



Appeal Decision

Site visit made on 18 April 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2023

Appeal Ref: APP/P1805/W/22/3313155

Pool House, Clewshaw Lane, Wythall B38 0ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mrs M Argue against the decision of Bromsgrove District Council.
 - The application Ref 22/00710/PIP, dated 20 May 2022, was refused by notice dated 20 July 2022.
 - The development proposed is erection of 1 single-storey dwelling.
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Decision

1. The appeal is dismissed and permission in principle for the erection of 1 single-storey dwelling is refused.

Preliminary Matters

2. The proposal is for permission in principle, as provided for in the Town and Country Planning (Permission in Principle) Order 2017. The Planning Practice Guidance advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle, and the second stage ('technical details consent') is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted.
4. The Council has considered the proposal against two Green Belt exceptions in the National Planning Policy Framework (the Framework), namely 149e) as 'limited infilling in villages' and 149g) as 'partial... redevelopment of previously developed land, whether redundant or in continuing use...which would not have a greater impact on the openness of the Green Belt than the existing development...'. However, the appellant reiterates in his Appeal Statement that they have never sought to argue that the proposal would comprise limited infilling within a village, but that it would come under Framework exception 149g). There is no dispute between the parties that the site is previously developed land (PDL) under the definition in the Glossary of Annex 2 of the Framework. Therefore, I have confined my Green Belt assessment to exception 149g) as the appellant has.

Main Issues

5. The main issues in this appeal are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies and its effect upon openness and reasons for including land within it,
- Whether the appeal site would be a suitable location for housing with regard to local and national policies, and
- If the proposed development constitutes inappropriate development in the Green Belt, 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 the scheme is inappropriate development in the Green Belt

6. Paragraph 137 of 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 regards the construction of new buildings as inappropriate development in the Green Belt, subject to various exceptions set out in paragraph 149. Framework paragraph 147 states 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.
7. Policy BDP4 of the Bromsgrove District Plan (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, which are similar to those set out in the Framework. Whilst the Policy provides a greater level of detail on certain matters, I am satisfied that Policy BDP4 is broadly consistent with the Framework.
8. Framework exception 149g) requires assessment of whether the proposal would have a greater impact on openness of the Green Belt than the existing development. There is no definition of 'openness' in the Framework or the development plan. However, the Courts have established that it requires consideration of both spatial and visual aspects.
9. The appeal site currently forms part of the wider residential garden of Pool House, a large, detached dwelling set in spacious landscaped grounds and set back from Clewshaw Lane. It comprises an existing paved driveway, a hard surfaced tennis court with tall mesh fencing around its four sides, a single-storey shallow pitched-roof timber outbuilding/games room (the 'outbuilding'), lawn around the tennis court, and an area of hardstanding between the tennis court and the outbuilding that leads past the outbuilding to an adjacent stable block.
10. The proposal would involve erecting a detached single-storey Pavilion-style dwelling on the appeal site following the demolition and removal of the existing

outbuilding and tennis court and fencing. Access to the new dwelling would be shared with the existing driveway off Clewshaw Lane.

11. There are fields behind and adjacent such that the openness of the Green Belt is clearly evident both within the spacious plot itself and around the appeal site with surrounding open countryside. Whilst the appellant refers to restricted views of the appeal proposal, openness as a concept has both a visual and a spatial dimension.
12. As the application is for permission in principle the final design of the proposed dwelling, the site layout and landscaping would be secured at the technical stage. Consequently, at the permission in principle stage there are no elevations or floor plans showing the appearance, dimensions, size, shape, massing or volume of the proposed dwelling. Furthermore, there are no plans showing where the dwelling would be positioned on the site to demonstrate which parts of the site would be developed for the new dwelling, and which areas would be hardstanding, for parking and patios for example.
13. The appellant has sought to provide indications of the size to make 'openness' comparisons. The existing outbuilding has a floor area of about 90sqm. Using the government's National Space Standards as an indicator, the appellant considers that 90sqm would equate to a 4-bedroom 5-person dwelling, which by their own admission is a substantial building. The outbuilding has a height of approximately 2.2m to eaves and 3m to the apex of the pitched roof. The appellant states that the proposed dwelling would be single-storey with a height between 3m and 3.5m. This indicates to me that the proposed dwelling would in all likelihood be taller and hence spatially and visually bigger than the existing timber building and hence have a greater impact than the existing outbuilding. As already stated, without plans it is not possible to compare the overall volume, massing and configuration of the proposed dwelling with the existing outbuilding.
14. Whilst the outbuilding would be demolished, it is currently sited close to the rear site boundary and does not encroach into the site. The tennis court in contrast has a much bigger area of about 550sqm and is fairly centrally located within the site. The exact position of the proposed dwelling on the site is not known at this permission in principle stage. However, it would not be unreasonable to assume the proposed dwelling would be sited forward of the outbuilding and away from the boundary. Siting the proposed dwelling in a different location on the site where no buildings currently exist would affect openness of what is currently a fairly open site. Furthermore, the re-arrangement of hardstanding, patio areas, domestic paraphernalia, and boundary treatments such as fences, located in parts of the site that currently do not have these features would also likely affect openness. Pool House has a car parking/turning area. However, this area are excluded from the application site such that new areas would need to be created for parking for the proposed dwelling where none currently exists. This could also affect openness.
15. Whilst the appellant seeks to assure me there would be no greater impact on openness, I have no plans to verify this. Within the context of a permission in principle application I am unable to impose planning conditions to restrict the size of the dwelling or that it be single-storey. Hence the size and design of the dwelling, or its position on the site, could not be guaranteed at this stage.

Consequently, it is not possible to definitively assess the impact on openness. Therefore, I am not satisfied the proposed dwelling would have no greater impact on the openness of the Green Belt than the existing development. Furthermore, the proposal for an additional dwelling would not assist in safeguarding the countryside from encroachment, one of the purposes of the Green Belt.

16. The existing dwelling may well have permitted development rights¹. Permitted development rights have not been withdrawn (in total or in part) in the Green Belt in the General Permitted Development Order. In some circumstances permitted development rights can permit sizeable extensions or the erection of sizeable outbuildings up to maximum limits, of different shapes, design and sizes, and which may well reduce openness. Even if permitted development rights still exist, it would not be possible to compare the effect on openness of something unknown with something so vague.
17. Moreover, there is no substantive evidence before me that further permitted development rights have or will be exercised at the property. I have not been presented with a Certificate of Proposed Lawful Use/Development for example, either submitted or approved, that would provide a genuine fallback. I understand planning permission was granted in 2003 for a replacement/larger games room, but I have not been presented with any details or plans. In any event the permission pre-dates the Framework and the District Plan. It would also likely have expired by now, as there is no evidence before me to suggest the permission was ever implemented, so it is of little consequence.
18. Drawing the various points together, it is not possible to conclude whether or not the proposed development would have a greater impact on the openness of the Green Belt than the existing development due to the limitations of the scope of the planning in principle application. Consequently, the proposal would not fall within exception 149g) of the Framework or District Plan Policy BDP4. The proposal would also conflict with one of the purposes of including land within the Green Belt in respect of the safeguarding of the countryside from encroachment. The proposal would therefore constitute inappropriate development in the Green Belt.

Whether a suitable location for housing

19. District Plan Policy BDP2 seeks to focus new development in locations in accordance with the District's settlement hierarchy shown in Table 2, in order to direct development to the most suitable locations to promote sustainable communities and patterns of development and reduce the need to travel. District Plan Policy BDP1 is a broad-brush policy setting out sustainable development principles. It states that for new development consideration will be had, amongst other things, to accessibility to public transport options.
20. These policies are broadly consistent with the Framework's aims of promoting sustainable patterns of development and to seek opportunities to promote walking, cycling and public transport and by limiting the need to travel and offering a genuine choice of transport modes, whilst recognising that opportunities to maximise sustainable transport solutions will vary between urban and rural areas

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

21. Wythall (including Drakes Cross, Grimes Hill and Hollywood) is identified as a 'large' settlement in Table 2 of Policy BDP2. The parties do not dispute that the appeal site lies outside the settlement boundary for Wythall and hence in the countryside. The proposed dwelling would therefore be contrary to the Council's settlement hierarchy. The appellant states that the appeal site lies some 1-1.5kms west of Wythall with its facilities for day-to day living (shops, schools, medical etc). From the submitted extract of the Proposals Map and my site visit observations the site is clearly set some distance from the settlement boundary of Wythall and its services and facilities.
22. I saw that the site was located close to a cluster of dwellings at the junction with Middle Lane and so the site is not isolated. The small store, on the corner of Clewshaw Lane and Middle Lane, stocks mainly horse and animal supplies, with some confectionary and a very limited range of supplies – in my view it would not offer genuine day-to-day essentials.
23. The appellant's evidence shows that the nearest bus stop is about 1.25kms away by the Swan Public House in Wythall, at the end of Silver Street - approximately a 15-minute walk/4 minute cycle, although it would be further to walk/cycle to the row of shops and Post Office at Drakes Passage and further still to the medical services and schools. I saw that Silver Street had a good tarmac footpath and street lighting for its duration that would make it suitable for walking. Clewshaw Lane had neither – only a grass verge. Middle Lane, which would need to be crossed to get onto Silver Street, was well-trafficked with no dedicated crossing point or pedestrian refuge and could deter some from walking/cycling. Wythall train station is about 3kms, or approximately a 10-minute cycle/40-minute walk. The distances to access meaningful services and facilities would likely not be conducive to encourage walking, as evidenced by the Highways Authority, although possibly cycling to some, such that future residents would most likely be reliant on the private car.
24. Taking these factors together, the appeal site is not a suitable location for housing with regard to local and national policies. It would undermine the Council's efforts to direct housing to selected suitable settlements to encourage sustainable patterns of development. Accordingly, it would be contrary to District Plan Policies BDP1 and BDP2, whose aims are outlined above. It would also be contrary to the Framework's aim of promoting sustainable development.

Other Matters

25. The appellant draws my attention to planning permission that was granted for two dwellings at Love Lane, Hollywood². The proposal involved the conversion of two existing agricultural buildings, which is not directly comparable to the erection of a new dwelling when considering the case overall, even if distances to some services and facilities are similar. Furthermore, the development was considered as a planning application subject to conditions, and not as a permission in principle. Whilst other decisions are capable of being material considerations, all decisions turn on their own particular circumstances based on the facts and evidence before the decision-makers at the time. The Love Lane decision is therefore not directly comparable to the application before me, which I must determine on its own merits.

² LPA Ref: 19/00238/FUL approved 18 April 2019

Other Considerations and Green Belt Balance

26. The development constitutes inappropriate development in the Green Belt, and I have found harm to its openness and conflict with one of the Green Belt purposes. Inappropriate development is, by definition, harmful to the Green Belt, and paragraph 148 of the Framework requires that substantial weight must be given to any harm. In addition, the development would be in an unsuitable location that would undermine the Council's housing strategy and national policy guidance, and weighs against the proposal. 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. This is a high hurdle for a development proposal to overcome.
27. The Council cannot currently demonstrate a 5-year supply of housing land. A shortfall of housing would therefore weigh in favour of the proposal, albeit moderately due to the small-scale nature of the proposal for a single dwelling. In these instances of insufficient housing land, the 'tilted balance' set out within paragraph 11d) applies, whereby planning permission should be granted unless the matters in 11d) i) or ii) apply.
28. Under paragraph 11d)i) permission should be granted unless i) the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the proposed development. Green Belt policies in the Framework are such policies, as set out in Footnote 7 to of the Framework. As I have found the development would be inappropriate in the Green Belt and would harm openness, the tilted balance is not engaged in this instance. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration.
29. Location and transport are only part of the broader picture of sustainable development. As the Framework explains, it involves three interdependent objectives – economic, spatial and environmental. There would be some economic uplift to the local economy during construction from jobs and the purchase of building materials, and longer-term social benefits from additional residents to support local services in the area. However, these benefits would be very limited given that only one dwelling is proposed. I have also already had regard to the Love Lane planning permission and permitted development rights.
30. I find the substantial weight to be given to the totality of the harm to the Green Belt, in addition to the harm to the Council's housing strategy designed to promote sustainable patterns of development, is not clearly outweighed by other considerations. Consequently, the very special circumstances needed to justify inappropriate development in the Green Belt do not exist. Accordingly, the proposed development would conflict with District Plan Policies BDP1, BDP2 and BDP4 and the Framework.

Conclusion

31. For the reasons given above I conclude that the appeal should be dismissed.

K. Stephens INSPECTOR