



Appeal Decision

Site visit made on 9 January 2024

by H Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/P1805/W/23/3324083

1 Clewshaw Cottage, Clewshaw Lane, Wythall B38 0EE

- 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 Lucas against the decision of Bromsgrove District Council.
 - The application Ref 22/00106/FUL, dated 21 January 2022, was refused by notice dated 15 December 2022.
 - The development proposed is construction of a four-bedroom dwelling below ground level on residential land east of 1 Clewshaw Cottage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined, a revised National Planning Policy Framework (Framework) was published on 19 December 2023. However, as any policies that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version of the Framework and new paragraph numbers in reaching my decision.

Main Issues

3. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt;
 - whether the proposal would be accessible to local services and facilities;
 - the effect of the proposal on protected species; and
 - whether or not any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations and if so, whether this would amount to the very special circumstances required to justify the proposal.

Reasons

4. The appeal site comprises part of the land at 1 Clewshaw Cottage, an extended semi-detached two-storey dwelling. The site is positioned to the side of the cottage and extends eastwards alongside Clewshaw Lane towards a private access track. Within the site there is a single storey detached timber clad

garage/shed outbuilding, a small timber shed, and a reed bed sewage system which serves the existing dwelling. The reed bed sewage system consists of two reed beds and forms a landscape depression roughly through the centre of the site. To the side and rear of the site are open fields.

Whether or Not Inappropriate Development

5. The fundamental aim of Green Belt policy in the National Planning Policy Framework (Framework) is to prevent urban sprawl by keeping land permanently open.
6. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. Paragraph 154 of the Framework states that the construction of new buildings should be regarded as inappropriate development. A closed list of exceptions are set out, one of which, under sub-paragraph g), concerns the limited infilling or the partial or complete redevelopment of previously developed land, providing that it would not have a greater impact on the openness of the Green Belt than the existing development.
8. Policy BDP4 of the Bromsgrove District Plan 2011-2030 (2017) (BDP) sets out that development of new buildings in the Green Belt is considered to be inappropriate, except in specific circumstances. One of the specific circumstances listed in Policy BDP4.4 is similar to paragraph 154g of the Framework. I am therefore satisfied that Policy BDP4 is broadly consistent with the Framework.
9. It is common ground between the main parties, and I agree, that the appeal site constitutes previously developed land, and the proposal is for the redevelopment of the site. I therefore turn to the effect of the proposal on the openness of the Green Belt.
10. Openness in terms of the Green Belt has a spatial and visual aspect and therefore relates both to considerations of the amount of built form and also a professional judgement on the effect of this on the perception of openness.
11. The proposed dwelling would comprise an L-shaped largely subterranean building. It would be built into the slope of the land and have a flat roof planted with grass. Whilst the proposal's north and west elevations would be underground, the south and east elevations would be exposed and would have the scale and appearance of a solid, single storey structure.
12. There would also be an unnatural drop in levels at the edges of the proposed dwelling. This, together with its flat roof form and exposed edges, would give it an artificial and engineered form and bulk that would be obvious and notably different to what is on site now. Furthermore, the proposal's footprint would cover a larger area than the existing development that it would replace. Consequently, the proposal would result in a physical change and increase in development on site. This would reduce spatial openness.
13. The underground part of the proposed dwelling would be largely screened from the road. However, the submissions do not convincingly demonstrate that the proposal would be totally hidden. The proposed southern and eastern elevations, including the integral greenhouse and full height glazing, would be

visible from the adjacent fields and the nearby private track. Furthermore, light from inside the dwelling would emanate up from the ground, particularly at night, which would draw attention to the building. Also, it is likely the changes to the natural landform to construct the development would be noticed. This would result in a marked reduction to the openness of the Green Belt in visual terms.

14. The proposal would create an additional vehicular access and parking area in semi-hardstanding material and reinforced grass. It would also create a garden area. The proposed access would create a gap in the roadside hedge which would open up views of the site from Clewshaw Lane. The enclosure of the garden area by fencing, as illustrated in the appellant's submitted images, combined with the use of semi-hardstanding materials for the access and parking areas would result in the area around the proposed dwelling being less open than it is at present, which would inevitably reduce the openness of the Green Belt in both visual and spatial terms.
15. Furthermore, the activity in the spaces around the proposed dwelling for car parking and garden activities would likely be much more intensive than that arising from the existing use. It would also result in parked cars and domestic paraphernalia that would be associated with the proposed dwelling, such as drying of clothes and garden furniture, being located in these areas which would impinge on the visual openness compared to the existing situation. The reduced openness would be readily experienced by those driving or walking along the nearby track and in the wider landscape views.
16. Although boundary hedging could be retained and further landscaping could be conditioned, such planting cannot be relied upon to conceal the development for perpetuity.
17. The removal of the existing outbuildings and reed beds would not affect my considerations of the overall impact on openness. The outbuildings to be removed are near to and seen with the existing dwelling. The reed beds are not dissimilar to a large pond and therefore have a natural appearance.
18. My attention has been drawn to a previous appeal decision¹. However, although there are some similarities, this other appeal was for a different scheme relating to a replacement dwelling and was considered under other policies. Therefore, it is not directly comparable to the appeal before me.
19. For the reasons given, the proposal would have a greater impact on the openness of the Green Belt than the existing development. Consequently, the proposal would not comply with the exception in Framework paragraph 154g) or Policy BDP4.4g) of the BDP and would therefore be inappropriate development. I have attached substantial weight to this harm.

Accessibility to local services and facilities

20. Policy BDP2 of the BDP seeks to focus new development in locations in accordance with the district's settlement hierarchy shown in Table 2, in order to promote sustainable communities, patterns of development and reduce the need to travel. Policy BDP1 of the BDP states that for new development consideration will be had, amongst other things, to accessibility to public transport.

¹ Appeal ref: APP/J3720/W/17/3177670

21. The appeal site has a rural location which is located some distance from the nearest settlement that offers a range of services and facilities of the type necessary to meet day to day needs.
22. I observed during my site visit the unlit road with no footway and the lack of bus stops in the vicinity of the appeal site. Whilst there are Public Rights of Way near to the site, these routes are unlit and unsurfaced, which would limit their use during hours of darkness and are unlikely to be suitable for all users.
23. The unlit nature of these routes and the lack of footway along the road would limit the prospect of future occupants of the proposed development using them to regularly access a range of services and facilities year-round.
24. I note the comments from the appellant regarding cyclists and the proximity of the site to the cycling network. However, on balance most journeys to access day to day services and facilities are likely to be made in a private motor vehicle, particularly during hours of darkness or bad weather conditions. This would result in future occupants of the proposal using motor vehicles to travel to services and facilities on a more frequent basis.
25. Whilst electric vehicular transport could be used by future occupants, this is not likely to result in replacement of reliance on the private vehicle by alternative modes of walking, cycling or public transport. I also note the appellant's desire to offer a travel plan package. However, there is no mechanism, such as a legal agreement, before me to implement such a package. Therefore, I attach little weight to it.
26. I note the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nevertheless, this does not justify locating development in an inherently inaccessible location by means other than the car. Given my findings above, there would be conflict with the Framework in these respects.
27. My attention has been drawn to a previous appeal decision². However, this other appeal was for the conversion of an existing agricultural barn for residential use. The Inspector found that the proposed residence would have one bedroom so, at worst, the proposal would only be likely to lead to a small increase in vehicular traffic from the site due to a mixed agricultural and residential use, which the council accepted would not be of great concern to it. Therefore, this other appeal is not directly comparable to the proposal before me, which would be for the construction of a new four-bedroom dwelling. In any case, I have determined this appeal on its own individual merits.
28. For the reasons given, essential services and facilities, employment opportunities, and public transport, would not be readily accessible from the appeal site. Therefore, occupants would be largely reliant on private motor vehicles to access essential services and facilities, due to the lack of safe pedestrian routes and having limited options for alternative modes of sustainable transport.
29. As such, the proposal would fail to accord with the Council's settlement hierarchy for residential development and the sustainability aims of Policies BDP1 and BDP2 of the BDP. It would also be contrary to the Framework.

² Appeal ref: APP/P1805/W/22/3298793

Protected Species

30. A Protected Species Survey dated 29 October 2020 has been submitted which indicates that the appeal site does not host any protected species. Nevertheless, this survey was undertaken a long time ago, and since that time circumstances could have changed for protected species. An updated Protected Species Survey is therefore needed. This has not been provided by the appellant.
31. A condition would not be reasonable as any mitigation measures found necessary to remove adverse effects on protected species could lead to a substantial re-design of the development. It may also be the case that adverse effects cannot be mitigated, which would need to be established before permission is granted. Any measures found necessary to protect species would also need to be in place through conditions and/or planning obligations before permission is granted.
32. Consequently, insufficient information has been submitted to be satisfied that protected species would not be adversely affected by the proposed development. I must therefore take a precautionary approach.
33. For the reasons given, the proposal would conflict with Policy BDP21 of the BDP, which amongst other things, seeks to ensure new development protects and enhances habitat biodiversity. In addition, it would also fail to accord with the habitats and biodiversity objectives of Section 15 of the Framework.

Other Considerations

34. The proposal is intended to be a self-build dwelling and the appellant is on the Council's self-build register. Paragraph 63 of the Framework supports self-build development and I note that the Council do not have a development plan policy that relates specifically to custom and self-build. Nevertheless, there is no mechanism, such as a legal agreement, before me to restrict the appeal site as a self-build dwelling. I therefore attach little weight to this matter.
35. It would though provide a new dwelling which would contribute to the Council's housing supply. As the Council cannot demonstrate a five year supply I give this moderate weight. There would be some economic benefits of the scheme which would be in the form of construction jobs, but these would be short term only. In the longer term, a new household would introduce expenditure into the local economy. I also give these moderate weight.
36. It is explained that the proposed dwelling is intended for the appellant and the growing needs of their family. The appellant refers to a potential fallback option. However, there is limited information within the evidence regarding the detail of such a fallback option, and whether it would be likely and indeed whether it would be more or less harmful than the appeal scheme. I therefore give little weight to the potential fallback option.
37. My attention has been drawn to several other planning application approvals. Nevertheless, the full details and the circumstances which led to these other developments being accepted are not before me. In any event, I have considered the proposal upon its own merits based on the evidence before me and my observations on site.

Conclusion

38. The proposal would be inappropriate development and would cause harm to the openness of the Green Belt. Paragraph 153 of the Framework states that substantial weight should be given to this identified harm. In addition, I have found that the site would not be an accessible location for a dwelling. It has also not been demonstrated that there would not be harm to protected species, to which I also attach substantial weight.
39. For the reasons given, the total weight of the other considerations does not clearly outweigh the harm by reason of inappropriateness, and any other harm. Consequently, the very special circumstances necessary to justify the development do not exist.
40. The proposal would be in conflict with the development plan taken as a whole given the conflict with the policies regarding the protection of the Green Belt, accessibility and biodiversity. Although the Council is unable to demonstrate a five year housing land supply, in accordance with paragraph 11d)i) I have found that the application of policies in the Framework that protect the Green Belt provide a clear reason for refusing the development proposed. There are no material considerations in this case that indicate a decision other than in accordance with the development plan and the Framework.
41. For the reasons given above, the appeal is therefore dismissed.

H Smith

INSPECTOR