



Appeal Decision

Site visit made on 3 April 2024

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/K3415/W/23/3324007

Dunroamin, Hungry Lane, Weeford, Lichfield, Staffordshire WS14 0PR

- 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 Keith Evans against the decision of Lichfield District Council.
 - The application is Ref 23/00175/FUL.
 - The development was originally described as "Demolition of commercial buildings, caravans and containers with Lawful Development Certification and the construction of six 4-bedroom two storey properties with connecting garages".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The emerging Lichfield District Local Plan 2040 has completed its Regulation 19 public consultation, but the examination of the plan has been paused, with no date set. Due to its stage of preparation the emerging plan attracts limited weight.
3. During the course of the appeal, in December 2023 the government revised the National Planning Policy Framework (the Framework). This now replaces the previous version. However, as any policies in the Framework that are material to this decision have not fundamentally changed, apart from some paragraph numbering, I am satisfied that neither party would be prejudiced by my consideration of the revised Framework in reaching my decision.

Main Issues

4. As the site is within the Green Belt 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 and its effect upon openness and reasons for including land within it,
 - Whether the appeal site would be a suitable location for housing with regard to local and national policies,
 - The effect on highway safety, with particular regard to pedestrians and cyclists,
 - Whether sufficient information has been provided regarding the effect of the proposed development on bats as a protected species, and

- If the proposed development constitutes inappropriate development in the Green Belt whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the scheme is inappropriate development in the Green Belt

5. The Framework identifies that the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 152 of the Framework states that 'inappropriate development' in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 regards the construction of new buildings in the Green Belt as inappropriate development, subject to a number of exceptions.
6. The appeal site comprises a number of commercial buildings of various shapes, sizes and designs, made from a mixture of materials. I also saw 4 metal shipping containers located around the site and 2 mobile homes/caravans. At the time of my visit some of the buildings were in business use. The proposal would involve the demolition of all of the buildings and structures, and removal of all containers, caravans and vehicles from the site. They would be replaced by 6 detached two-storey dwellings with integral garages. The existing vehicular access off Hungry Lane would be retained and used.
7. There is no dispute between the parties that the proposal would involve the redevelopment of previously developed land. Framework exception 154g allows for "... *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 openness of the Green Belt than the existing development; or not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.*"
8. Policy NR2 of the Lichfield District Local Plan Strategy (the Local Plan) seeks to protect the Green Belt from inappropriate development. Whilst it includes some additional detail, I am satisfied it is broadly consistent with the Framework.
9. The Framework states that the essential characteristics of Green Belts are their openness and their permanence. There is no definition of openness in the Framework or the development plan. However, it is established that openness as a concept has both spatial and visual aspects. Hence, a development is still capable of affecting openness notwithstanding the degree of visibility of the land or development in question. Different factors are capable of being relevant to openness depending on the particular facts of a specific case. The effect on openness is therefore a matter of planning judgement. There are fields behind and adjacent to the appeal site such that the openness of the Green Belt is clearly evident.
10. The existing buildings occupy space on the ground with a combined floor area of about 840m² including the caravans and containers. The proposed dwellings would have a floor area of 810m², which is less. There is some dispute between

the parties as to the comparative volume of the existing and proposed buildings. The Council contend the dwellings would have a volume of at least double the existing built form. The appellant calculates the volume of the existing structures (excluding the caravans and containers) to be almost 3,000m³. The total volume of the 6 dwellings would be about 4,470m³. Even if the caravans and containers were included the appellant calculates the existing volume would still be less than the proposed.

11. Notwithstanding whether the floor areas and volumes are similar or less than existing, or whether the containers and caravans are included in the calculations, openness is more than a mathematical exercise.
12. The buildings and structures are of different sizes and heights - some are single storey, others taller. The buildings also have a variety of roof shapes and forms - some roofs are dual pitched roofs, some are curved and others are asymmetrical. In addition, the existing buildings are sited in an irregular arrangement across the site with some areas of hardstanding. Coupled with the different heights and sizes of buildings and different roof shapes, the existing built form is informal and organic. Not all of the buildings are visible or apparent from the road as smaller buildings are obscured by taller or larger buildings, and there is roadside hedging.
13. In contrast the proposal would be for a very regular form of buildings. The dwellings would all be two storeys and of a very similar design and dimensions to each other. They would be aligned in two straight rows, with three dwellings either side of a short cul-de-sac centrally located within the site. The proposed dwellings would each have a long unbroken roofline. As the dwellings would be sited close together on a similar building line to each other, the effect would be two regimental lines of significant built form that would have substantial bulk and massing, with little variation or variety of roofscape. Taking these components together, spatially and visually, the proposed development would have a greater impact on openness than the existing development.
14. Furthermore, the proposal would also introduce a more formal road layout with footpaths either side, instead of the more informal rough hardstanding that currently exists. There would be regular patterns of hardstanding for driveways and car parking spaces. The regular alignment of parked cars, including if visitors park along the road, would be more permanent than the more informal parking for the business units which is scattered across the site and not highly visible from the road. As the existing access would be retained, off which the straight cul-de-sac would extend, the dwellings and parked cars would be more visible from the road than the existing development. There would also be a regular arrangement of boundary fences erected to create compartmentalised back gardens, together with associated domestic paraphernalia.
15. Drawing all the above points together, the proposed development would have a greater impact on the openness of the Green Belt than the existing development on site. Consequently, the proposal would not fall within the first clause of exception 154g of the Framework. The proposal would therefore constitute inappropriate development in the Green Belt for the purposes of the Framework and Local Plan Policy NR2.
16. The appellant offers the dwelling on Plot 1 as an affordable dwelling, to satisfy the second clause of paragraph 154g as an alternative. There is no substantial evidence submitted, such as a local needs survey, to demonstrate there is an

identified local need for a single affordable dwelling on the site. Furthermore, there is no legal planning obligation¹ submitted with the appeal to secure the dwelling as affordable and guarantee its tenure into the future. Consequently, I must treat the proposal as fully open-market housing. It does not, therefore, fall under the second clause of Framework paragraph 154g.

Location for housing

17. The Council has a spatial strategy to guide the location of new housing and Local Plan Core Policy 1 sets out where new housing will be directed. The majority will be focussed on main urban areas, such as Lichfield and Burntwood. In the rural area most housing will be directed to certain identified key rural settlements set out in its Table 4.1 of the policy. Weeford, the nearest village to the appeal site, is not one of the listed key rural settlements. Nor is it listed as one of the other rural settlements. I saw Weeford had a restaurant but lacked facilities and services to provide for day-to-day needs.
18. For villages in the Green Belt, Core Policy 1 will allow limited infill in villages with appropriate infill boundaries determined through community consultation in preparing the local plan allocations document. The proposal would not accord with these infill criteria. Nor is the proposal a rural exception site for local community affordable housing needs. The proposal would therefore be contrary to Core Policy 1.
19. Local Plan Core Policy 3 seeks to contribute to the creation and maintenance of sustainable communities by addressing a number of issues, such as ensuring development is of a scale and nature appropriate to its locality and encourage the re-use of previously developed land in the most sustainable locations, as well as reducing the need to travel. As set out in Core Policy 1 this previously developed land is not in a location considered an appropriate location for housing.
20. Core Policy 6 expects new housing to be focused on key urban and rural settlements. As already stated, the appeal site is not located within any of the key rural settlements. The policy goes on to state that in the remaining rural areas, within which the site is located, residential development will be allowed in a limited number of instances, such as infill within a defined village settlement boundary, or changes of use or conversion schemes. The proposal does not fulfil any of the listed criteria.
21. Local Plan Policy Rural 1 reiterates the approach to housing in the rural areas in order to promote sustainable patterns of development and to protect the character of the countryside. The proposal would not comply with these scenarios.
22. These policies are broadly in accordance with the Framework's aim of promoting sustainable patterns of development and identifying opportunities for villages and other settlements to grow, supported by infrastructure and facilities, and where it will enhance or maintain the vitality of communities. For the reasons set out above, the proposed development would conflict with Local Plan Core Policy 1, Core Policy 3, Core Policy 6 and Rural 1.

¹ Pursuant to Section 106 of the Town and Country Planning Act 1990

Highway safety

23. The site is located on Hungry Lane, a narrow unclassified country lane that continues to Weeford, the nearest village. The site is near the junction with Watling Street, that in turn meets the Weeford Interchange to the west with onwards connections to main highways such as the M6 Toll, the A5 and the A38. To the east Watling Street continues towards Mile Oak and Fazeley. Due to the relatively straight nature of the road I saw some vehicles travelling at speed.
24. As described above, there are no services or facilities in Weeford to speak of and none that would provide day-to-day needs. The nearest facilities and services are in Shenstone, one of the key rural settlements, over 3 miles away. Other facilities are in Mile Oak about 3 miles to the east. Lichfield and Tamworth railway stations are also about 3 miles away in other directions. I am advised there is no bus service. I saw that Watling Street did not have a continuous pavement or streetlighting, but there were more built up stretches where they were present.
25. Taking these various factors into account, I find Hungry Lane and the other adjacent connecting roads are not conducive to walking or cycling to access day-to-day services and facilities, especially in the dark or inclement weather. Use of them would create potential conflict and highway safety issues between vehicles, pedestrians and cyclists. Consequently, due to the site's location and nature of the roads, residents would likely be unduly reliant on the car to access day-to-day services, even if journeys are short.
26. This endorses the site's unsuitable location for housing and would further undermine the Council's spatial strategy, as discussed above. The Framework expects development to seek opportunities to promote walking, cycling and public transport; limit the need to travel, and offer a genuine choice of transport modes, whilst acknowledging that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account.
27. The proposal would see a reduction in commercial traffic using the site and Hungry Lane, including 7.5 tonne vehicles, due to the proposed cessation of some 11 businesses who currently operate from the site. The appellant advises that in the last 31 years there have been no incidents with vehicles, cyclists or pedestrians whilst entering/exiting the site. That may be the case, but that does not improve the site's suitability as a location for housing or reduce the potential conflict between vehicles and pedestrians /cyclists using the local road network to access nearby services and facilities. The Highway Authority's decision not to reduce the speed limit is a matter for them, but it remains a fact that Hungry Lane is subject to a 60mph speed limit.
28. The appellant draws my attention to planning permission that was granted for the conversion of the Old Smithy into a dwelling, further along Hungry Lane. The conversion of a building is not the same type of development as demolishing existing buildings and erecting 6 new dwellings. Furthermore, traffic from a single dwelling is significantly less than 6 dwellings. Therefore, the comparison has little relevance to the appeal before me, which I must determine on its own planning merits in any event.

29. Accordingly, the proposal would exacerbate potential conflict with road users and be contrary to Local Plan Core Policy 1, Core Policy 3, Core Policy 5 and Policy ST1. Collectively these seek to ensure development is located in sustainable locations to reduce the need to travel and that development is served by a choice of transport modes, including public transport, footpaths and cycle routes, to reduce the reliance on the private car.

Protected species

30. Bats and birds are protected by law. The planning system seeks to minimise the impact on them and other protected species. The presence of protected species is a material consideration to be taken into account when assessing development proposals.
31. The appellant submitted a Preliminary Bat Roost Assessment and Bird Survey with the application that found there were bat roosting opportunities in some of the existing buildings. The report recommended that further surveys were undertaken, which the Council's Ecology team endorsed. The optimum time for undertaking the necessary bat emergence surveys is between May to August. When the application was determined in May 2023, the additional surveys had not been undertaken.
32. Two bat emergence surveys have since been undertaken on 9 and 27 June 2023 and a report² of the findings was submitted in July shortly after the appeal was lodged. The Council has been in receipt of the additional bat report, but no comments have been received.
33. The locations of the emergence surveys enabled the bat roosting opportunities in buildings 3 and 5 to be checked again at the same time. There was no evidence of bats using the buildings as a place of shelter. However, building 3 (the brick building in use as an office) was being used as a day roost by a single Common pipistrelle bat. A licence from Natural England would therefore be required to demolish this building. There are roosting opportunities under the fibre cement roof sheets and timber cladding of building 5 (the asymmetrical timber clad building in far northeast corner of the site), but no bats were seen emerging. Building 1 (the largest building with block work base) has poor potential for places for bats to shelter. The report advises that work to the building can be managed by contractors following the method of working set out in the report (such as lifting roof materials rather than twisting or sliding them). If bats are found then work must stop immediately, and a licensed bat worker called to site.
34. The proposed development would have a negative impact on bats with the loss of some potential roosting if building 3 in particular is demolished. However, the report finds there would be no impact on habitat, foraging or commuting routes from the proposed development. For mitigation, new roosting opportunities could be created with the use of bat boxes integrated into the new dwellings. Contractors would also need to follow the methodology in the report, and the necessary bat licence from Natural England secured, should planning permission be granted.
35. Some of the buildings have the potential for bird nesting, as do the leylandii trees around the site boundary and ivy growing on some of the buildings. Any

² Undertaken by S. Christopher Smith dated 3 July 2023

tree felling should only take place between the beginning of September and the end of February in any year. In addition, no demolition should take place if birds are nesting and until the young have fledged.

36. I am satisfied that the additional bat emergence surveys, together with the initial report and proposed mitigation measures, now provide sufficient information to safeguard the protection of bats and birds. Appropriate conditions could now be imposed to control these measures, should planning permission be granted. Accordingly there would be no conflict with Local Plan Core Policy 13 and Policy NR3. Collectively these seek to ensure, amongst other things, that development protects protected species and where necessary appropriate mitigation measures can be provided. It would also conform with the advice in the Council's Biodiversity & Development Supplementary Planning Document.

Other Considerations and Green Belt Balance

37. The proposed redevelopment of the appeal site represents inappropriate development in the Green Belt under Framework paragraph 154g), as I have found there would be a greater impact on openness than the existing development. Inappropriate development is, by definition, harmful to the Green Belt. Paragraph 153 of the Framework requires that substantial weight must be given to any Green Belt harm.
38. In addition, the proposed development would be in an unsuitable location for housing making future residents reliant on the car to access day-to-day services. This would undermine the Council's housing strategy and national policy guidance to promote sustainable patterns of development and reduce the need to travel. There would also be potential for vehicle/pedestrian/cyclist conflict on the surrounding road network. These are serious planning objections that weigh against the proposal.
39. Inappropriate development in the Green Belt should not be approved except in very special circumstances, which will not exist unless the harm to the Green Belt, by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
40. The appellant offers one of the dwellings as affordable. However, this has not been evidenced or justified. Nor has the affordable tenure been secured by a planning obligation. Thus there is no guarantee it would be an affordable dwelling. As a result, the proposed 100% market housing in this location would be inappropriate development in the Green Belt.
41. There would be re-development of previously developed land and some visual improvement with the removal of some untidy and semi derelict buildings. From my observations, the site is already partially screened from view by roadside hedging, but the proposed dwellings would be more visible from the road than the existing buildings overall.
42. The caravans and storage containers may well benefit from lawful development certificates (LDC), but the proposal does not involve their retention on site. IN any event a LDC is not a planning permission so the planning merits, including Green Belt issues, did not fall to be considered. Lighting could be installed, and visibility improved at the site access. However, this would have little effect on overcoming the planning objections above.

43. The proposal would attract a Community Infrastructure Levy payment. However, this cannot be regarded as a benefit as it is a mechanism for offsetting the impacts of new development on an area. The absence of harm relating to protected species carries neutral weight in the balance.
44. I find that the other considerations, alone or in combination, do not clearly outweigh the totality of the harm to the Green Belt and other harms. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. Accordingly the proposal would conflict with Local Plan Core Policy 1, Core Policy 3, Core Policy 5, Core Policy 6, Rural 1, and Local Plan Policies NR2, NR3 and ST1.

Conclusion

45. For the reasons set out above, I conclude that the appeal should be dismissed.

K. Stephens
INSPECTOR