



Appeal Decisions

Site visit made on 18 December 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Appeal A: APP/P1805/C/22/3312327

Land at Parkland House, Brockhill Lane, Beoley, Redditch, Worcestershire B98 9DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr A Snehi against an enforcement notice issued by Bromsgrove District Council.
 - The enforcement notice was issued on 10 October 2022.
 - The breach of planning control as alleged in the notice is the erection of a two-storey extension (marked "W" on the Plan), two storey outbuilding (marked "X" on the Plan), detached double garage/log store (marked "Y" on the Plan) and gates and piers (marked "Z" on the Plan).
 - The requirements of the notice are:
 - a. Remove the two-storey outbuilding marked "X" on the Plan, detached double garage/logstore marked "Y" on the Plan and gates and gate piers marked "Z" on the Plan.
 - b. Remove from the Land all materials including waste and rubble arising from requirement a.
 - c. Remove the two-storey extension marked "W" on the plan.
 - d. Remove from the Land all materials including waste and rubble arising from requirement c.
 - e. Reinstate the dwelling elevation so that it complies with planning permission as a consequence of requirement c. in accordance with elevations A-A; E-E and F-F on drawing 103 A.
 - The period for compliance with the requirements is:
 - a. In respect of the requirements of points a and b above, within nine months from the date this notice takes effect.
 - b. In respect of the requirements of points c, d and e above, within 12 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
-

Appeal B: APP/P1805/D/22/3306135

Land at Parkland House, Brockhill Lane, Beoley, Redditch, Worcestershire B98 9DA

- 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 A Shehi against the decision of Bromsgrove District Council.
 - The application Ref 22/00671/FUL, dated 13 May 2022, was refused by notice dated 8 July 2022.
 - The development proposed is construction of gates and gate piers.
-

Appeal C: APP/P1805/D/22/3307152

Land at Parkland House, Brockhill Lane, Beoley, Redditch, Worcestershire B98 9DA

- 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 A Shehi against the decision of Bromsgrove District Council.
 - The application Ref 22/00731/FUL, dated 25 May 2022, was refused by notice dated 20 July 2022.
 - The development proposed is construction of two storey front extension to dwelling.
-

Appeal D: APP/P1805/D/22/3307171

Land at Parkland House, Brockhill Lane, Beoley, Redditch, Worcestershire B98 9DA

- 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 A Shehi against the decision of Bromsgrove District Council.
 - The application Ref 22/00752/FUL, dated 28 May 2022, was refused by notice dated 22 July 2022.
 - The development proposed is retention of detached garage outbuilding with amendments to reduce its height to single storey with pitched roof.
-

Appeal E: APP/P1805/W/22/3312334

Land at Parkland House, Brockhill Lane, Beoley, Redditch, Worcestershire B98 9DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr A Snehhi against the decision of Bromsgrove District Council.
 - The application Ref 22/01154/S73, dated 22 August 2022 was refused by notice dated 30 October 2022.
 - The application sought planning permission for demolition of existing bungalow and industrial units. Erection of 3 No dwellings with associated site works at land off Alcester Road, Beoley, Redditch (resubmission of application B/2000/0715) (as amended by plans received 12.01.01) without complying with conditions attached to planning permission Ref B/2000/1229, dated 15 May 2001.
 - The conditions in dispute are Nos 12, 13, 19 and 20 which states that:
 - 12. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 1995, and subsequent amendment orders, any development within Class A, B, C, D, E Part 1, Schedule 2, shall be subject of a separate application for planning permission.
 - 13. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted) Development Order 1995, and subsequent amendment orders, any development within Class A, Part 2, Schedule 2, shall be the subject of a separate application for planning permission.
 - 19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) no extension or external alterations shall be carried out without the prior approval of the local planning authority to an application in that behalf.
 - 20. Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 (as amended) no fences, gates or walls shall be erected within the curtilage of any dwellinghouse in front of the forwardmost part of that dwellinghouse.
 - The reasons given for the conditions are:
 - 12. In order to protect the amenities of the area.
-

13. In order to protect the amenities of the area.
 19. To protect the openness of the Green Belt.
 20. To protect the visual amenity of the area.
-

Decisions

Appeal A

1. I allow the appeal on ground (a) insofar as it relates to the gates and piers and I thereby grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the construction of gates and gate piers at Parkland House, Brockhill Lane, Beoley, Redditch, Worcestershire B98 9DA.

