to the proximity to local services; and
 - whether any 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 proposal.

Reasons

Whether Inappropriate Development

4. The Framework makes clear that the construction of new buildings is inappropriate development in the Green Belt. The appellant has conceded that the proposal to demolish the existing agricultural building on site and to replace it with a dwelling would not fall within any of the exceptions found under paragraphs 149 and 150 of the Framework, or under Policy DM12 of the Development Management Policies: Sites and Policies Plan Part 1 (adopted 2016) (DMP) which provides that, amongst other things, inappropriate development is, by definition, harmful to the Green Belt and will not be approved except in very special circumstances.
5. Considering the nature of the proposal and the evidence before me, I concur with this assessment. As such, I find that the proposal would represent inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt.

Openness

6. The Framework denotes openness as an essential characteristic of the Green Belt. The openness of the Green Belt has a spatial aspect as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
7. The Planning Practice Guidance advises that, as openness is capable of having both spatial and visual aspects, volume can be a relevant factor¹. I have taken note of appeal decision Refs APP/N5090/D/17/3174495 and APP/K2230/W/19/3225211 and they are relevant to this appeal in so much as, from my reading of those decisions, essentially the Inspectors found that in the particular circumstances before them the proposals involving subterranean development caused no actual harm to the openness of the Green Belt. In a similar vein, in appeal decision Ref APP/D0121/W/20/3255105 the proposal was found to greatly improve the openness of the Green Belt, taking account of the partly subterranean element of that proposal.
8. The appeal site is dominated by Atcost Barn, which is located on and surrounded by hardstanding. The barn is positioned adjacent to Sandy Lane and although the front of the barn can be seen from Sandy Lane, hedging and trees shroud much of the side of the barn from that side. The trees and bushes present near the edge of the hardstanding, to the south and west of the barn, and the predominantly rising topography in that direction close to the barn, also partially screen much of the barn from public view points.
9. The proposed dwelling would retain the same ridge height as Atcost Barn, but with a slightly smaller width. Consequently, it would have a smaller footprint than Atcost Barn, but not significantly so.
10. More importantly, the proposal involves a considerable amount of excavation to create a subterranean floor, which would result in a dwelling on 2 levels. The presence of windows on both floors and the lightwell area would mean that within the site its 2-storey nature would be apparent.

¹ Paragraph 64-001-20190722

11. However, given the screening and topography referred to above, the presence of private land to the north of the site further limiting public views of the site, and that the first floor windows on the north elevation would be partially obscured due to hit and miss timber cladding being positioned in front of them, the adverse impact of this particular aspect of the new dwelling on the openness of the Green Belt in visual terms would be limited. In appeal decision Ref APP/D0121/W/21/3276355, the Inspector described that site as being 'highly prominent' from some viewpoints, which is not the case for the appeal proposal. Hence, that appeal decision does not change my findings on this matter.
12. Although the proposed new dwelling would have an increased overall volume compared to Atcost Barn, according to the figures provided by the appellant, which have not been disputed by the Council, the proposal would involve an approximately 16% reduction in above-ground volume, compared to Atcost Barn. This above-ground reduction would however be modest in spatial terms and considering the site's fairly secluded context, would make little appreciable positive difference to the current situation in visual terms.
13. The proposal would remove much of the existing hardstanding surrounding Atcost Barn, replacing it with landscaped areas. As the hardstanding consists of ground-level surfacing its removal would have a negligible effect on the openness of the Green Belt.
14. The Design, Access and Heritage Statement refers to Atcost Barn as being derelict, and there is little information before me to indicate that the site has recently been used on a particularly intensive basis. In this respect, the proposal for a new family-sized dwelling would likely introduce items associated with a household, including bin storage, parked cars, and children's play equipment. Moreover, comings and goings on this currently derelict site, including from vehicles of the future occupiers of the proposal, would likely occur.
15. Drawing all of the above together, given its above-ground bulk the proposed new dwelling itself would result in only a slight improvement to the openness of the Green Belt in both visual and spatial terms, whereas the increased activity on site, the comings and goings to it, and the domestic paraphernalia which would likely accrue, would cumulatively entail a tangible and noticeable localised change over-and-above the present situation. Hence, the openness of the Green Belt would be reduced in both visual and spatial terms. This would cause harm to the Green Belt, which would be in addition to the harm identified on the first main issue, above.

Suitability of Location

16. Due to its location outside of any established settlement boundary, the site is located within the open countryside in planning policy terms. In such areas, Policies CS14 and CS33 of the Core Strategy (adopted 2017) (Core Strategy) collectively provide that, amongst other things, development will be strictly controlled in order to protect the character of the rural area and to prevent unsustainable development.
17. According to a figure provided by the appellant, which has not been specifically disputed by the Council, the site is less than 300 metres away from a potential settlement boundary for Abbots Leigh, proposed within the North Somerset

2038 Draft Local Plan. Nevertheless, this does not change the current status of the site as being within the open countryside. In any event, it is common ground between the main parties that there are limited services and facilities close to the site, including at Abbots Leigh.

18. The main parties have focussed on Pill with respect to the presence of facilities which would serve the day-to-day requirements of the future occupiers of the proposed new dwelling. Although there are bus stops at the junction between Sandy Lane and the A369, which provide half-hourly services between Bristol and, via Pill, Portishead, much of Sandy Lane is narrow, with no pavement or street lighting, and with restricted visibility for pedestrians in places. As such, this route would most likely be unattractive for pedestrians to use, particularly during winter and in the hours of darkness. These bus services, including any services to Pill, would not therefore be easily accessible on foot.
19. Public Rights of Way have been referred to which link the site with Manor Road, Ashton Court, and Clifton. However, as mentioned above, Abbots Leigh has a limited range of services and facilities, and few details have been provided with respect to what services might be available at Ashton Court and Clifton, nor the likely times that it would take to walk to these. Moreover, although the option of cycling would be available, this is unlikely to be suitable for many types of day-to-day journeys, such as a family shopping trip, for example.
20. Accordingly, recognising that opportunities to maximise sustainable transport solutions vary between urban and rural areas (as stated in paragraph 105 of the Framework), in this case it is highly likely that the future residents of the proposal would not be able to meet their day-to-day needs by means of sustainable modes of transport.
21. Instead, future occupiers would in all likelihood choose to travel to surrounding settlements, including Pill and Long Ashton and Nailsea, by car or other private vehicle, rather than by walking, cycling, or by public transport. The proposal would not therefore promote sustainable transport, as required by the Framework. It would also fail to support the underlying aim of Policies CS14 and CS33 in relation to not encouraging unsustainable patterns of development.
22. I have had regard to the Officer's Report relating to the cow shed at Glen Farm, which was granted planning permission for a change of use to a residential dwelling². I note that the officer considered that the site was not in full compliance with Policy DM45 of the DMP due to a number of factors, including shopping trips likely to be undertaken by car, and Sandy Lane being unlit and lacking footways, which are facts that I have referred to above.
23. The conflict with the locational criterion within Policy DM45 was given limited weight in part due to the support for the re-use of rural buildings in the Framework, which does not apply to the appeal proposal. Furthermore, the lack of a 5 year housing land supply does not change the physical proximity of the appeal site to services, or the modes of transport that the future occupiers of the proposal would likely use to access services. The housing land supply position is however a factor that is considered later in this decision. My findings on this main issue therefore remain unchanged.

² 20/P/0684/FUL

24. I therefore find that the appeal site is not in a suitable location for new housing, having regard to the proximity to local services. The proposal would conflict with Policies CS14 and CS33 of the Core Strategy, which I have summarised above.

