The Planning Inspectorate

Appeal Decision

Site visit made on 2 July 2024

by Elaine Moulton BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal Ref: APP/W4325/W/24/3337201
Land to the South of Freshways, Boathouse Lane, Parkgate CH64 3TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr and Mrs Danny Morgan against Wirral Metropolitan Borough Council.
- The application Ref is APP/23/00029.
- The development proposed is a new dwelling.

Decision

1. The appeal is dismissed and planning permission for the erection of one detached dwelling (zero carbon) is refused.

Preliminary Matters

2. The appeal follows the Council's failure to determine the respective planning application. In response to the lodging of the appeal, the Council confirms that had it determined the application it would have refused it on three grounds. The appellant has had the opportunity to respond to these grounds in their final comments, therefore they would not be prejudiced by my taking such matters into account and for them forming the main issues.

3. The main parties refer to policies from the emerging Wirral Local Plan (eLP), which has been submitted for examination and public hearings have taken place. However, there is no clear evidence as to whether there are unresolved objections to them. Accordingly, the policies of the eLP carry limited weight.

4. I have been provided with a copy of an appeal decision on this site, reference APP/W4325/W/18/3213083, relating to an outline application for residential development (all matters reserved), which I have had regard to in reaching my decision.

Main Issues

5. 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 development on the openness and purposes of the Green Belt;

- The effect of the development on the character and appearance of the area, with particular reference to protected trees within the site;
- The effect of the proposal on protected species, namely bats; and
- Whether the 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 development.

Reasons

Inappropriate development

6. The appeal site is located within the Green Belt. The Framework establishes that new buildings in the Green Belt are inappropriate other than for specified exceptions that are set out in paragraph 154. One such exception, 154(e), is limited infilling in villages.

7. Policy GB2 of the Wirral Unitary Development Plan (UDP) sets out a presumption against inappropriate development and states that planning permission will not be granted unless it is for specified purposes which includes the limited infilling in existing villages. This corresponds with exceptions identified in the Framework at paragraph 154(e). Although it predates the Framework and the eLP is at an advanced stage, I do not consider it to be out of date and I therefore give it full weight.

8. The appeal site lies on Boathouse Lane outside of the settlement of Heswall and Gayton. On one side is a row of houses with dwellings on The Spinney sited to the rear. The densely built environment of the settlement markedly contrasts with the looser and more sporadic form of development, interspersed by large undeveloped spaces, of the countryside outside of it. The heavily treed and verdant quality of the appeal site gives it a rural character that forms part of the countryside and is distinctly different to that of the adjoining settlement. As such, considering this situation on the ground, the appeal site does not appear to be part of the settlement.

9. Consequently, even though a new defensible Green Belt boundary would be established, I concur with the conclusion of the Inspector in the previous appeal that the development of the site would represent an outward expansion of the settlement rather than comprising limited infilling within it.

10. The extract from the Wirral Policy Proposals Map, provided by the appellant, suggests that the appeal site is separated from other Green Belt land. However, there is nothing before me that demonstrates that the land in front of and to the side of the appeal site, which is within the Cheshire West and Chester boundary and outside of the settlement, is not also designated as Green Belt. Accordingly, I am not satisfied that the appeal site is a random parcel of land unrelated to other Green Belt land and that this is pertinent to my finding as to whether the appeal proposal amounts to limited infilling in a village.

11. I have had regard to the appeal decision within the Cheshire West and Chester area that the appellant has referred to. However, in the absence of the full details and circumstances of that case, it is not possible to conclude that the situation on the ground is comparable to the case before me. Accordingly, I am

not satisfied that the Cheshire West and Chester decisions supports the proposal before me.

12. I therefore conclude that the proposal would be inappropriate development in the Green Belt.

Openness and purposes

13. The Framework, at paragraph 142, sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. At paragraph 143, the Framework sets out the five purposes of the Green Belt, one of which is to assist in safeguarding the countryside from encroachment.

14. The proposal is for a large two-storey dwelling with an extensive hard surfaced area for vehicle manoeuvring and parking to the front. In comparison with the existing, undeveloped site, the large footprint and volume of the proposed development would result in a significant visual and spatial loss of openness of the Green Belt. Furthermore, the site forms part of the countryside, and the development is a physical encroachment into it. As a matter of judgement, the proposal would not assist in safeguarding the countryside from encroachment and will therefore conflict with this Green Belt purpose.

15. I conclude on this issue that there is a loss of openness in the Green Belt and conflict with one of the purposes of including the land within it, contrary to paragraphs 142 and 143 of the Framework.

Character and appearance

16. The appeal site is subject to a Tree Preservation Order (TPO). The trees, which cover a significant proportion of the site, are prominent in the street scene along Boathouse Lane. Their height, form and visibility as a group make a highly positive contribution to the appearance of this area.

17. The appeal is supported by an Arboricultural Impact Assessment (AIA) which indicates that the tree cover on site comprises six individual trees and seven groups of trees. The AIA indicates that groups G1 and G4 would need to be partially removed and group G2 and tree T5 fully removed to accommodate the development, and for no other reasons. In addition, the AIA indicates that Group G3 and tree T1 would have to be fully removed due to their condition and to accommodate the development.

18. The loss of such trees, which are predominantly categorised as being of moderate or low quality and which the AIA broadly suggests are in relatively good condition and with reasonable life expectancy, would materially and harmfully erode the wooded and verdant nature of the appeal site to the detriment of the character and appearance of the area.