Appeal B

2. The appeal is allowed, and planning permission is granted for construction of gates and gate piers at Parkland House, Brockhill Lane, Beoley, Redditch, Worcestershire B98 9DA in accordance with the terms of the application, Ref 22/00671/FUL, dated 13 May 2022 and the plans submitted with it.

Appeal C

3. The appeal is dismissed.

Appeal D

4. The appeal is dismissed.

Appeal E

5. The appeal is dismissed.

Preliminary Matters

6. Appeal A on ground (a) is not submitted for the detached garage/log store which, I understand, the appellant is willing to remove.
7. Since the hearing, the Government has published a new National Planning Policy Framework (the Framework). In relation to the main issues in this appeal, Government policy has not materially changed. As such, the cases of either side have not been prejudiced.

Appeal A on Ground (d)

8. The ground of appeal is that at the date when the Notice was issued, no enforcement action could be taken. In order to succeed on this ground, it would be necessary for the appellant to demonstrate on the balance of probabilities that the two-storey extension, two storey outbuilding, detached double garage/log store and gates and piers had been substantially completed four years before the notice was issued. In support of this ground the appellant has stated that it is not expedient or appropriate for the Council to progress with enforcement action against the various works undertaken at the appeal site at this time.
9. The appellant's argument focuses on the fact that planning applications have been submitted to regulate the development that has occurred and therefore

the Council should not have initiated or progressed enforcement action where appeals against the refusal of those applications are currently under consideration. There is no evidence before me that the various developments were substantially completed four years before the Notice was served and therefore the appeal on ground (d) cannot succeed.

Appeal A on Ground (a) and Appeal B – gates and piers

10. The ground of appeal is that planning permission should be granted. The main issues are:
- i. Whether the development is inappropriate development for the purposes of the development plan and the National Planning Policy Framework (the Framework);
 - ii. The effect of the development on the openness of the Green Belt and the purposes of including land within it; and
 - iii. If the development is inappropriate development, whether the 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 it.

Whether inappropriate development

11. The Framework establishes that new buildings within the Green Belt are inappropriate, unless one of a number of exceptions is met. Policy BDP4 of the Bromsgrove District Plan 2011-2031 (the District Plan) sets out the Council's overall approach to development in the Green Belt and Policy 4.4 reiterates national policy with respect to the construction of new buildings in the Green Belt which are considered to be inappropriate development.
12. The gates and piers are not exceptions identified in the Framework or District Plan and therefore, as a form of building are inappropriate development which is, by definition, harmful to the Green Belt.

Openness and Green Belt purposes

13. Openness is an essential characteristic of the Green Belt. The scale of the development is relatively minor and the evidence before me shows that the Council has previously granted planning permission for the existing entrance gates and piers which would be removed. I am aware that permitted development rights for the erection of fences, gates or walls were removed when permission was granted for the redevelopment of the site under reference B/2000/1229; however, that is not to say that proposals for all such proposals should be refused.
14. In my judgement, the proposed gates and piers would introduce a form of built development where there was previously none, but as a consequence of its minor scale and location at the entrance to the residential property, it would not cause harm with respect to the openness of the Green Belt.
15. The purposes of the Green Belt include to check the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment. The appeal site is within the curtilage of an existing residential property and the proposed gates are at the entrance into the large garden

area. As such they would not create any further encroachment of residential land into the countryside area. Furthermore, such gates and piers are common features in the countryside and therefore I would not describe them as being urbanising features which cause undue encroachment into the countryside. I certainly would not conclude that they result in any unrestricted sprawl of a large built-up area into this area of countryside, nor do they encourage the merger of neighbouring towns into one another, prejudice the setting and special character of an historic town or prevent any kind of urban regeneration. Consequently, I do not find any harmful effect with respect to the purposes of including the land in the Green Belt.

Very special circumstances

16. It is my understanding that the appellant does not enjoy sole control over access to his property and relies on a neighbour to ensure the existing gates are secured properly. The proposed gates and piers would give the appellant that control and would ensure that his property is properly secured at all times. I am aware that security is a material consideration that has been given weight in previous appeals but there is little evidence before me that the property is at significant risk of trespass or crime. Consequently, I attribute only limited weight to this argument.

Conclusions

17. The development would be inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. However, there would be no loss of openness and I do not find there to be harm with respect to the purposes of including the land within the Green Belt. In addition, there would be a minor benefit in terms of improving the security of the appellant's property which attracts only limited weight in this case.
18. There would be no harm to the openness of the Green Belt nor would the overall purposes of including the land within the Green Belt be harmed through the proposal for new gates and piers. Consequently, in these specific circumstances I conclude that with respect to the erection of gates and piers, the development is in accordance with the development plan as a whole and the Framework and the appeals should succeed.

Appeal A on Ground (a) and Appeal C – two storey front extension to dwelling

19. The ground of appeal is that planning permission should be granted. The main issues are:
- i. Whether the development is inappropriate development for the purposes of the development plan and the Framework;
 - ii. The effect of the development on the openness of the Green Belt and the purposes of including land within it; and
 - iii. If the development is inappropriate development, whether the 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 it.

Whether inappropriate development

20. The Framework establishes that new buildings within the Green Belt are inappropriate unless, amongst other things, it involves the extension of a building. This is provided it does not result in disproportionate additions over and above the size of the original building. Policy BDP4 of the District Plan sets out the Council's overall approach to development in the Green Belt and Policy 4.4 reiterates national policy with respect to the construction of new buildings in the Green Belt which are considered to be inappropriate development. The Policy goes on to identify specific circumstances as an exception, including *"extensions to existing residential dwellings up to a maximum of 40% increase to the original dwelling or increases to a maximum of 140 sq m (original dwelling plus extension(s)) provided that this scale of development has no adverse impact on the openness of the Green Belt"*.
21. It is my understanding from the evidence before me that since the original dwelling was built extensions have been added through previous planning permissions granted by the Council. These include a two-storey front extension, a lounge and kitchen extension and a single storey extension to provide a conservatory. The appellant's own evidence shows that these developments have increased the original dwelling by 41% in terms of square metres. The current proposal for another two-storey extension would increase that floorspace to more than 50% of the original dwelling.
22. The appellant has noted that the previously approved two storey front extension took the overall increase to over the 40% threshold and furthermore considers the latest Framework approach of *"disproportionate addition"* rather than a specific figure of 40% which is derived from earlier supplementary planning guidance from 2002. Nonetheless that is the approach taken in the development plan and it establishes a reasonable test for whether a development is disproportionate in relation to an original building.
23. In any case, an increase of more than half of the original building is, in my judgement, disproportionate. I understand the appellant's argument in relation to other developments that may have taken place in the area and that the extensions already built take the overall increase in size beyond the development plan threshold of 40%, but nonetheless the development in this specific case is disproportionate and therefore inappropriate development which is, by definition, harmful to the Green Belt.

Openness and Green Belt purposes

24. Openness is an essential characteristic of the Green Belt. In that the bulk of the building has been increased by additional built development the proposal would reduce it. However, in isolation, the loss of openness would be relatively small.
25. The appellant has stated that the site was originally occupied by large scale development; however, this is not relevant to the determination of the current appeal because that development has been removed following the grant of planning permission for development under reference B/2000/1229 for the demolition of existing bungalow and industrial units and the erection of 3 no. dwellings with associated works, which includes the erection of Parkland House.

26. I conclude that the development would lead to loss of openness and would impact on the Green Belt purpose of safeguarding the countryside from encroachment.

Very special circumstances

27. The appellant contends that there are a number of very special circumstances in this case, including the historical use of the site, negligible visual intrusion and energy efficiency improvements achieved by the development.
28. It is my understanding that the site was previously occupied by a bungalow and some industrial units which had a considerable visual presence on the site. However, these are now gone and the development that is now in place appears to be less visually intrusive than the form that previously existed. I also appreciate that the levels of activity associated with the current residential use would be likely to be less than for the mixed residential and industrial uses. As I have previously stated above, the fact that there used to be another form of development on the site is now irrelevant because the development that is there now is the benchmark against which any new development should be assessed in terms of the effect on the openness of the Green Belt. The current proposal before me for the two-storey extension would be relatively small, but nonetheless significant in Policy terms.
29. The appellant argues that solar gain from the extension would achieve consequential energy efficiency improvements and reduce heating requirements for the property. However, there is no suggestion that the development would be zero carbon or carbon neutral. Consequently, this does not attract in my judgement amount to very special circumstances.
30. The fact that the development would have a low level of visual intrusion is a neutral factor in this case. Therefore, I give this little weight.

Conclusions

31. The development would be inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there would be a minimal loss of openness.
32. The previous development on the, limited visual intrusion and energy efficiency improvements do not clearly outweigh the harm which is the test they have to meet. Consequently, very special circumstances do not exist. For the reasons given above the overall conclusion with respect to the erection of the two-storey extension is therefore in conflict with Policy BDP4 of the District Plan and the Framework. I have taken account of the range of evidence presented by the main parties and given the conflict with the development plan as a whole, the appeal should fail.

Appeal A on Ground (a) and Appeal D – detached garage outbuilding

33. The ground of appeal is that planning permission should be granted. The main issues are:
- i. Whether the development is inappropriate development for the purposes of the development plan and the National Planning Policy Framework (the Framework);

- ii. The effect of the development on the openness of the Green Belt and the purposes of including land within it; and
- iii. If the development is inappropriate development, whether the 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 it.

Whether inappropriate development

34. The Framework establishes that new buildings within the Green Belt are inappropriate, unless one of a number of exceptions is met. Policy BDP4 of the District Plan sets out the Council's overall approach to development in the Green Belt and Policy 4.4 reiterates national policy with respect to the construction of new buildings in the Green Belt which are considered to be inappropriate development.
35. The existing garage or its proposed amended single storey revision is inappropriate development which is, by definition, harmful to the Green Belt. The appellant does not dispute this.

Openness

36. Openness is an essential characteristic of the Green Belt. In that the bulk of the existing or proposed revised garage has increased built development on the site, the proposal would reduce it. However, in isolation, the loss of openness would be relatively small.
37. The appellant has stated that the site was originally occupied by large scale development; however, as I have set out above, this is not relevant to the determination of the current appeal because that development has been removed following the grant of planning permission for development under reference B/2000/1229 for the demolition of existing bungalow and industrial units and the erection of 3 no. dwellings with associated works, which includes the erection of Parkland House.
38. I conclude that the development would lead to loss of openness and would impact on the Green Belt purpose of safeguarding the countryside from encroachment.

Very special circumstances

39. In this particular case the appellant contends that the historical use of the site and mitigation measures amount to very special circumstances which outweigh the harm I have identified with respect to inappropriateness of the development.
40. It is my understanding that the site was previously occupied by a bungalow and some industrial units which had a considerable visual presence on the site. However, these are now gone and the development that is now in place appears to be less visually intrusive than the form that previously existed. I also appreciate that the levels of activity associated with the current residential use would be likely to be less than for the mixed residential and industrial uses. As I have previously stated above, the fact that there used to be another form of development on the site is now irrelevant because the development that is

there now is the benchmark against which any new development should be assessed in terms of the effect on the openness of the Green Belt. The current proposal before me for the existing detached garage and the amendments to reduce its height to single storey with a pitched roof would reduce openness in relation to what planning permission has been granted for.

41. The appellant also argues that additional tree and hedgerow planting along the site boundaries would ensure that the development benefits from screening. I can understand that this may be of benefit in a case where it is argued that the development is visually intrusive or harmful to the character or appearance of the area, but that is not the case here. I can see that planting would screen the site but that is different to mitigating the effect of the development on the openness of the Green Belt. Therefore, this does not attract weight in my judgement or amount to very special circumstances.

Conclusions

42. The development would be inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there would be some loss of openness.
43. The historical use of the site and suggested mitigation through additional tree and hedgerow planting do not clearly outweigh the harm which is the test they have to meet. Consequently, very special circumstances do not exist. For the reasons given above the overall conclusion with respect to the retention of the existing detached garage building or amended detached garage building with reduced height to single storey with a pitched roof is therefore that there is conflict with the development plan as a whole and the Framework and the appeal should fail.

Appeal A on ground (g)

44. The ground of appeal is that the time given to comply with the requirements is too short. The nine months given would be sufficient to remove the two-storey outbuilding and the detached double garage and to remove from the land all materials including waste and rubble arising from that requirement.
45. The appellant argues that the two storey outbuilding houses batteries and plant which power solar panels fixed to the property as well as electric vehicle chargers and therefore the requirement to demolish it would require reconfiguration of the power supply and electric vehicle charging arrangements. Therefore, a period of at least 18 months is sought.
46. The nine months given would be sufficient to demolish the structures and there is insufficient evidence before me to conclude that the reconfiguration of the electrical supply and vehicle charging arrangements could not be carried out within that timeframe.
47. With respect to the two-storey front extension to the dwelling, 12 months would be sufficient time to carry out the physical works of removing the extension, removing materials and reinstating the dwelling elevation in accordance with the requirements of the Notice. The appellant has suggested a minimum period of 18 months to ensure there is sufficient time to remove the structures, revise power supply and access arrangements for the property and ensure that the front elevation of the property is reinstated to a high

standard. It is also suggested that an increased time period would allow time for the determination of other related appeals.

