



Appeal Decision

Site visit made on 21 March 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal Ref: APP/R0660/W/22/3311738

Land Off Greaves Road, Wilmslow SK9 5LW

- 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 Sr Juan Paez Lopez against the decision of Cheshire East Council.
 - The application Ref 20/0622M, dated 11 February 2020, was refused by notice dated 24 May 2022.
 - The development proposed is erection of one underground dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council determined the application, the Cheshire East Site Allocations and Development Policies Document (the SADPD) was adopted on 14 December 2022. It replaces the saved policies from the Macclesfield Borough Local Plan (MBLP) and hence MBLP Policy GC1 cited in the refusal reason is no longer relevant. The Council has confirmed that the relevant replacement policy is SADPD Policy PG10 (Infill villages). The appellant has had the opportunity to comment on this policy update.
3. The site lies within the Green Belt. Policy PG6 of the Cheshire East Local Plan Strategy¹ (the LPS) remains relevant. It states inappropriate development in the Green Belt will not be allowed except in very special circumstances in accordance with national policy and that new buildings are inappropriate unless they are one of the listed exceptions. I am satisfied that LPS Policy PG3 is broadly consistent with the National Planning Policy Framework (the 'Framework').
4. There is no dispute between the main parties that the erection of an open market underground dwelling would not fall within any of the exceptions listed in paragraph 149 of the Framework. Hence there is no dispute that the proposal would constitute inappropriate development in the Green Belt as defined in the Framework. I concur with that position.

Main Issues

5. In light of the above, the main issues in the appeal are:
 - The effect of the proposal on the openness of the Green Belt, and

¹ Adopted July 2021

- 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

Effect on the openness of the Green Belt

6. Openness and the absence of built development is one of the essential characteristics of the Green Belt. There is no definition of openness in the Framework, however caselaw² has established that openness of the Green Belt has both a spatial and a visual aspect, in spite of whether views of the site and development would be restricted.
7. The site occupies an urban fringe location on the edge of Wilmslow, but outside the settlement boundary. The site is a triangular parcel of land surrounded by narrow lanes with some limited residential dwellings and a hotel nearby. The openness of the site is clearly evident as the site is laid to grass (and according to the appellant is used for grazing and the keeping of horses) and is free of buildings, structures or hardstanding and is surrounded by hedgerows, with some post and rail fencing.
8. The site would be excavated to construct an underground contemporary dwelling that would have a green roof and enclose sunken private amenity courtyards and spaces. The entrance to the dwelling would be via an entrance staircase going into the ground. Whilst largely hidden from view a low parapet wall approximately 300mm high would protrude above ground in places to make allowance for the slope and varying site levels across the site. Lightwells and courtyards would be largely screened by the retention of existing boundary hedges and new planting within the site, which the appellant is willing to have imposed as a condition. These factors would help ensure the dwelling has minimal volume above ground such that the underground part of the dwelling would, for the most part, not be externally visible from the surrounding roads. However, the substantial subterranean floor area would still reduce spatial openness.
9. In addition, a substantial area of driveway would be formed on the surface of the site, with parking nominally shown for 4-5 cars. The introduction of a driveway surface, even if it were conditioned to be semi-hardstanding or reinforced grass, would occupy an area of the site currently free of development. There would be no underground parking so the regular presence of parked cars on the site surface would further reduce openness, albeit this would fluctuate depending on how many cars were parked at any one time.
10. Openness would also be reduced by the array of tiltable photovoltaic solar panels on the ground/roof around the site, lessening the amount of the open grassed site. Furthermore, light from inside the dwelling, rooflights and the lower ground courtyards would also emanate up from the ground, particularly at night, and affect the visual openness of the site.
11. As a result, the appeal site would no longer be an open, grassed, undeveloped grazing field and it would not remain permanently open. I therefore find the proposal would harm the visual and spatial openness of the Green Belt, albeit

² Including *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

moderately due to most of the built form being underground. Nonetheless, this means the proposal would be contrary to the specific guidance within the Framework where it refers to openness and contrary to LPS Policy PG3.

Other Considerations and Green Belt Balance

12. The proposed development would represent inappropriate development in the Green Belt which is, by definition, harmful. I have also found moderate harm to openness of the Green Belt. Framework paragraph 148 requires that substantial weight is given to *any* harm [my emphasis]. The proposal would also be contrary to SADPD Policy PG10 as it would not represent limited infilling in an infill village. These are serious planning objections. Therefore, inappropriate development should not be approved except in very special circumstances, which will not exist unless the harm to the Green Belt, by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
13. The appellant advances a number of 'other considerations' to support his appeal. The proposal would offer the appellant and his family a self-sufficient home in terms of energy usage and sustainability for the lifetime running of the building by employing techniques such as thermal energy efficiency and heat exchange to reduce energy use; hot water from ground source heat pump; solar panels; natural ventilation; and a thermally active building strategy/passive system to provide heat from the ground and cooling when required. The building would therefore maximise solar gain throughout the day to all habitable areas and carbon usage would be reduced.
14. The dwelling would be cutting-edge modernist architecture of quality and innovation. Reference is made to paragraph 80 of the Framework whereby design of exceptional quality, in that it is truly outstanding and would significantly enhance its setting, can be regarded as an exceptional circumstance to allow isolated dwellings in the countryside. However, the site is close to other dwellings and Wilmslow and therefore cannot be regarded as 'isolated' under the terms of the Framework and is therefore not relevant in this instance.
15. I have no reason to doubt the dwelling would be designed and built to a high quality and the appellant's environmental aspirations are laudable. However, a contemporary high-quality building with energy-saving, low or zero carbon and sustainability techniques are not uncommon these days and do not necessarily make the building particularly innovative. I therefore afford these credentials moderate weight.
16. The site is sustainably located within walking distance of a number of services and amenities nearby and in Wilmslow centre, but no more so than the existing nearby dwellings. I give this limited weight, especially when the site is not within an infill village as required by SADPD Policy PG10.
17. The appellant contends that the proposed dwelling should be considered in the light of the provision for self-build custom housing (SBCH), which the Framework regards as being part of the mix of housing needed for different groups in the community. The SBCH Act and Regulations³ provide a definition

³ The Self-Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) and the Self-build and Custom Housebuilding Regulations.

of SBCH and relevant authorities are required to keep a register of individuals (and associations of individuals) who are seeking to acquire serviced plots of land in their area and publish it. The appellant does not indicate if he is on the SBCH Register. A shortfall in SBCH would be a material consideration to weigh in the balance. I have not been presented with evidence to suggest there is a shortfall of SBCH provision in the district. I am not aware the Council cannot demonstrate it has a 5-year supply of deliverable housing land. The description of the development does not include SBCH and the appellant has not put forward any particular circumstances to justify the need for the dwelling. A legal agreement would be needed to ensure that the housing was delivered as SBCH, but none has been provided. I therefore give this matter limited weight.

18. The absence of harm to the living conditions of occupiers of nearby dwellings, the character of the area, access, parking and highway safety carry neutral weight and therefore cannot be counted as positive considerations in support of the proposal.
19. I find that the 'other considerations' taken together do not clearly outweigh the totality of the harm to the Green Belt and the harm of allowing housing in locations contrary to the development plan. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. Accordingly, the proposal would be contrary to LPS Policy PG3 and SADPD Policy PG10 and the Framework.

Conclusion

20. For the reasons above the proposal would be inappropriate development in the Green Belt and there would be adverse impacts on its openness. These are circumstances where the Framework and development plan indicate that development should not be approved.
21. The appeal should therefore be dismissed.

K. Stephens
INSPECTOR