19. The proposal includes a deck area which did not form part of the development that was appraised in the AIA. The deck would result in a significant incursion into the Root Protection Area of trees T3 and T4 that could result in a risk to their health. Furthermore, the protection of the trees identified to be retained would be extremely challenging given the limited space within the site. Consequently, in the absence of an Arboricultural Method Statement, it has not

been demonstrated that the proposed development could be constructed without further loss of trees.

20. I acknowledge that tree planting could be secured through the imposition of a condition. However, this would not be sufficient to mitigate the visual impact of the proposed development and compensate for the loss of the existing trees.

21. Accordingly, the proposal would harm the character and appearance of the area due to the loss of, and impact on, trees and would therefore be contrary to UDP Policies HS4 and GR7 which, amongst other things, requires that development proposals do not result in a detrimental change to the character of the area, including the substantial preservation of wooded character. The proposal also fails to comply with the Framework which recognises the intrinsic character and beauty of the countryside and trees.

Protected Species

22. Paragraph 99 of Circular 06/2005[1] states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

23. The appellant has provided a Preliminary Ecological Appraisal (PEA). It states that the trees within the site were briefly assessed in May 2022 for their potential to support roosting bats, and trees with roosting features were identified. A preliminary bat roost assessment of the trees to be lost to the proposals was then carried out in May 2023 which concluded that they provided low or negligible bat roost potential.

24. The Council states that the earlier version of the PEA, which is not before me, identified that one tree to be lost had moderate bat roost potential (BRP) and that a further detailed survey of it was required to justify the revision to low BRP. However, that is not supported by the ecological advice from the Merseyside Environmental Advisory Service (MEAS) submitted with the appeal documents. MEAS raises no objection to the downgrading of that tree, or to the conclusions of the PEA that all trees that would be felled have a low BRP. The MEAS does advise, in line with best practice, that the felling of the trees with low BRP should employ soft felling techniques under supervision of a suitably qualified ecologist, which could be secured through an appropriately worded planning condition.

25. There is, therefore, nothing before me that suggests that there is insufficient information to assess the extent of the impact of the proposal on this or other protected species. Subject to the implementation of the mitigation measures set out in the PEA, which could be secured by condition, I find that the proposed development would not adversely affect a wildlife species protected by law.

26. I therefore conclude that the proposed development will not have an adverse effect on protected species, specifically bats. Accordingly, the proposal would

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not conflict with UDP Policy NC7 or the Framework which seeks to protect and enhance biodiversity.

Other Considerations

27. The appellant refers to the Council currently being unable to demonstrate a five-year housing land supply. The Council states that the eLP, which I have found carries limited weight, allocates sufficient land over the plan period to meet the housing need of the Borough, but does not dispute that it does not have an up-to-date five-year supply. Nevertheless, the Framework indicates that the presumption in favour of sustainable development set out at paragraph 11(d) does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The Green Belt is one such area, and the proposal is contrary to the relevant policies of the Framework regarding the Green Belt.

28. The proposed self-build dwelling would, however, be on an unused scrubland site and would contribute towards the Government's aims of boosting the supply of housing, as set out in the Framework, in a location where schools, shops and services are easily accessible. The appeal development would meet the appellant's desire to move back to the area and, once occupied, would also provide support to the local economy and local community facilities. However, such benefits attract limited weight due to the very modest quantum of development under consideration and in the absence of evidence of the lack of suitable existing properties in the area.

29. The Framework indicates that the planning system should support the transition to a low carbon future as part of meeting the challenge of climate change. In addition, paragraph 139 stipulates that significant weight should be given to outstanding or innovative designs which promote high levels of sustainability, so long as they fit in with the overall form and layout of their surroundings.

30. The supporting information indicates that the site has the potential to include a one-of-a-kind water filtration system using the on-site pond, and an energy storage/production system utilising eco waste from the site, thereby possibly becoming the first custom build in England to achieve the World Bank net zero accreditation. Nonetheless, in the absence of precise details, and given my findings that the proposal would be harmful to the character and appearance of the area, no more than moderate weight is attributed the low carbon credentials of the proposed development. I have had regard to the examples of low carbon homes that have been granted planning permission. However, whilst consistency of decision making is important, from the limited evidence before me I have not found that the comparison of such cases to that before me alters my findings.

31. Whilst provision for electric vehicle charging points could be secured, it would be impossible to control the type of vehicles that would be used by the future occupiers or visitors to the dwellings by condition.

32. The proposal would facilitate the maintenance and management of the remaining trees within the site which would improve the character and appearance of the area. This is, however, tempered by the loss of trees of a relatively good condition, with reasonable life expectancy, and the harmful erosion of the wooded and verdant nature of the appeal site that would arise

from the development. Consequently, I only attribute limited weight to this benefit.

Green belt balance

33. Paragraph 152 of the Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the Framework advises that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless that harm, and any other harm, are clearly outweighed by other considerations.

34. I have concluded that the appeal scheme would be inappropriate development and would, by definition, harm the Green Belt. I have also found harm to the openness and purposes of the Green Belt, and to the character and appearance of the area. The lack of harm to protected species is a neutral factor.

35. The other considerations I have found are of limited or moderate weight in favour of the proposal. Consequently, these considerations, along with all other matters acknowledged in the evidence, do not clearly outweigh the identified harm to the Green Belt, either individually or collectively, so as to amount to the very special circumstances necessary to justify the development.

Conclusion

36. The development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.

37. I conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR