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# Appeal Decision

Site visit made on 28 February 2023

**by K Stephens BSc (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> March 2023**

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**Appeal Ref: APP/P1805/W/22/3309007**

**86a Houndsfield Lane, Shirley, Solihull, West Midlands B90 1PS**

- 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 Ms Gemma Burkett against the decision of Bromsgrove District Council.
  - The application Ref 22/00397/FUL, dated 17 March 2022, was refused by notice dated 16 September 2022.
  - The development proposed is replacement dwelling.
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## Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling at 86a Houndsfield Lane, Shirley, Solihull, West Midlands B90 1PS in accordance with the terms of the application, Ref 22/00397/FUL, dated 17 March 2022, and the plans submitted with it, subject to the conditions in the attached schedule.

## Preliminary matters

2. The description of development is taken from the application form and appears on the Council's decision notice. On their appeal form the appellant describes the development as 'Proposed new self-build dwelling'. It was not the development applied for, not what the Council consulted on and not what the Council determined. Therefore, I have determined the application in the way it was originally described on the application form.

## Main Issues

3. As the site is located 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 revised National Planning Policy Framework<sup>1</sup> (the Framework) and any relevant development plan policies, and effect of the development on the openness of the Green Belt, 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. If so, would this amount to the very special circumstances required to justify the proposal.

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<sup>1</sup> The latest revision was published on 20 July 2021 and replaces previous revisions in 2018 and 2019. Green Belt paragraph numbers have also changed over time.

## Reasons

### *Whether 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. The Framework makes it clear 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. The Framework regards the construction of new buildings as inappropriate development in the Green Belt, subject to various exceptions set out in paragraph 149.
5. Framework exception 149d) allows for a replacement building subject to provisos. However, the dwelling was demolished in March 2022 before the application had been determined and so the dwelling no longer exists on site. The courts<sup>2</sup> have held that if there is no building currently on site then paragraph 149d) cannot apply as there is no building to be replaced. The proposal is therefore a new building that falls to be assessed against exception 149e) as 'limited infilling in villages'. The Council has assessed the proposal against both Framework exceptions and so shall I.
6. Policy BDP4 (Green Belt) of the Bromsgrove District Plan<sup>3</sup> (the District Plan) states, amongst other things, that the development of new buildings in the Green Belt is inappropriate development except in the circumstances listed. Policy BDP4 is broadly consistent with the Framework, even if it does include more detail on certain matters and refers to limited infilling in settlements rather than villages.

### *Limited infill in villages*

7. 'Limited infilling in villages' requires assessment of the terms village, infill and limited. First it is necessary to determine if the proposal would be within a village. The Framework does not specify or define what type of villages can have limited infill. The courts have established<sup>4</sup> that the boundary of a village defined in a Local Plan is relevant but may not be determinative, and that regard should be had to the situation on the ground, as well as any other policies. Policy BDP4 expects limited infilling to be within Green Belt settlements.
8. The site is located along a private track that follows the alignment of the railway. It does not lie within any of the Council's settlements listed in District Plan Policy BDP2 or shown on the proposals map. I saw that there was some residential development along part of Tilehouse Lane and Hounsfield Lane, before reaching the appeal site. There was no village name sign announcing arrival in Whitlock's End and development comprised limited ribbon development. At a stretch one could loosely refer to the limited collection of housing as a small settlement.
9. However, the appeal site was visually and physically separated from this housing by the railway line and the railway bridge. Furthermore, after crossing under the railway bridge, Hounsfield Lane takes on the appearance of a country

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<sup>2</sup> *Athlone House Ltd v SSCLG* [2015] EWHC 3524 (Admin)

<sup>3</sup> adopted January 2017

<sup>4</sup> *Julian Wood v SSCLG and Gravesham Borough Council* [2015] EWCA Civ 195

lane with roadside hedgerows and trees. The site's location towards the far end of the private track, off Hounsfield Lane, further removes the site from any visual and physical connection with the housing to the east of the railway. A dwelling to the west of the track, No.88, does little to engender a 'village' location.

10. For the reasons above and having regard to the situation on the ground, the appeal site does not lie within a village, regardless of whether there is a settlement boundary or not, or the provision of services and facilities in other settlements in the area or the suburbs of Solihull.
11. The appellant cites a number of appeal decisions (including one of mine<sup>5</sup> in Fairfield) where Inspectors found sites were in villages even if outside a village or settlement boundary imposed through a development plan. In the case I determined, I found the village of Fairfield extended beyond the Council's defined Local Plan village envelope and that the appeal site lay within the wider village of Fairfield. That situation is different to the appeal proposal before me, as described above. Other submitted decisions relate to sites in other settlements or different parts of the country for different Councils with their own policies such that they are not directly comparable with the appeal before me. Whilst appeal decisions are capable of being a material consideration and consistency in decision-making is important, all decisions turn on their own particular circumstances based on the facts and site specific context before each Inspector at the time. In any event I must determine the appeal on its own planning merits.
12. Notwithstanding the site is not within a village I shall continue assessing whether the proposal would be limited infill for completeness. There is no definition of infill in the Framework or Development Plan, but the Council suggests it normally comprises 'development of a modest sized gap in an otherwise substantially built-up frontage which is broadly linear in formation'. The site is located between two other single storey properties that front the track and clearly forms a gap in a linear frontage.
13. However, the built-up frontage could not be described as 'substantial' comprising only 3 dwellings. There is no justification as to why a built-up frontage must be 'substantial' in order for an infill gap to be legitimate. In contrast the Planning Portal<sup>6</sup> glossary defines infill as 'development of a relatively small gap between existing buildings'. The plot once had a dwelling on it and it sits between existing buildings. The width of the gap is smaller than the plots either side. From what I observed on site I am satisfied that the proposal would represent infill development. As the proposal would be for a single dwelling, the infill development would also be 'limited'.
14. Notwithstanding the proposal would be limited infill, the site is not located within a village such that the proposal would not fall within exception 149e). Hence it would constitute inappropriate development in the Green Belt.

#### *Effect on openness*

15. The proposal would result in a single storey house where there is currently no development and therefore would have a significant impact on openness. It

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<sup>5</sup> APP/P1805/W/21/3279054 dated 22 February 2022

<sup>6</sup> The Planning Portal is a joint venture with the Department for Levelling Up, Housing and Communities across England and Wales

would, however, be viewed within the context of existing built development on either side and therefore the overall impact on openness would be modest.

*Other considerations*

16. The appellant's mistaken decision to demolish the dwelling before the application was determined is not condoned by my decision. As shown above the appellant potentially jeopardised her appeal by doing so.
17. However, the site has been occupied by a dwelling since the 1960s and only recently was it demolished prematurely. In light of this I have taken a pragmatic approach in this particular instance, as indeed the Council has, and considered the proposal further as a 'replacement' dwelling under Framework exception 149d).
18. When considering proposals for a replacement building, there are 2 tests the proposal must satisfy. The first requires that the replacement building would be in the same use as the one it would replace. The previous building was a residential dwelling and the replacement building would be for a residential dwelling. Hence the replacement building would be in the same use as the one it would replace and satisfies the first test in exception 149d).
19. The second test requires that the new building would not be materially larger than the one it replaces. There is no definition in the Framework or Policy BDP4 of "materially larger". Comparison of the extent of built development between the previous dwelling and the replacement dwelling will be necessary, as will a planning judgement when comparing the extent of any change.
20. According to the submitted plans, the previous dwelling was a 3-bedroom hipped roof bungalow with a lounge, dining room, kitchen and family room. It occupied a rectangular footprint with an area of about 205m<sup>2</sup> within a long garden. The dwelling was about 7 metres high to the ridge of the roof.
21. The replacement dwelling would also be single storey to eaves with an additional floor of accommodation in the roof with 2 dormer windows. It would still be a 3 bedroom dwelling, with a lounge, dining room and kitchen/family room. The 'L' shaped footprint would have a smaller ground floor area than the previous dwelling. However, with the extra floor of accommodation in the roof the overall floor area of the replacement dwelling would be approximately 296.28m<sup>2</sup>, which would amount to about a 90.89m<sup>2</sup> increase. The overall height of the dwelling would be 6.8 metres, which is less than the previous dwelling, although more of the roof of the replacement dwelling would be at this height. In terms of the volume, the replacement dwelling would be about 29m<sup>3</sup> larger, although the Council raises some doubt as to the accuracy of this.
22. There is no doubt that the replacement dwelling, although very similar in maximum height and with a smaller footprint, would have a greater floor area and volume than the building it replaces and so would be larger. The Council's overlay of the two dwellings confirms this. However, the test is whether it would be 'materially' larger and this is a planning judgement.
23. Although the replacement dwelling would have a different roof shape with dormer windows and a greater bulk and mass as a result of the configuration, it would still be single storey to eaves. It would have the same number of reception rooms and bedrooms. It's design would also be relatively simple and modest, not unlike the previous dwelling.

24. Whilst the replacement dwelling would be sited a little further away from the boundary with the adjacent dwelling No.86b, it would principally occupy the same part of the site. Furthermore, the plans show the depth and width of the replacement dwelling would be very similar to that of the previous dwelling, such that built form on the site would not extend further down the garden or across the width of the plot. In addition, the resulting size of the footprint of the replacement dwelling would not be significantly different to the dwellings either side (Nos 86 and 86b). The proposed replacement dwelling would remain as infill development in a row of single storey dwellings.
25. The Council refers to an historic appeal decision<sup>7</sup> that was dismissed for roof alterations and a rear dormer. From the submitted details the design of the dormer building was poor and very different in scale and design to the proposed dormer windows that integrate into the roofslope without awkwardly protruding beyond the roof. The proposal pre-dates the Framework and the Green Belt test was against alterations and extensions to the dwelling where consideration was required as to whether the development resulted in "disproportionate additions" to the size of the original dwelling. This is different to consideration of a replacement dwelling and the 'materially larger' test.
26. Taking all these factors into account, whilst the replacement building would be larger, it would not be 'materially' larger than the building it would replace had it still been in place. While I accept that this does not make the proposal not inappropriate development, it is in this instance an important consideration given the circumstances of the appeal.
27. Furthermore, the Council cannot demonstrate a 5 year housing land supply so the proposal would weigh in favour of the proposal and maintain the status quo. Together, these are two factors that weigh considerably in favour of the proposal.

### **Other Matters**

28. The Council refer to engineering operations and a garage. I have no information before me of what these engineering operations are. The submitted plans and description of development do not show or include a garage. Therefore consideration of these matters is not before me as part of this appeal.

### **Planning Balance**

29. The proposal would be inappropriate development in the Green Belt and would be moderately harmful to its openness, contrary to the Framework and Policy BDP4 of the District Plan. In accordance with the Framework I give these harms substantial weight. However, I 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**

30. I have considered the 9 conditions put forward by the Council, which the appellant agrees to, against the advice in the Framework and Planning Practice

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<sup>7</sup> APP/P1085/A/051183558 dated 17 October 2005

Guidance (the PPG). Following the advice in the PPG I have also listed the conditions in the order that they need to be satisfied.

31. In addition to the standard condition which limits the lifespan of the planning permission (condition 1), I have imposed a condition specifying the relevant drawings as this provides certainty (condition 2). For the avoidance of doubt I have also included the red line location plan shown on the HM Land Registry plan (Title number HW14794). To safeguard the character and appearance of the area it is necessary to condition materials (condition 4).
32. In the interests of highway safety and promoting sustainable transport choices, I have imposed conditions relating to the access and parking (conditions 5 and 6) and the provision of electric vehicle charging points (condition 7) and cycle parking (condition 8).
33. To ensure the site is properly drained and the development will not create or exacerbate flood risk on site or within the surrounding local area, details of surface water disposal will be required (condition 3). I shall impose condition 9 to ensure the necessary biodiversity gain, mitigation and compensation for bats.
34. At the request of local residents I have imposed a condition restricting hours of construction (condition 10). With residential properties either side this is reasonable in the interests of the living conditions of nearby residents. The appellant is in agreement.
35. Residents have also requested that the appellant make good the track once work is completed, following damage allegedly caused during demolition. As it is a private track this is a matter between the appellant and residents and any access/maintenance agreements that may exist.

## **Conclusion**

36. In this instance there are material considerations that outweigh the conflict with the development plan as a whole. For the reasons above the appeal should be allowed.

*K Stephens*  
INSPECTOR

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and drawings: Red line application site shown on HM Land Registry Plan (Title number HW14794); Location Plan Proposed Floor Plans Dwg No.02; Proposed Elevations Dwg No.03; and Proposed Site Plan Dwg No.05.
3. No works or development shall take place until a scheme for surface water drainage has been submitted to, and approved in writing by the Local Planning Authority. This scheme shall be indicated on a drainage plan. There shall be no



increase in runoff from the site compared to the pre-development situation up to the 1 in 100 year event plus an allowance for climate change. If a connection to a sewer system is proposed, then evidence shall be submitted of the in principle approval of Severn Trent water for this connection. The scheme should include run off treatment proposals for surface water drainage. The drainage scheme shall be implemented prior to the first use of the development and thereafter maintained.

4. No above ground works shall be carried out until details of the form, colour and finish of the materials to be used externally on the walls and roofs have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.
5. Prior to the first occupation of the development hereby approved the access and parking facilities shall be provided as shown on Drawing No. 05.
6. Prior to the first occupation of the development hereby approved the first 5 metres of the access into the development, measured from the edge of the carriageway, shall be surfaced in a bound material.
7. Prior to the first occupation of the development hereby approved electric vehicle charging point(s) shall be installed and operational. The charging point(s) shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and the Worcestershire County Council Streetscape Design Guide. The electric vehicle charging point(s) shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point(s) shall be of the same specification or a higher specification in terms of charging performance.
8. Prior to the first occupation of the development hereby approved sheltered, safe, secure and accessible cycle parking to comply with the Council's adopted highway design guide shall be provided. Thereafter the approved cycle parking shall be kept available for the parking of bicycles only.
9. All proposed works shall be carried out in accordance with the recommendations as set out in Section 5.0 Mitigation/Compensation in the Internal/External Bat Survey by Dr Stefan Bodnar dated May 2022.
10. Construction works shall take place only between the hours of 08:00 and 18:00 Monday to Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.

## **End of conditions**