48. The 18 months suggested would be excessive given the ongoing harm caused by the development and, in any case, in my judgement, the 12 months given would be sufficient to plan for and implement the requirements of the Notice.

49. Consequently, the appeal on ground (g) does not succeed.

Appeal E

50. The main issue is whether the conditions are reasonable or necessary in the interests of the openness of the Green Belt.

51. Planning permission for the demolition of the existing bungalow and industrial units and the erection of 3 no dwellings and associated works includes conditions removing permitted development rights, including the enlargement, improvement or other alteration of a dwellinghouse and the erection of fences, gates and walls. The Council's reason for refusing to remove the conditions and their evidence in support of their position is that removing such restrictions would allow for the construction of inappropriate forms of development harming the openness of the Green Belt. The reasons for conditions 12, 13 and 20 relate to protecting the amenities or visual amenity of the area rather than protecting any potential harm to the Green Belt. The appellant objects to the conditions as they consider that it is not the Government's intention that houses in the Green Belt should lose their permitted development rights and it is common for houses in the Green Belt to be extended and altered using such rights.

52. The appeal property is a large modern detached house set within extensive grounds within the Green Belt. The appellant argues that there is no open countryside surrounding the site and there are no public viewpoints in the vicinity of the site from which the property can be seen and therefore, it is argued that the likelihood of permitted development changes or alterations being perceived as harmful is low. It is also contended that the openness of the Green Belt would not be affected by changes as this is not an exposed, open or isolated rural setting.

53. However, as previously set out above, openness is an essential characteristic of the Green Belt. Therefore, even if the scale of potential development under permitted development rights may be relatively minor, there may be some harmful effect on the openness of the Green Belt in that development may be built where previously there was none.

54. Within the definition of article 2(3) land in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) there is no reference to Green Belt land and it is my conclusion that it is intentional that permitted development rights for dwelling houses within the Green Belt are no different to those in other locations. Had there been an intention to restrict rights, the Green Belt would surely have been included as 2(3) land where there is an automatic restriction.

55. Furthermore, the Framework and Planning Policy Guidance clearly indicates that exceptional circumstances must apply for the removal of permitted development rights. Therefore, any blanket removal of permitted development

rights in the Green Belt location would be highly unlikely to be justified through exceptional circumstances. This is because a situation where a dwellinghouse may be altered and extended or other permitted development rights be implemented could apply to many, many properties across the country in the Green Belt and on this basis would not amount to exceptional circumstances. As such it is reasonable to assume that permitted development rights should remain in place unless there is clear justification for such an approach to be taken on a case-by-case and site-by-site basis.

56. In the light of the above, I do not find that the Green Belt location is on its own adequate justification for the approach taken by the Council. However, the appeal site has been the subject of a significant redevelopment when the original buildings were removed when planning permission was granted for new residential and associated development. The site is in the open countryside, albeit in a location where there is other built development in relatively close proximity and there are some views into the site from the adjacent road and adjoining open fields.
57. The concept of openness is not restricted to sites which are exposed, open or isolated, but is one which relates to protecting the Green Belt from built development and restricting development which may compromise the key objectives of the Green Belt, including safeguarding the countryside from encroachment and restricting urban sprawl, for example. In my view, each case must be determined on its own merits and, as is illustrated by my concerns about some of the development that has taken place on the appeal site pursuant to permitted development rights. Given the scale of the appeal site, its planning history and its locational characteristics in the countryside, but located close to other development, I understand the benefits from restricting permitted development rights in the interests of protecting the Green Belt.
58. However, restricting such rights need not necessarily result in a blanket restriction on development taking place within the curtilage of the dwelling house, but is a means of controlling any such development through the development management process. That is not an unreasonable approach and, as may be illustrated by other appeals determined in this decision letter, is a successful approach to restricting inappropriate development in the Green Belt that would otherwise be permitted.
59. Therefore, for these reasons and taking account of the evidence presented by the main parties I conclude that in these specific circumstances, the conditions are reasonable and necessary in the interests of protecting the openness of the Green Belt. As such the proposal to remove the conditions conflicts with Policy BDP4 of the Local Plan. The appeal therefore fails.

A A Phillips

INSPECTOR