Other Considerations

25. The proposal would remove the existing derelict barn and hardstanding and replace it with a modern well-designed dwelling with appropriate materials which would blend well with its context, with a slightly reduced above-ground bulk when compared to Atcost Barn, and landscaped areas would be created within the site. It follows that no conflict would arise with Policy DM32 of the DMP which provides that, amongst other things, the design of new development should contribute to the creation of high quality places. However, as this would merely serve to maintain the character and appearance of the area, this is a neutral factor, which does not weigh in favour of the proposal.
26. Although land that is or was last occupied by agricultural buildings is excluded from the definition of previously developed land given in the Framework, and the proposal would not be reusing an existing building, as the proposal would not result in the loss of a green field site, no conflict would arise with criterion 8) of Policy CS1 of the Core Strategy, which refers to the re-use of previously developed land and existing buildings in preference to the loss of green field sites. As this consideration does not provide support for the proposal, this, too, is a neutral factor.
27. The appellant has highlighted a purported fallback position³ which relates to a change of use of Atcost Barn to a dwelling under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Class Q consent). In this respect, I have considered the case law referred to⁴.
28. Whilst reference has been made to the potential for the purported fallback position to be implemented, with the site then being redeveloped with a replacement dwelling, as the purported fallback position has not yet been implemented, that would be a different situation to the current state of affairs, as would the scenario of a new residential building already being on site.
29. As such, whilst the Council assessed the purported fallback position against Policy DM44 of the DMP, which relates to the replacement of a single permanent dwelling in the countryside (referred to in the third reason for refusal in the Council's decision notice), I have considered the purported fallback position as a discrete alternative to the appeal proposal, with respect to the potential for it to be implemented in the event that this appeal is dismissed.
30. The fact that the Class Q consent and the appeal proposal involve different forms of development (with the appeal proposal incorporating demolition and excavation) does not mean that the Class Q consent cannot be considered as an alternative to the appeal proposal, as either one would result in the creation of a residential dwelling on site. Given that Policy DM45 of the DMP relates to

³ APP/D0121/W/19/3234531

⁴ Including: *Gambone v SSCLG* [2014] EWHC 952 (Admin); *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

the conversion or re-use of rural buildings for residential use, which is not proposed in this appeal, Policy DM45 has not been considered further.

31. The appellant has made clear their intention to implement the Class Q consent, which remains extant, if this appeal is unsuccessful. Evidence has been provided which shows that the site was marketed and sold with the Class Q consent, which supports this proposition.
32. Even though the Class Q consent must be completed by 19 December 2022 and a new application for the conversion of Atcost Barn to a dwellinghouse has been submitted⁵, there is little substantive evidence to suggest that the work involved in implementing the Class Q consent could not start at any time before that date. Therefore, whilst the Class Q consent and the appeal proposal involve different construction processes, and taking account of the representations of interested parties on this matter, the evidence before me indicates that there is a real prospect that the Class Q consent could be implemented, should this appeal be dismissed.
33. As the Class Q consent and the appeal proposal would both contain the same number of bedrooms, the comings and goings to the site would likely be similar under each scheme, as would the potential for domestic paraphernalia to accrue on site, even taking account of the increased number of living spaces involved in the appeal proposal when compared to the Class Q consent. The proposal would however result in a slight improvement to the openness of the Green Belt, resulting from its reduced footprint and above-ground bulk when compared to the Class Q consent.
34. The appeal proposal would incorporate a number of other benefits, not included in the Class Q consent. These include energy efficiency measures, including on-site renewable energy generation, resulting in a smaller carbon footprint than the Class Q consent, better access to natural light in the resulting dwelling, the removal of the existing hardstanding on site (replacing it with a regraded and terraced lawn and a parking area composed of porous Hoggins gravel), and greater economic benefits arising through the construction of the new build than would arise via the Class Q conversion. The appeal proposal would also introduce a number of ecological and biodiversity enhancement measures.
35. Taking all of the above into account, I consider that the Class Q consent would be more harmful to the openness of the Green Belt than the appeal proposal, but not significantly. Whilst the appellant has stated that a minimum 10% reduction in energy demand following energy efficiency measures would be achieved, few details have been provided to accurately quantify the scale of the various economic, ecological and biodiversity gains over-and-above the Class Q consent. Reference has been made to the planting of over 1000 trees on the adjoining land, but these are not shown on the Proposed Landscape Plan for the appeal proposal. For these reasons, as a matter of fact and degree I have given the fallback position moderate weight in favour of the proposal.
36. I have had regard to appeal decision Ref APP/Y3940/W/20/3262812 and I recognise the logic that a fallback position that is almost identical to a proposal may attract significant weight in certain circumstances. However, the Inspector mentioned that the particular circumstances in that case were unusual and that the appeal should not set a precedent that is bound to be followed in the

