

Appeal Decision

Site visit made on 29 January 2024

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01.03.2024

Appeal Ref: APP/W4325/W/23/3329788 The Menage, Mill Hill Road, Irby CH61 4XQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Gary Jones against the decision of Wirral Metropolitan Borough Council.
 - The application Ref RVC/22/02223, dated 23 December 2022, was refused by notice dated 17 May 2023.
 - The application sought planning permission for demolition of existing stable buildings, removal of outdoor riding arena and the erection of one detached dwelling with associated parking and landscaping (revised scheme of planning application APP/19/01591) without complying with a condition attached to planning permission Ref APP/20/00576, dated 2 September 2020.
 - The condition in dispute is No 2 which states that: Unless modified by other conditions of this consent the development hereby permitted shall be carried out in accordance with the approved plans received by the local planning authority on 06 August 2020 and listed as follows:
 - 18-102-110 Revision E (Site Location Plan)
 - 18-102-112 Revision C (Proposed Boundary Treatment Plan)
 - 18-102-113 Revision C (Existing and Proposed Site Section)
 - 18-102-121 Revision D (Proposed Floor Plans)
 - 18-102-122 Revision D (Proposed Elevations)
 - The reason given for the condition is: For the avoidance of doubt and to define the permission.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing stable buildings, removal of outdoor riding arena and the erection of one detached dwelling with associated parking and landscaping (revised scheme of planning application APP/19/01591) at The Menage, Mill Hill Road, Irby CH61 4XQ in accordance with the application Ref RVC/22/02223, made on 23 December 2022, without complying with condition No 2 set out in planning permission Ref APP/20/00576, granted on 2 September 2020 by Wirral Metropolitan Borough Council, but otherwise subject to the conditions in the attached Schedule.

Preliminary matters

2. The appeal form states that the planning application was refused on 23 March 2023, but the decision notice provided by the appellant is dated 17 May 2023. That notice bears the correct reference and contains the same reason for refusal as quoted in the appellant's statement. The latter date is also confirmed by the Council's appeal statement and no earlier notice has been supplied by either party. I therefore take the decision notice dated 17 May 2023 to be correct.
3. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023, during consideration of the appeal. The main parties have been given an opportunity to comment on these changes. The appellants draw attention to the increased emphasis on energy efficiency and low carbon heating improvements in paragraph 164 of the revised Framework. I return to this matter below.
4. The Menage is a recently constructed L-shaped bungalow. It has been built larger than shown on the approved plans, including extra sections to both sides and to the rear. This retrospective proposal seeks to gain permission for the bungalow as built.

Main issues

5. The main issues are:
 - i) whether the proposal constitutes inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies, including an assessment of its effect on the openness of the Green Belt; and
 - ii) if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations, amounting to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development in the Green Belt

6. The Menage is set well back from Mill Hill Road within the countryside and the designated Green Belt, on part of a former equestrian site that previously included stables, a barn and a riding arena. Framework paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 explains that construction of new buildings should be regarded as inappropriate in the Green Belt, except for listed exceptions. These include (g) the limited infilling or the partial or complete redevelopment of previously developed land where this would not have a greater impact on the openness of the Green Belt than the existing development.
7. Policy GB2 of the Wirral Unitary Development Plan 2000 (WUDP) similarly sets out a presumption against inappropriate development in the Green Belt. Its list of exceptions is, however, more restricted than the list now set out in the Framework. In this situation I look to the Framework as the more up-to-date policy. I understand from the Council that policy WP8.1 of the emerging Wirral

Local Plan 2021-2037 applies national policy for the Green Belt, which reinforces the weight to be given to the Framework in this matter.

8. In granting permission Ref APP/20/00576 the Council considered that the proposal was for the redevelopment of previously developed land and that the scale of the proposed dwelling would not result in any greater impact on the openness of the Green Belt than the existing development (as was). That proposal therefore met the exception listed above and was not considered to be inappropriate development in the Green Belt. This permission followed on from the Council's refusal of another application for a similar but larger scale development, that was eventually dismissed on appeal¹, having been assessed as inappropriate due to the impact on openness.
9. As the proposal is agreed to be the redevelopment of previously developed land, the key question under the exception at Framework paragraph 154(g) is whether this would have a greater impact on the openness of the Green Belt than the '*existing*' development. The appeal proposal is put forward as a variation of an existing planning permission, so the pre-development situation remains relevant to this assessment as the '*existing*' situation, even though the previous buildings are now gone and the new building constructed. Framework paragraph 142 confirms that openness is an essential characteristic of the Green Belt.
10. I understand from the previous appeal decision, and from the main parties, that the equestrian structures previously existing on site measured 199 square metres (sqm) in floorspace. The proposal dismissed on appeal was for 408 sqm of floorspace, which represented a substantial increase. In contrast, the approved plans for the bungalow show a far smaller floorspace, not much more than half of the floorspace of the equestrian structures.
11. The current proposal would more than double the floorspace of the approved bungalow. The appellant states that the new floorspace would be 234 sqm or an increase of 108% over the approved scheme, which appears to be about right. In comparison to the 199 sqm of the original buildings, however, this is a relatively small increase.
12. No comparative figures have been provided for the volumes of the previously existing building, the approved scheme and the current proposal. On the evidence before me, however, it appears that the volume of the new bungalow as built would be substantially greater than that of both the equestrian buildings and the approved scheme. As noted by the Council, the heights have been increased in comparison to the stables. The volume increase in comparison to the approved scheme is limited to some extent by some lower roof heights, but the volume of the built form must still be nearly doubled.
13. Although the bungalow is physically taller than the stables, it is also set further down a slope (on the site of the riding arena) and cut into the ground so that its ridge height would actually be about the same as the stables. Set so far down into the landscape its visual impact is very limited. The additions proposed in this variation are individually modest in scale and fit well with the L-shaped form of the building, so that they have little additional visual effect. The visual impact of the proposal on openness is therefore marginal.

