



Appeal Decision

Site visit made on 17 June 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2024

Appeal Ref: APP/V4630/W/23/3332807

11 Knights Hill, Aldridge, West Midlands WS9 0TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Emma Turrell against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 21/0168.
 - The development proposed is the demolition of an existing house and its replacement with two dwellings.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of an existing house and its replacement with two dwellings at 11 Knights Hill, Aldridge WS9 0TG in accordance with the terms of the application, Ref 21/0168, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application form describes the development as “residential development”. However, I have used an adapted version of the Council’s description of development as this more accurately describes the full details of the proposal.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (The Framework) and any relevant development plan policies;
 - The effect of the proposed dwellings on the character and appearance of the area, with particular regard to trees; and
 - The ecological effects of the proposal.

Reasons

Inappropriate development

4. The development plan for the district includes the Walsall Site Allocation Document [2019] (SAD). SAD Policy GB1 relates to development in the Green Belt. This states, at GB1(b), that proposals in the Green Belt that are not inappropriate, or establish very special circumstances, will be assessed against

other policies of the plan. Furthermore, policy CSP2 of the Black Country Strategy [2011] (CS) seeks to promote a strong Green Belt.

5. The Framework explains that the Government attaches great importance to the Green Belt and that substantial weight is to be afforded to any harm. Paragraph 154 establishes that new development would be inappropriate unless it meets a listed exception. Paragraph 154(d) states that the replacement of a building would not be inappropriate provided that the new building is in the same use and is not materially larger than the one it replaces.
6. The phrase 'Materially larger' is not defined by the Framework. This is therefore ultimately a matter for the decision maker, with much depending on the individual circumstances of the proposal. However, a conclusion on this matter cannot be arrived purely on a mathematical calculation as a single factor as the test is primarily an objective one based on size, as referenced by the Framework.
7. The Framework also identifies, at paragraph 154(e), that limited infilling in villages would not be inappropriate development. The terms 'limited infilling' and 'villages' are not defined in the Framework. However, the planning portal defines infill development as "The development of a relatively small gap between existing buildings". Without the benefit of a more germane definition, I shall use this approach in consideration of this matter.
8. The appeal site is over-washed by the Green Belt, located within a row of residential plots, within the settlement of Aldridge. The northwest side of the street consists of dwellings that are relatively close-knit with small gaps between built form. Whereas dwellings along the southeast side of the street, including the site, are more dispersed and include some substantial gaps between dwellings. The site is a verdant spacious plot with a comparatively small dwelling in its middle and a range of outbuildings within its extensive rear garden.
9. The proposed development would consist of a replacement dwelling and a new single storey dwelling. These would be arranged in a line that would follow the highway.

Replacement dwelling

10. The Appellant states that the replacement dwelling would be around 21% larger in floorspace than the existing dwelling. This would be closer to the neighbouring dwelling at No 15 with a slightly greater footprint but would maintain an extensive gap. It would also maintain a recessed position from the highway and be two-storey, similar to the existing dwelling. The Council does not refute the floorspace increase but identifies that the scale of the proposal would also result in a volumetric increase of 33%. The Council has not drawn my attention to any local policy that might demonstrate what it considers 'materially larger' to be, as a qualified quantum.
11. The proposed dwelling would be a two-storey property of traditional form. It would have a pitched roof, a projecting front gable and include brick walls and detailing that would add overall interest. It would be wider as viewed from the highway, than the existing building. However, within this spacious site the replacement dwelling would appear only moderately larger than the dwelling it replaces. Therefore, in terms of its overall mass, the replacement dwelling

would not be materially larger than the one it would replace and would therefore be deemed to not be inappropriate development.

Infilling

12. The proposed bungalow would be located between the replacement dwelling and 9 Knights Hill. The appeal site is within a row of dwellings which is connected to a large village. Residential development is apparent along both sides of Knights Hill without a clear gap of plots and therefore offers no break in the continuous pattern of development. As such, it is clear that the site is within the village.
13. The proposed dwelling would be between existing built form. It would not materially alter the nature of the gap between it and No 9, enabling the gap to function as an infill plot. There is no provision in the Framework that would exclude garden land from being considered as an infill plot. The new plot would be comparable in scale to adjacent plots and would therefore complement the existing pattern of development.
14. The proposed dwelling would have a footprint that would be similar to the proposed replacement dwelling. Due to its footprint and single-storey nature, the proposal would be of a small scale. As a result, being for one dwelling within a generous plot and being a low-key building, the proposal would represent *limited* infilling. As such, the new infill dwelling would not be inappropriate development in the Green Belt.
15. Having found the proposal to not be inappropriate it would accord with paragraph 154 of the Framework. Given my findings that the proposal would not be inappropriate development in the Green Belt, the proposal would, by definition, not have an adverse impact on the openness of the Green Belt or the purposes of including land within it. Additionally, as the proposal does not amount to inappropriate development, there is no requirement to assess if there are other considerations that amount to very special circumstances.
16. Accordingly, the proposed development would not amount to inappropriate development in the Green Belt in accordance with SAD policy GB1, CS policy CSP2 and paragraph 154 of the Framework.

Ecology issues

17. CS policy ENV1 requires development to safeguard nature conservation and states that species that are legally protected should not be harmed by development. It requires adequate information to be provided, in support of planning applications for proposals, to ensure that the likely impacts on important habitat and species can be fully assessed.
18. The Council's ecologist has identified that the existing house could be a habitat used by bats as the site is within an identified bat zone. Bats are a European Protected Species by virtue of schedule 2 of The Conservation of Habitats and Species Regulations 2017. A mitigation licence is required for any activities affecting bats that would otherwise be illegal. This includes any deliberate or reckless activity that leads to capture, killing, disturbance or injury as well as any activities that might lead to the damage or destruction of breeding or resting places or the obstruction of access to places used for resting or shelter.

19. The submitted preliminary Bat Roost Assessment¹ demonstrates that the existing dwelling has only a low potential to support roosting bats, due to the roof being relatively intact and having only two low potential roof tiles offering limited access opportunities. The Assessment does not recommend an emergence survey but suggests that demolition includes a soft strip to remain alert to any bat activity. This could be suitably secured by condition. The assessment appears to be robust and has been undertaken by a suitably qualified expert and I see no reason, within the submitted evidence, to disagree with its findings. I am therefore satisfied that the proposal would have no adverse effect on local bat populations.
20. Consequently, the proposal would not have an adverse effect on protected species or other ecological matters of interest. Accordingly, the proposal would comply with CS policy ENV1, SAD policy EN1, the Council's Conserving Walsall's Natural Environment SPD and the Framework. These seek, among other matters, for development to protect, manage and enhance nature conservation sites, habitats and assets within, around and beyond the borough.

Character and appearance

21. Knights Hill is a residential street in a semi-rural location, adjacent to the open countryside to the east. The appeal site is a large residential plot occupied by a main house, a series of outbuilding in its rear garden and a range of trees. The site slopes from the highway towards the countryside beyond its rear providing wide and distant views of the countryside. The trees on site are subject to a group Tree Preservation Order (TPO), these are largely clustered along the frontage of the site. The site is largely undeveloped and makes a strong contribution to the character and appearance of the surrounding local verdant landscape.
22. The proposed development would be arranged around existing trees and the scheme includes the provision of new trees. A number have been recently removed with the Council's consent due to poor health. The retained trees would be considerably incorporated into the revised layout of the site. The proposed dwellings have been arranged to provide clear views from front and rear facing windows which would not be materially hampered by the close proximity of the trees.
23. The proposed replacement dwelling would have a large tree to its side. The limited side windows serve mostly non-habitable rooms on its northern elevation. Although bedroom 5 has a side window that may be compromised due to the proximity of the adjacent tree, this is the smallest bedroom and would in any event receive reduced daylight due to the enclosed nature of the site and the proximity of nearby built form. Therefore, whilst some trees would be relatively close to the dwellings, these would not demonstrably diminish the outlook or living conditions of future occupiers. As such, the trees would not be under material threat of future removal due to this arrangement and would remain protected by their TPO status.
24. Tree T27, a cypress, is within a cluster of trees to the side of the existing house and this group would be in front of the proposed replacement dwelling. Tree T27 is proposed to be removed to facilitate development. The Arboricultural

¹ Preliminary Roost Assessment, Oak Ecology, 30/10/23

Assessment², although now a dated document, identifies this to be in poor condition. It finds that the tree has a lifespan of less than 10 years and is accordingly rated as a category C tree. Although the Appellant has stated that his could be retained if essential, its removal would allow the adjacent trees to grow with less competition. Due to the poor quality of the tree and limited contribution made by this particular tree its loss would result in only a limited adverse effect on the local verdant character. Furthermore, the proposed replacement tree planting would outweigh the limited adverse effect of the proposed removal.

25. The provision of servicing, such as water and power, to the proposed development could affect tree roots due to trenching. However, the existing dwelling already receives such services limiting the need for future services. Furthermore, the details of any new services could be specified by the imposition of a planning condition to avoid root damage.
26. As a result, the proposed development would complement the verdant and spacious character and appearance of the area, including the TPO trees on site. Consequently, the proposal would comply with saved policies GP2, ENV18 and ENV23 of the Walsall Unitary Development Plan [2005], CS policies ENV1 and ENV2, SAD policy EN1, the Council's Conserving Walsall's Natural Environment SPD and the Framework. These require development, *inter alia*, to protect and promote the special qualities of the Black Country and for the removal of existing trees to be supported if it would be in the interests of good arboricultural practice.

Other Matters

27. Interested parties have raised concern that the scheme does not include garaging, putting future owners' cars at risk of theft. Although garaging is not included, the risk to future occupiers would be limited. Driveway parking is common in the area and there would be good natural surveillance of the parking areas by occupiers of the dwellings.

Conditions

28. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance (PPG). I shall take the Council's suggested conditions into consideration, and the Appellant's comments, and impose most of the conditions with some amendments and adjustments for clarity.
29. I have imposed the standard conditions with respect to time frame and approved plans as advised by the PPG for clarity and certainty [conditions 1 and 2]. Although the submission of a bat survey, as sought by the Council, is no longer required, it would be necessary to ensure as a precaution that the roof of the existing dwelling is removed under the supervision of a licensed bat expert [3]. It is also necessary for a condition to be imposed requiring the Tree Protection Plan be in place prior to the commencement of development and for the submitted landscape scheme to be implemented before either dwelling is first occupied [4].
30. A condition is also necessary to secure the provision and retention of the parking and manoeuvring spaces shown on plan to ensure that the

² Arboricultural Impact Assessment, Morfe Valley Arboriculture, 9/11/20

development would function well [5]. Furthermore, a condition is necessary to require details of levels and the location of proposed services in the interests of the character and appearance of the area and the protection of tree roots [6].

31. The Council has advised that conditions would be necessary with respect to a Construction Management Plan and Construction Environmental Management Plan. However, these requirements include some duplication, relate to hours and method of construction that is adequately addressed through other legislation and describe requirements that would be more likely for large scale development. As the scheme is comparatively small, and can adequately accommodate its construction activity/storage needs within the site, the requirements for such plans would not be necessary.
32. The Council has also advised that a condition would be necessary with respect to electric charging points and boiler details. However, I have not sought details of electric charging points as this would be secured by Building Regulation requirements and it would be unnecessary to duplicate other legislative requirements. With respect to a boiler specification, the Council states that this is required to comply with CS policies ENV8 (air quality) and DEL1 (infrastructure provision). However, the first policy relates to the location of development to avoid areas of poor air quality and the second is concerned with infrastructure improvement to mitigate the effects of development. As a result, these do not directly relate to boiler specifications, carbon emissions or climate change and therefore this requirement would be unnecessary.
33. The Framework advises that conditions should not be used to restrict permitted development (PD) rights unless there is clear justification to do so. The site is within a row of other dwellings that would be likely to benefit from PD rights and where such small-scale extensions and alterations would be unlikely to have a material impact on the openness of the Green Belt. As such, a condition that would seek to remove PD rights would be unreasonable and unnecessary. Also, Conditions requiring materials are not required based on the already submitted details.

Conclusion

34. The proposal would accord with the development plan, when taken as a whole, and there are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. As such, the appeal is allowed, and planning permission granted subject to the attached conditions.

Ben Plenty

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing no's: LO-01 Location plan, PL-01A Proposed planning layout & streetscene, HO-FP-01 Proposed 5 bed house floor plans & elevations, BU-FP-01 Proposed bungalow floor plans & elevations, BTP-01A Boundary treatment and materials plan, MVA_TPP_01 Tree protection plan, MVA_LSP_01 Proposed landscape scheme, and PL-03A Proposed removal of hardstanding.
- 3) No demolition of the roof of the main house shall take place without an ecologist with a class 2 bat licence being present to oversee the soft strip of the roof tiles. Should bats be identified during any stage of the demolition, all works must cease until a licence from Natural England has been acquired.
- 4) Prior to the development commencing tree protection measures shall be installed in relation to all trees to be retained in accordance with the approved Tree Protection Plan reference MVA_TPP_01 and shall be maintained until completion of the associated works; the hard landscaping approved by the landscape scheme reference MVA_LSP_01 & BTP-01A shall be carried out prior to first occupation of each associated dwelling and the soft landscaping shall be carried out in the first planting season following the first occupation of the associated dwelling; these shall be maintained as such for a minimum period of 5 years.
- 5) Prior to the first occupation of each dwelling on the development, the parking areas and vehicle manoeuvring space associated with the associated dwelling shall be fully implemented. These areas shall thereafter be retained and used for no other purpose.
- 6) Prior to the construction of the approved dwellings, a detailed plan of existing and proposed levels, in addition to details of proposed services (electricity, gas, water, foul and surface water disposal), shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall then be implemented in accordance with the approved details.

End of conditions