⁵ 22/P/0340/FUL

determination of all future planning applications. Moreover, as that proposal was not in the Green Belt there was no discussion of the effect of the proposal on the openness of the Green Belt, which is a key consideration in this appeal. Similarly, in appeal decision Ref APP/C1625/W/22/3291163 the Inspector gave significant weight to the planning history of the site, but as that site was not in the Green Belt, the openness of the Green Belt was not a consideration.

37. Reference has been made to the so-called 'Spinney case', relating to appeal decision Ref APP/M1710/W/20/3258256 and the associated Costs decision, but as no copies of those decisions have been provided, it has not been possible to make a meaningful comparison with the proposal and the fallback position before me. In appeal decision Ref APP/D0121/W/20/3255105 it was found that relative to the fallback position, the proposal would clearly have a significantly better effect on the openness of the Green Belt which, for the reasons I have given above, is not the case in the present appeal.
38. As such, none of the decisions referred to above changes my findings as to the weight I have accorded to the fallback position.
39. It is common ground that the Council is currently unable to demonstrate the necessary forward supply of housing sites, as required by the Framework. Taking account of paragraph 69 of the Framework, I recognise that small sites can make an important contribution to meeting the housing requirement of an area.
40. The Inspector in appeal decision Ref APP/D0121/W/21/3286677, dated 15 June 2022, found that there was a housing land supply equivalent to 3.2 years, and that the extent of the shortfall against a 5 year housing land supply was significant.
41. The Inspector in appeal decision Ref APP/D0121/W/21/3285624, dated 22 June 2022, established that the lack of evidence of the deliverability of many sites had resulted in the need to make significant modifications to the deliverable supply figures provided by the parties, including small sites with consent. The Inspector considered that there was a very significant shortfall in housing land supply (calculated as being 3.5 years).
42. Although the Inspector in appeal decision Ref APP/D0121/W/21/3286677 gave very significant weight to the shortfall as a stand-alone consideration, I note that the Inspector in appeal decision Ref APP/D0121/W/21/3285624 did not, but rather give very significant weight to the provision of market and affordable housing in the planning balance, without a separate weighting given for the shortfall alone. Hence, it does not necessarily follow that the shortfall that I have described above should attract very significant weight in all cases.
43. The Inspector in appeal decision Ref APP/D0121/W/21/3285624 gave 'at least moderate weight' to the provision of 6 plots for self-build and custom-build housing, which the Inspector stated would assist with meeting unmet need, with the attendant social benefits. However, the appeal proposal relates to one dwelling rather than 6 plots, meaning that appeal decision Ref APP/D0121/W/21/3285624 is not directly comparable with respect to the quantum of self-build housing proposed.
44. In any event, whilst the need for consistency is important in the planning system, I am not bound to fall in line with any previous decision or opinion of

another Inspector. It is not the case that previous appeal decisions provide a firm indication of what weight should be given to a particular issue, as each case is considered in the context of its particular circumstances.

45. Whilst I do not have the exact up-to-date figure before me, these recent appeal decisions demonstrate that a clear and unequivocal shortfall against a 5 year housing land supply most likely exists at the present time. Every new home would count towards addressing this shortfall, and in this way the proposal would support the Government's objective of significantly boosting the supply of homes, in addition to contributing to the mix of housing in the local area.
46. I recognise that this very significant shortfall is likely to persist for some time. That the appellant is a registered self-builder in the context of an evident need for the delivery of housing on small sites is also an important consideration. Nevertheless, as the quantum of new housing proposed in this appeal is limited to one dwelling, taking all of the above into account, I consider that these matters can be given no more than moderate weight in favour of the proposal.
47. As mentioned above, the intention of the proposal is to deliver an 'A'-rated energy efficient home with on-site renewable energy generation, with ecological, biodiversity and landscape improvements incorporated across the wider site. However, given that only one dwelling is proposed, and considering the minimal details provided with respect to the potential scale of any net gains for biodiversity, these matters when taken together can only be given limited weight in favour of the proposal.
48. The proposal would support the economy via the construction of the proposed dwelling and by way of the future occupiers of the new dwelling likely utilising local services and facilities. However, as one dwelling is proposed these economic contributions would likely not be significant and therefore these matters have been given limited weight in favour of the proposal.
49. I note that the Inspector in appeal decision Ref APP/D0121/W/21/3286677 came to the conclusion that paragraph 81 of the Framework prescribes that significant weight must be applied irrespective of the economic contribution in question. However, the Inspector's interpretation in that respect does not amount to a legal ruling that I am compelled to follow.
50. Moreover, I note that in appeal decisions Refs APP/D0121/W/21/3286219, APP/D0121/W/18/3214721, and APP/D0121/W/21/3276355, modest / moderate weight was given to the economic benefits of the respective proposals, rather than significant weight, which indicates that the 'significant weight' referred to in paragraph 81 is not prescriptive to all circumstances. Accordingly, none of the above mentioned appeal decisions changes my findings regarding the weight which I have given to the economic benefits of the proposal.

Balancing of Considerations

51. The Framework makes it clear at paragraph 148 that substantial weight is given to any harm to the Green Belt. It establishes 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.

52. To sum up the considerations advanced favour of the proposal, I have given the fallback position moderate weight. I have given the provision of one new self-build dwelling on a small site in the context of the Council's shortfall of housing land supply no more than moderate weight. I have given the various environmental benefits limited weight. I have given the likely economic benefits limited weight.
53. Due to the very significant housing land supply shortfall triggering paragraph 11 d) of the Framework, the policies which are most important for determining this appeal are out-of-date, meaning that the proposal's conflict with Policies CS14 and CS33 of the Core Strategy, identified under the third main issue above, is given limited weight.
54. However, given that Policy DM12 of the DMP closely reflects the approach of the Framework in terms of Green Belt policy, including paragraph 147 of the Framework which is a critical consideration in this appeal, and taking account of paragraph 11 d), the proposal's conflict with Policy DM12 in terms of the proposal constituting inappropriate development in the Green Belt has been given substantial weight. Policy CS6 of the Core Strategy, referred to in the Council's decision notice alongside Policy DM12, relates to the boundaries of the Green Belt and therefore is not directly relevant to this appeal.
55. Set against the benefits identified above is the substantial weight given to the harm to the Green Belt which includes the adverse effects identified in respect of openness, and the planning harm resulting from the appeal site not being in a suitable location for new housing, having regard to the proximity to local services, which for the reasons given above has been given limited weight.
56. As such, whilst the proposal has merit, in my judgement when taken together the other considerations in this case do not clearly outweigh the totality of the harms identified. Consequently, the very special circumstances necessary to justify the proposed development do not exist. The proposal therefore conflicts with the aims of the Framework with respect to protecting Green Belt land, as set out in section 13 of the Framework.
57. As mentioned above, the lack of a 5 year housing supply means that the policies which are most important for determining the appeal are out-of-date in accordance with paragraph 11 d) of the Framework. However, part i. of paragraph 11 d) clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including the Green Belt, provide a clear reason for refusing the development.
58. As demonstrated above, there would be harms to the Green Belt that would not be clearly outweighed, which provides a clear reason for refusing the proposal. Therefore, the proposal would not benefit from the presumption in favour of sustainable development. This also means that the policy requirement found at paragraph 14 of the Framework, which relates to neighbourhood plans and paragraph 11 d) ii. of the Framework, is not engaged.

Conclusion

59. For the reasons given above I find that the proposal would conflict with the development plan when considered as a whole. None of the other

considerations, which include the Framework, indicate that this appeal decision should be taken otherwise than in accordance with the development plan.

60. I therefore conclude, after taking account of all relevant material considerations, that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR