



Appeal Decision

Site visit made on 5 December 2023

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 29 December 2023

Appeal Ref: APP/V4630/W/23/3319645

Land Adjacent to Pool House Farm , Crook Lane, Walsall, West Midlands, WS9 0RD

- 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 Dr F Lewis against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 21/0475, dated 17 February 2021, was refused by notice dated 12 October 2022.
 - The development proposed is described as 'a barn'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development used in the banner header above has been taken from the planning application form. However, it is clear from the submitted plans that the application is for two barns using different existing accesses, rather than for one barn, and I have determined the appeal on this basis.
3. The Council describes the application as also including the use of the appeal site to produce organic herbs, spices and trees for sale. The use of land though for agriculture is excluded from the definition of development under s55(2)(e) of the Town and Country Planning Act 1990 Act. As a result, I have not considered this matter further in this appeal.
4. On 19 December 2023, the version of the National Planning Policy Framework published on 24 May 2021 was replaced with a new version. The parties were invited to comment and the comments received have been taken into account in the determination of the appeal.

Main Issues

5. The main issues in this appeal are:
 - whether the proposal is inappropriate development in the Green Belt for the purposes of development plan policy and the National Planning Policy Framework ('the Framework');
 - if the development is inappropriate, the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposal on highway safety, trees within the site and heritage assets; and,

- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development.

Reasons

Whether the proposal is inappropriate development

6. The appeal site is located within the Green Belt. The Framework seeks to protect the Green Belt from inappropriate development. Paragraph 154 of the Framework advises that the construction of new buildings within the Green Belt should be regarded as inappropriate, other than for certain listed exceptions. The first of these exceptions are buildings for agriculture and forestry. Policy GB1 of the Walsall Site Allocation Document does not demur from the Framework in this regard.
7. The appeal site comprises 3 hectares of Grade 3 good to moderate agricultural land which are currently not in arable use. The proposal is to build two barns for use in association with the growing of organic herbs, spices and trees for sale. Such growing activities fall within the meaning of agriculture as defined in the Town and Country Planning Act 1990. As a result, the proposed buildings meet the definition of agricultural buildings.
8. The agricultural enterprise is not yet established and there is no detailed explanation as to why two barns of the size proposed (9m by 9m) are needed. However, the Framework does not set out any limiting criteria relating to size or other matters in relation to agricultural buildings in the Green Belt.
9. Taking all these matters into account, I therefore conclude that the proposal would comply with one of the exceptions contained in paragraph 154 of the Framework in relation to buildings for agriculture, and so would also comply with policy GB1 of the Walsall Site Allocation Document. As a result, it would not be inappropriate development. It is therefore unnecessary to consider the effect of the proposal on the openness of the Green Belt and whether there are very special circumstances that justify the development.

Highway safety

10. Crook Lane is a narrow country lane enclosed by hedges and trees. The two proposed barns would each make use of a different existing access onto this lane. A drawing has been submitted showing how the visibility splays to the access to the proposed southern building could be improved to the standard sought for a road with a 30 miles per hour speed limit. Having viewed this access, I am satisfied that these splays could be achieved by cutting back or realigning the hedgerow on both sides of the access. Such work would take place solely on land within the appeal site and therefore within the control of the appellant.
11. No such plan though has been submitted for the northern access. It appears to me that in relation to this access and traffic approaching from the north along the nearside of the lane, that the provision of the necessary 43m visibility splay in this direction is not within the control of the appellant. This is because it seems that the creation of this splay would involve encroaching on land to the north of the appeal site, which is not in the same ownership, and nothing has been suggested to resolve this issue.

