



## Appeal Decision

Site visit made on 22 August 2023

**by Tamsin Law BSc MSc MRTPI**

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

**Decision date: 08 November 2023**

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**Appeal Ref: APP/T3725/W/23/3322154**

**Clinton House, Old Warwick Road, Rowington CV35 7BT**

- 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 & Mrs R Joyce against the decision of Warwick District Council.
  - The application Ref W/22/0367, dated 27 February 2022, was refused by notice dated 16 November 2022.
  - The development proposed is described as "erection of a self-build single storey dwelling."
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a self-build single storey dwelling at Clinton House, Old Warwick Road, Rowington, CV35 7BT in accordance with the terms of the application, Ref W/22/0367, dated 27 February 2022, subject to the conditions in the attached schedule.

### Main Issues

2. The main issues are;
  - whether the proposal would be inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies;
  - the effect of the proposal on the openness of the Green Belt and the purposes of including land within it;
  - whether the proposed development would be consistent with local and national policies relating to the location of new housing development;
  - the effect of the proposed development on biodiversity; and
  - if the proposal is inappropriate development, whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

### Reasons

#### *Whether Inappropriate Development*

3. The construction of new buildings should be regarded as inappropriate in the Green Belt, subject to a number of exceptions set out in paragraphs 149 and 150 of the National Planning Policy Framework (the Framework). These

exceptions include the limited infilling in villages, and the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development. Policy DS18 of the Warwick District Local Plan 2011-2029 (2017) (LP) states that the Council will apply national policy to proposals within the Green Belt.

4. The appeal site lies outside the defined settlement boundary of Kingswood. My attention has been drawn to case law<sup>1</sup> which requires that an assessment of the situation on the ground is undertaken to ascertain whether the scheme would meet the Framework policy of being limited infill in a village.
5. Kingswood is largely a clearly defined village, linear in form with development focussed along Old Warwick Road and Station Lane. The village lies to the west of a canal. There is some sporadic linear development outside the settlement boundary. When approaching Kingswood from the east along Old Warwick Road, the surroundings are predominantly rural in character, with boundary hedgerows and agricultural fields. As you get closer to Kingswood large residential dwellings on large plots are located to the north and South of Old Warwick Road.
6. The appeal site forms part of the garden of Clinton House, which lies to the north of Old Warwick Road. The appeal site and host dwelling form part of a small cluster of buildings, including a public house and associated car park, immediately to the east of the canal. The appeal site has a hedgerow as part of its frontage and during my site visit was used as a residential garden. The appeal site and neighbouring front garden, combined with the adjoining agricultural land and field opposite create a gap in visible built form which reinforces the openness of the area.
7. Taking all circumstances together, because of the gap in linear development, the agricultural land and the rural characteristics of this part of Old Warwick Road, the appeal site has a greater affinity and association with the surrounding countryside than with the village. Therefore, the appeal site, when experienced on the ground, falls outside the village for the purposes of considering exceptions under paragraphs 149 (e) of the Framework.
8. Based on my findings above, the appeal site does not fall with a built-up area. However, the appeal site forms part of the residential garden of Clinton House. Residential gardens which are not in built-up areas are not excluded from the definition of previously developed land contained within the Framework.
9. Whilst not infilling, paragraph 149 (g) of the Framework refers to the partial or complete redevelopment of previously developed land which would not have a greater impact on openness than the existing development. Therefore it is necessary for me to consider openness.

### *Openness*

10. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects. It can be considered to be the absence of buildings and development. The appeal site forms part of the residential curtilage of Clinton House. It is currently devoid of any buildings or structures. As such, the

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<sup>1</sup> Julian Wood v SSCLG & Gravesham BC 21015

introduction of a dwelling, and associated infrastructure, would unavoidably reduce the openness of the Green Belt in both spatial and visual terms.

11. Therefore, in addition to the harm arising from the fact that the development would be inappropriate, there is a degree of harm arising from the loss of openness and from being contrary to one of the purposes of including land within the Green Belt.

#### *Location of Development*

12. Both main parties acknowledge that the appeal site is located outside the settlement boundary of Kingswood as defined by the LP and is therefore considered to be in the open countryside. Policy H1 of the LP states that in these locations residential development will be limited to sites adjacent to the boundary and in other locations limited to rural affordable housing and rural workers dwellings.
13. Local services such as public house, school and doctors surgery are located within walking distance of the appeal site. A wide highway verge, which during my site visit I noted was clearly being used as a footpath, Kingswood to the west. There is only a small section on the verge then there is a pavement at the Navigation Inn which leads directly into Kingswood. The highway verge and pavement are both lit.
14. Within Kingswood is a bus stop and a train station which links the area with Birmingham and Warwick. Access to these on foot would require individuals to travel a small section on the highway verge. Although the desirability of the route would be less favourable outside of daylight hours and in inclement weather, it would offer the potential for future occupants to make some use of public transport.
15. Nevertheless, the proposal would lie outside the settlement boundary, which would be contrary to the strategy of the development plan. It would conflict with LP Policy H1 which seeks, amongst other things, to focus development to defined settlements boundaries.

#### *Biodiversity*

16. Paragraph 174 of the Framework refers to amongst other things, protecting and enhancing sites of biodiversity, and minimising impacts on and providing net gains for biodiversity. Paragraph 180 indicates that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or as a last resort, compensated for, planning permission should be refused.
17. The Planning Practice Guidance states that an ecological survey will be necessary in advance of the planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate.
18. The Council's concerns relate to Great Crested Newts and the lack of a survey and appropriate mitigations. During the course of the appeal an Ecological Impact Assessment (Great Crested Newts) has been submitted. This sets out a number of mitigation and enhancement measures, such as the creation of a hibernaculæ, timings of work, and native species planning. The assessment concludes that, provided the measures outlined within the assessment are

carried out, that impacts on Great Crested Newts on and near the site will be mitigated.

19. For the reasons outlined above I conclude that it has been demonstrated that the scheme would avoid or adequately mitigate unacceptable harm to Great Crested Newts, which are a protected species. The scheme would therefore comply with LP Policy NE2 which seeks, amongst other things, to protect designated areas and species of national and local importance for biodiversity. The proposal would also comply with paragraphs 174 and 180 the Framework that seeks to protect and enhance sites of biodiversity value.

### *Other Considerations*

20. The appeal site lies outside of, but close to, the defined settlement boundary of Kingswood. A railway station is within the settlement along with a GP surgery, a post office, a public house and a school. Although there is no footpath directly outside of the site linking to the village, there is one from the public house into the village and I consider that the site is within walking distance. I give moderate weight to the accessible location of the site.
21. Additionally, whilst the Council can demonstrate a 5-year supply of housing, their Officer Report details that a recent Housing Needs Survey highlights a need in the area for two-bedroom bungalows, which is proposed in the appeal scheme. I give moderate weight to this need.
22. The appeal site is not within a built-up area and as it forms a private residential garden would be categorised as previously developed land in accordance with the definition within the Framework. I give this consideration moderate weight.
23. The appellant has referred me to a certificate of lawfulness<sup>2</sup> for a single storey outbuilding on the appeal site. The outbuilding be located in the same location as the proposed dwelling and would have the same dimensions. As the outbuilding has a certificate of lawfulness, I consider this to be a fall back that has a more than theoretical prospect of being developed. I therefore attached this significant weight.

### **Planning and Green Belt Balance**

24. In the context of the development plan, I find that the location of the proposed development would be contrary to the development strategy. However, it would have good access to services and facilities and would provide a dwelling that is in need in the area.
25. Therefore, the adverse impacts of the proposed development in respect of the location, would not significantly and demonstrably outweigh the combination of its benefits. Despite the conflict with LP Policy H1, material considerations indicate that permission should be granted.
26. The proposal would be inappropriate development in the Green Belt, which, by definition, is harmful. To this must be added further moderate harm arising from the loss of openness, and from being contrary to the purposes of including land within the Green Belt. Paragraph 148 of the Framework indicates that any harm to the Green Belt should be given substantial weight.

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<sup>2</sup> W/20/2085 approved 23 July 2021

27. However, I give significant weight to the potential fallback position which may be implemented. This would have the same effect on openness as the appeal scheme.
28. I find that this other consideration is of sufficient weight to clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness and effect on openness and Green Belt purpose. As a result, very special circumstances exist to justify inappropriate development in the Green Belt.
29. Although there would be conflict with the development plan, the balance of planning considerations in this case leads me to the view that the appeal should succeed.

### **Conditions**

30. The Council has provided a list of conditions, which I have assessed in regard to the advice provided in the Planning Practice Guidance (PPG). I consider that conditions regarding biodiversity net gain and landscaping are necessary in order to ensure that the biodiversity and environment of the area is safeguarded during construction and lifetime of the development. Conditions regarding the provision of an electric car charging point, sustainability statement and water efficiency are necessary in order to promote the use of alternative methods of travelling and safeguard the development from climate change. A materials condition is necessary in order to safeguard the character and appearance of the area. I have also included a condition regarding Great Crested Newts in order to ensure that mitigation is provided.
31. I have altered the wording of some conditions in order to ensure they comply with the PPG.

### **Conclusion**

32. For the above reasons, and having had regard to all other matters raised, the appeal should be allowed.

*Tamsin Law*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 5659/20 B and drawing 5659/22A.
- 3) Notwithstanding details contained within the approved documents, prior to commencement of development (within its relevant phase), a Sustainability Statement including an energy hierarchy scheme for that phase and a programme of delivery of all proposed measures shall be submitted to and approved in writing by the Local Planning Authority. The document shall include;
  - a) How the development will reduce carbon emissions and utilise renewable energy;
  - b) Measures to reduce the need for energy through energy efficiency methods using layout, building orientation, construction techniques and materials and natural ventilation methods to mitigate against rising temperatures;
  - c) Details of the building envelope (including U/R values and air tightness);
  - d) How the proposed materials respond in terms of embodied carbon;
  - e) Consideration of how the potential for energy from decentralised, low carbon and renewable energy sources, including community-led initiatives can be maximised;
  - f) How the development optimises the use of multi-functional green infrastructure (including water features, green roofs and planting) for urban cooling, local flood risk management and to provide access to outdoor space for shading.

No dwelling shall be occupied until the works within the approved scheme have been completed in strict accordance with the approved details and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturer's specifications.

- 4) The development hereby permitted shall not commence until arrangements to secure measures on another site which ensure that there is a biodiversity net gain as a result of the development have been submitted to and approved in writing by the Local Planning Authority. Unless those arrangements comprise a proposal to enter an agreement acceptable to the County Council and Local Planning Authority which secure the implementation of suitable measures, the submitted arrangements shall include:
  1. Proposals for off-site offsetting measures;
  2. A methodology for the identification of any receptor site(s) for offsetting measures;
  3. The identification of any such receptor site(s);

4. The provision of arrangements to secure the delivery of any offsetting measures (including a timetable for their delivery); and a management and monitoring plan (to include for the provision and maintenance of any offsetting measures for no less than 30 years).

The written approval of the Local Planning Authority shall not be issued before the arrangements necessary to secure the delivery of 2 any offsetting measures have been executed. The scheme shall be implemented in full accordance with the requirements of the arrangements or any variation so approved.

- 5) No development shall be carried out above slab level unless and until samples of the external facing materials to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.
- 6) No development shall be carried out above slab level unless a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The plan should include details of habitat enhancement/creation measures such as native species planting, tree and hedgerow planting. The agreed scheme shall thereafter be implemented and retained in strict accordance with the approved details.
- 7) The development hereby permitted shall not be occupied unless and until a scheme showing how a water efficiency standard of 110 litres per person per day based on an assumed occupancy rate of 2.4 people per household (or higher where appropriate) will be achieved has been submitted to and approved in writing by the Local Planning Authority. The dwelling shall not be first occupied until the works within the approved scheme have been completed in strict accordance with the approved details and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturer's specifications.
- 8) Prior to the occupation of the dwelling hereby permitted, one electric vehicle recharging point shall be installed in accordance with details first submitted to and approved in writing by the Local Planning Authority. Thereafter the electric vehicle recharging point shall be retained in accordance with the approved details and shall not be removed or altered in any way (unless being upgraded).
- 9) The development hereby permitted shall be carried out in accordance with the avoidance, mitigation and compensation detailed in Chapter 5 of the Ecological Impact Assessment (Great Crested Newts) dated 2023. The mitigation and enhancement measures shall be completed prior to the occupation of the dwelling and retained in perpetuity.