¹ APP/W4325/W/20/3254375

14. Summing all this up - although the increase in floorspace (in comparison to the original buildings) is minor and the visual impact is marginal, the increase in volume compared to both the original and the approved buildings is significant. In these circumstances I find that the proposal has a materially greater impact on the openness of the Green Belt than the previously existing development. It therefore constitutes inappropriate development in the Green Belt. Framework paragraph 153 advises that the very special circumstances required to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Other considerations

15. WUDP policy GB2 also seeks to ensure that developments do not harm the visual amenities of the Green Belt by virtue of their siting, materials or design. Like the approved scheme, this is a well-designed development of traditional rural character and high quality materials. The building sits well below and away from the road, fitting in well in the landscape. The Council raises no objection to its impact on local character and appearance except for a concern about the possible spread of the domestic garden. This point could be dealt with by a planning condition limiting the extent of the garden, as in the existing approval. I find that no harm is or would be caused to local character and appearance. Furthermore, I find no significant effect on the purposes of including land within the Green Belt. There is no noticeable encroachment into the countryside and no harm to the setting or character of towns. These are all neutral factors in my assessment.
16. The appellant's key further argument is that most of the additions to the approved building could have been constructed using permitted development rights without the need for a new application, if their construction had been delayed until after the approved scheme was complete². The appellants argue that even if the additions are refused permission and have to be demolished to protect the Green Belt, they could mostly be re-built as permitted development, forming a fall-back position that could be implemented if permission is refused.
17. It is agreed by the parties that the additions as built are not permitted development extensions because they were built at the same time as the main house. As stated by the Council, the dwelling has not been built in accordance with the approved plans and does not benefit from planning permission, as built.
18. This is not to say, however, that the original permission APP/20/00576 is no longer extant and implementable. The appellants have submitted an application, with evidence, for a Lawful Development Certificate to try to show that a material commencement was made on this permission so that it remains extant. I have not been informed of any decision on that application and, importantly, the Council does not put forward any argument that the development was not materially commenced. Based on the information before me, it appears very likely that the permission remains extant, so that it could be used as part of a fall-back development.

² Under the terms of the Town and County Planning (General Permitted Development) (England) Order 2015

19. The Council agrees that the 2 side additions could have been permitted development if they had been built later on. It is furthermore agreed by the parties that the main existing rear addition would not be permitted development as it stands because it sits to the side of the rear wing and exceeds half of the width of the building, thereby failing to meet a relevant criterion. If reduced to meet that requirement, however, a similar but smaller rear addition could meet the permitted development criteria. This smaller permitted development rear extension would have slightly less spatial impact on openness, but its visual impact would be much the same.
20. I find that the bulk of the of the proposed additions could potentially have been built as permitted development once the bungalow was completed. I accept the appellants' argument that, if planning permission was refused and the additions eventually had to be demolished, they would very likely then be re-built insofar as they would be permitted development. This is a real possibility that forms a strong fall-back position, which is a material consideration. I also note that the existing permission contains no restriction on permitted development rights for domestic outbuildings, which could likely lead to the construction of other substantial structures in the garden.
21. The fall-back extensions that could be built under the existing permission would have slightly less impact on the openness of the Green Belt compared to the existing situation. If combined with the potential for new outbuilding(s), however, the overall impact could be much greater, increasing the volume, spread and visibility of the built development.
22. I note that the Council has recommended conditions removing permitted development rights for extensions and outbuildings should this appeal be allowed. This would address the point about outbuildings and safeguard the situation, helping to limit any ratchet effect by requiring planning applications for most future extensions and outbuildings. Such conditions would appear to take effect immediately, because of the retrospective nature of the application. The Council also expresses a concern about future extensions being approved under its own policy that allows for extensions of up to +50% in size in the Green Belt. Any future applications for extensions would be a matter for the Council to deal with in the first instance, bearing in mind the particular circumstances of the case.
23. The appellants also argue that the high energy efficiency of the bungalow is a further factor in its favour, in line with Framework paragraph 164's support for energy efficiency. The additions proposed in this appeal are not, however, shown to be necessary for this purpose. On the other hand, the fall-back position of potentially rebuilding these structures after demolition would entail a substantial waste of energy. I weigh this in favour of the proposal, in light of the importance of mitigating climate change as set out in the Framework's overarching environmental objective (paragraph 8).
24. I find no other significant factors either for or against the proposal. A new dwelling is created here, whether or not the appeal is allowed, so the impact on the supply of homes is neutral.

Planning balance

25. As above, I find that the proposed development is inappropriate in the Green Belt, due to the harm to openness. I give substantial weight to the harm to the Green Belt, in line with Framework paragraphs 152 and 153. That harm is, however, comparatively limited in this case. I also give substantial weight to the permitted development fall-back position, which could very likely restore almost all of the additions even if they were to be demolished and could add outbuildings in the garden. This would potentially have a significantly greater impact on the Green Belt and, as a matter of secondary importance, would also have a notable cost in terms of energy use and the environment.
26. I find that these positive factors here are sufficient to clearly outweigh the harm to the Green Belt and any other harm. I conclude that the very special circumstances necessary to justify inappropriate development in the Green Belt do exist in this case, so that the proposal accords with WUDP policy GB2 and the Green Belt provisions of the Framework.

Conditions

27. This decision establishes a new stand-alone permission so it is necessary to bring forward the conditions from the previous approval, insofar as these remain relevant. The Council has also suggested 2 additional conditions regarding permitted development rights.
28. A condition specifying the approved plans is needed for certainty. Notwithstanding the general details of the approved plans, I have not been provided with full details of hard and soft landscaping or external lighting, which are needed to protect the local landscape and rural character. A condition requiring the replacement of any failing plants is still needed for the same reason.
29. A condition limiting the size of the garden is also necessary, to protect the local landscape and the openness of the Green Belt from a spread of domestic activities and paraphernalia. Although the Council has raised concerns about an inconsistency in the plans here, the red line limiting the garden on the new site plan appears to be in the much same place as in the previous permission. Finally, 2 conditions removing permitted development rights for future extensions and outbuildings are necessary, as set out above, to protect the Green Belt. I have made minor amendments to conditions for clarity.
30. There are several conditions of the existing permission which are tied into the development process so no longer appear to be relevant. The development has started and has been carried out acceptably, so the standard 3 year commencement condition and a condition requiring approval of materials are no longer needed. Likewise previous conditions requiring measures to protect birds, newts and trees during development are now unnecessary. The equestrian buildings have been demolished as required so there is no need for a condition requiring their removal.

Conclusion

31. The proposal would accord with the development plan as a whole. Having considered all matters raised, I conclude that the appeal should be allowed.

Les Greenwood

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Unless modified by other conditions of this consent the development hereby permitted shall be carried out in accordance with the following approved plans:
18-102-110E (location plan)
18-102-310B (site plan)
18-102-312 (boundary treatment plan)
18-102-313 (site sections)
18-102-320B (floor and roof plans)
18-102-350B (elevations)
- 2) A detailed scheme for landscaping shall be implemented in full within the first planting season following the date of this decision, in accordance with details first submitted to and approved in writing by the Local Planning Authority. Such scheme shall include:
 - a) the type and location of hard and soft surfacing material to be used across the site;
 - b) the location, species, stock size and planting densities of trees and hedges to be planted across the site;
 - c) details of the type and location of any walls, fences, gates or other means of enclosure;
 - d) any earthworks or land grading works; and
 - e) details of the reinstatement of the land occupied by the existing stable buildings.
- 3) If, within the first five years after planting, any tree or hedge planted as part of the approved landscaping scheme, or any tree or hedge planted in replacement, should fail, die, become diseased, felled, uprooted or be otherwise destroyed, a new tree or hedge of the same species shall be planted in the same location unless the Local Planning Authority gives its written consent to any variation.
- 4) No external lighting shall be installed or retained except in accordance with details of the type, location and luminance of the lighting which have been submitted to and approved in writing by the Local Planning Authority.
- 5) The garden of the dwelling hereby approved shall not extend beyond the red line to the north-east of the bungalow shown on approved drawing 18-102-310B.
- 6) Notwithstanding the provisions of Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as

amended, (or any Order revoking or re-enacting that Order) no external alterations or extensions which would otherwise be permitted under that Class shall be carried out to the building hereby approved.

- 7) Notwithstanding the provisions of Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (or any Order revoking or re-enacting that Order) no building or enclosure, swimming or other pool incidental to the enjoyment of the dwellinghouse shall be constructed.