12. As a result, if permission was granted there is a significant risk that inadequate visibility would be provided to the northern side of this access and that as a result a wholly unnecessary material risk of a collision would occur.
13. For the reasons given above, I therefore conclude that the proposed development would cause unacceptable harm to highway safety, contrary to policy TRAN 2 of the Black Country Core Strategy and paragraphs 114(d) and 115 of the Framework which seek to prevent such harm. Policies T7 and T13 of the Walsall Unitary Development Plan (UDP) have also been cited by the Council in relation to highway safety. However, as these policies relate to parking provision they are not relevant to highway safety.

Trees

14. A number of trees within the appeal site close to the boundary with Crook Lane are protected by a tree preservation order. As attractive trees that add to the verdant rural character of the lane, they are of high amenity value. Given that some of these trees appear to lie within or close to the visibility splays that need to be provided at the site accesses they may be at risk of damage or loss should the proposed development go ahead.
15. In the absence of an assessment of the impact of the proposed scheme on the trees, the development proposal would therefore be contrary to policy GP2 of the Walsall UDP and the supplementary planning document 'Conserving Walsall's Natural Environment' (SPD). This policy and SPD seek to protect the environment, including trees, from unacceptable adverse impacts. Given the importance status of these trees, this is a matter that needs to be dealt with upfront at planning application stage and is not a matter that can be dealt with by condition.

Heritage Assets

16. An interested party has noted that the application site is within a conservation area and has raised concerns about the effect of the proposed development. Conservation Areas are designated heritage assets and the appeal site lies within the Great Barr Conservation Area. The appeal site also wraps around Pool House Farm which is a non-designated heritage asset. The statutory duty in relation to development within conservation areas is that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
17. Paragraph 200 of the Framework requires an applicant to describe the significance of any heritage assets affected by a proposal, including any contribution made by their setting. It goes on to advise that this should be proportionate to the assets importance and sufficient to understand the potential impact of a proposal on its significance when assessed using appropriate expertise. In this particular instance no such assessment has been undertaken by the appellant. Insufficient information has therefore been provided to assess the effect of the proposed development on these two heritage assets.

Other Matters

18. The Framework has been cited in support of the proposal. It is stated that the development would result in all of the environmental gains referred to in paragraphs 124 (a) and (b) of the Framework, over and above the present use of the land. However, in the information submitted in support of the appeal it has not been explained what new habitat would be created that would be of

benefit ecologically. In terms of the functions of undeveloped land, the only function which it has been demonstrated the proposal would benefit is food production. It is also a given that the growing of trees would store carbon, but as the trees would need to be small enough to be sold the amount of carbon sequestration would be small. I therefore attach limited weight to these considerations in favour of the appeal.

19. It is stated that the electricity that would be supplied to the proposed development would allow surveillance cameras to be installed to deter the fly tipping that occurs along the lane. Fly tipping enforcement though is the responsibility of the Council and covert battery powered surveillance cameras which do not require a power supply are available for this purpose. As a result, I attach little weight to this consideration in favour of the appeal.
20. Reference has been made to an e-mail exchange that was sent to the appellant in error where members of the planning department express frustration with the information that has been submitted in relation to the application. Section 4 of the Framework, which relates to decision making and advises that local planning authorities should approach decision making in a positive and creative way, has been referred to in support of the appeal. Whether or not the approach of the Council was consistent with this section in reaching its decision is not a matter for me to determine in this appeal. Even if it was, and I found that the Council was in breach of section 4 of the Framework, this consideration would be insufficient to overcome the conflict with the development plan that I have identified.

Conclusion

21. The two barns proposed would not be inappropriate development within the Green Belt. However, it has not been demonstrated that the proposal would not adversely affect highway safety or that protected trees of high amenity value would not be harmed. As a result, I find that the proposed development would be contrary to the development plan considered as a whole. The proposal would also conflict with the Framework in that no assessment of the potential effect of the proposal on heritage assets was made by the appellant.
22. The other matters, discussed above, that have been put forward in support of the proposed scheme are insufficient to outweigh the harm that would be caused and non-compliance with the development plan. Material considerations therefore do not indicate that the proposal should be determined other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector