



Appeal Decision

Site visit made on 9 October 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2024

Appeal Ref: APP/K3415/W/24/3336855

The Bungalow, Walsall Road, Pipehill, Lichfield WS13 8JW

- 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 Mrs Clarke of Clarke Construction (Services) Limited against the decision of Lichfield District Council.
 - The application Ref is 21/00883/FUL.
 - The development proposed is the demolition of existing house and garage/store; erection of replacement dwelling, garage/outbuilding and summerhouse.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 28 October 2024.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing house and garage/store, erection of replacement dwelling, garage/outbuilding and summerhouse at The Bungalow, Walsall Road, Lichfield WS13 8JW in accordance with the terms of the application, Ref 21/00883/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The main parties agree that the proposed development is inappropriate in the Green Belt. Based on the evidence before me, I concur.
3. The appellant has suggested that as the emerging Local Plan has been withdrawn, the Council does not have an up-to-date development plan. However, the policies of the Local Plan Strategy (LPS) identified as relevant to the determination of this appeal, broadly confirm with the National Planning Policy Framework (the Framework). Accordingly, I do not find the LPS to be out of date.

Main Issues

4. The main issues are:
 - The effect of the development on the openness of the Green Belt;
 - The effect of the proposal on the character and appearance of the area; 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 proposal.

Reasons

Openness

5. 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.
6. The proposal is a large, detached dwelling which would replace a modest sized bungalow. A proposed workshop/gym/garage would replace a smaller triple garage, and a summerhouse would be introduced to the plot. As such, the proposal would represent a substantial increase in the bulk and massing of development at the site. It would also introduce built form to parts of the plot where there is currently none. The appeal scheme would therefore result in a spatial loss of the openness of the Green Belt. Furthermore, as it would be visible from Walsall Lane and the adjoining property, a visual loss of openness would also arise.
7. I conclude on this issue that there would be a loss of openness in the Green Belt. Consequently, the development conflicts with paragraphs 142 of the Framework and with LPS Policy NR2 which requires that all development within the Green Belt must retain its openness.
8. LPS Core Policy 1 and Policy BE1 have been referenced in the reason for refusal relating to the Green Belt. However, as these policies do not address openness, they are not relevant to this main issue.

Character and appearance

9. The appeal site is a large plot of land which contains a modest sized bungalow and detached triple garage. It is located on Walsall Road where there is a loose and sporadic ribbon of development, including houses of varied design and scale, interspersed by large verdant gaps. The site is partially enclosed by hedges and trees.
10. The appeal site directly adjoins a dwelling, Hollybank, which the Council considers is a non-designated heritage asset (NDHA). The appellant, however, suggests that this is questionable as it is not of architectural or historic merit. The National Planning Practice Guidance (PPG)¹ indicates that there are a number of ways through which NDHAs may be identified, including as part of the decision-making process on planning applications. Nonetheless, the PPG makes it clear, whichever the process, that decisions to identify NDHAs should be based on sound evidence. In this case, other than reference to it being a 19th Century dwelling, there is no evidence before me to suggest that Hollybank should be treated as a NDHA in my determination of the appeal.
11. The existing bungalow would be replaced by an L-shaped two-storey dwelling in a broadly similar position within the plot. I accept that the proposed dwelling would be larger and higher, with a much longer ridgeline on its Walsall Road elevation, than the existing bungalow and Hollybank. Nevertheless, there would be a significant set-back from the front boundary, and a large gap between the proposed dwelling and the adjoining property. Furthermore, several windows, a projecting gable, and brickwork detailing are

¹ Paragraph: 040 Reference ID: 18a-040-20190723

proposed, which would break up and provide relief to the Walsall Road elevation. Consequently, the proposed dwelling would not appear inappropriately prominent within the plot and would not unduly dominate Hollybank. In addition, in a street scene that includes a variety of architectural styles, its appearance, scale and massing would not be out of keeping.

12. The proposal would introduce built form larger in volume and footprint than the existing. However, as the site is already in residential use, it would not represent a new incursion into the rural area. Furthermore, as the proposal would not result in the loss of any existing landscape feature, it would not erode the beauty of the countryside.
13. Consequently, the proposal would not harm the character and appearance of the area. It would therefore accord with LPS Core Policy 3 and Policy BE1, which seek to secure high quality development and protect the character and distinctiveness of the district. It would also accord with the design aims of the Framework.

Other considerations

14. The appellant sets out a possible fall-back position, namely the construction of the extensions and outbuildings, shown on several plans forming part of the appeal submission, under permitted development (PD) rights. It is not part of my role to give a formal view on whether such extensions and outbuildings could be constructed without planning permission. Nonetheless, I have no reason to doubt that significant additions to the dwelling, as well as substantial outbuildings, could be constructed utilising PD rights.
15. The appellant has provided a financial appraisal which shows that if the PD developments shown in the submission were undertaken, a profit of 28% before tax would be achieved. Based on the appraisal, and in the absence of any substantive evidence that would lead me to dispute its findings, I accept that constructing the PD developments would be financially advantageous to the appellant. Accordingly, I consider that there is a greater than theoretical possibility that exercising PD rights would take place were I to dismiss the appeal.
16. The fallback position, insofar as it relates to the existing bungalow, would have a broadly similar footprint to the proposal, but would have a greater overall height and would be closer to the road. As such, whilst the proposed dwelling would present a longer two storey elevation to Walsall Road than the fallback position, it would not appear more dominant within the site. Furthermore, when the outbuildings are taken into consideration, the fallback position would introduce built form across a significantly greater proportion of the plot than the proposal.
17. Overall, I conclude that the harm to the spatial and visual dimensions of Green Belt openness would be materially greater in respect of the fallback position than the appeal proposal. I therefore attribute the fallback position considerable weight.
18. In reaching this conclusion, I have had regard to the appeal decisions that the Council has drawn to my attention. In respect of the Lamb Farm and Lamb Farm Barns decisions, the identified fallback positions were found to have a greater impact on the openness of the Green Belt than what was proposed,

unlike in this case. In the London Road case, the Inspector did not take into consideration a fall-back position. Therefore, such appeal decisions do not provide clear or convincing justification to refuse the scheme that is before me, as they are not directly comparable.

19. The site is within the Cannock Chase Special Area of Conservation (SAC) where development mitigation is required. It is likely that the SAC would be accessed for recreational purposes by future occupiers of the development. Nevertheless, as the proposal would be a replacement dwelling, it would not lead to increased activity at the SAC and would not, therefore, be likely to have a significant adverse effect on its integrity. Consequently, this is a neutral factor.

Other Matters

20. Although not forming a reason for refusal, the Highway Authority (HA) has recommended that the appeal should be dismissed. It considers that insufficient information has been provided regarding the use of the proposed outbuildings and, therefore, it is not possible to determine whether the proposal could take place without affecting the safe operation of the adopted highway.
21. Whilst there is limited information, there is nothing before me that suggests the outbuildings would be used for anything other than purposes incidental to the enjoyment of the dwellinghouse. Accordingly, I do not consider that the use of such buildings will generate additional vehicular movements or that highway safety would be adversely affected.
22. The HA also suggests that the submitted plan doesn't allow for three vehicles to park on site independently and that to exit the site would require another parked vehicle to manoeuvre out of the way. Whilst that may be the case, there is no compelling evidence before me to suggest that this would result in dangerous manoeuvres on the highway or that justifies a requirement to submit further details or amend the proposed layout.

Green belt balance

23. 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.
24. The appeal scheme has harmful implications for the Green Belt as it is inappropriate development and would erode its openness. However, I have attached considerable weight to the fallback position, which would lead to greater harm than the appeal proposal.
25. Overall, in this case, I find that the fallback position clearly outweighs the substantial harm to the Green Belt by reason of inappropriateness and effect on openness. I therefore conclude that there are very special circumstances in this case that justify the granting of planning permission.

Conditions

26. The Council has suggested several conditions which I have considered against the Framework and PPG. The appellant has agreed to some and commented on others, which I have had regard to. As a result, I have made some amendments to the wording.
27. In addition to a time limit condition, I have considered it necessary to attach a condition specifying the approved plans, in the interests of certainty.
28. I include a condition relating to the proposed demolition and construction works so that the construction process is suitably controlled in the interests of highway safety and to protect the living conditions of nearby residents. Conditions are also appropriate and necessary to ensure that the development accords with the habitat compensation requirements of LPS Policy NR3 and that protected species and habitats are conserved, protected and enhanced. All these are pre-commencement conditions to ensure that appropriate controls are in place before development commences.
29. A condition requiring agreement of the external materials is necessary to preserve the character and appearance of the area. I also have imposed a condition relating to foul and surface water drainage to prevent flooding and pollution. However, it is not necessary for these to be pre-commencement conditions, as suggested by the Council, and I have amended their wording accordingly.
30. The HA has also recommended several conditions, additional to those suggested by the Council. For the reasons set out above, I do not consider that a condition requiring details of the car parking layout and turning facilities is necessary. In addition, I do not consider that it is necessary to restrict the use of the proposed workshop/gym/garage as there is nothing before me that demonstrates that, without a further planning permission, the building could be used for purposes that could result in highway safety issues. I have, however, considered it necessary, in the interests of highway safety, to impose conditions requiring the access gates to open inwards and be a minimum distance of 5 metres from the highway boundary and that the access is surfaced in a bound material for the first 5 metres.
31. The Council has also set out, within the list of recommended conditions, an informative. However, this would have no legal effect, and I have not, therefore, included it in the decision. Nonetheless, the appellant has had sight of the Council's statement of case and should be aware of its contents.

Conclusion

32. For the reasons given above I conclude that the appeal should be allowed.

Elaine Moulton

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
A001 Rev A Location Plan
A002B Rev B Block Plan
PL100 New Dwelling Floor Plans
PL101 Rev A Proposed Elevations
PL102 Proposed Elevations
PL103 Rev A Workshop/Garage
PL105 Rev A Summer House
PL104B Rev B Workshop/Garage Elevations
PL107 Streetscene
- 3) Before the development hereby approved is commenced (including any demolition), a Construction Environmental Management Plan shall be submitted to and approved in writing by the local planning authority. The plan shall include details of how noise, vibration and dust associated with the demolition and construction phases are to be controlled and minimised. It shall also include the routing of construction vehicles to and from the site, parking facilities for vehicles of site personnel and operatives, arrangements for the loading and unloading of plant and materials, and areas of storage for plant and materials. The demolition and construction phases shall thereafter be undertaken in accordance with the approved details.
- 4) Before any construction works hereby approved are commenced (including demolition), a Construction Environment Management Plan (CEMP) and Habitat Management Plan (HMP) detailing, in full, measures to protect existing habitat during construction works and the formation of new habitat to secure a habitat compensation value of no less than 0.643 Biodiversity Units, shall be submitted to and approved in writing by the local planning authority.

Within the CEMP/HMP document the following information shall be provided:

- i. Current soil conditions of any areas designated for habitat creation and detailing of what conditioning must occur to the soil prior to the commencement of habitat creation works (for example, lowering of soil pH via application of elemental sulphur);
- ii. Descriptions and mapping of exclusion zones (both vehicular and for storage of materials) to be enforced during construction to avoid any unnecessary soil compaction in areas to be utilised for habitat creation;
- iii. Details of both species composition and abundance where planting is to occur;
- iv. Proposed management prescriptions for all habitats for a period of no less than 25 years;
- v. Assurances of achievability;
- vi. Timetable of delivery for all habitats; and
- vii. A timetable of future ecological monitoring to ensure that all habitats achieve their proposed management condition as well as description of a feed-back mechanism by which the management prescriptions can be amended should the monitoring deem it necessary. All ecological monitoring and all recommendations for the maintenance/amendment of

future management shall be submitted to and approved in writing by the local planning authority.

The development shall be undertaken and thereafter maintained in accordance with the approved CEMP and HMP.

- 5) No demolition works hereby approved shall be commenced until a Natural England License has been approved and mitigation agreed or completed where appropriate. Once the license has been approved it shall be presented to the local planning authority prior to the commencement of works.
- 6) Prior to any above ground works, excluding demolition, full details of all external materials to be used in the construction of the development shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be implemented in accordance with the approved details.
- 7) Prior to any above ground works, excluding demolition, drainage plans for the disposal of foul and surface water flows shall be submitted to and approved in writing by the local planning authority, and the scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 8) Any gates shall be set back a minimum of 5 metres rear of the footway edge and shall open away from the highway.
- 9) No unbound material shall be used in the surface treatment of the vehicular access for a distance of 5 metres measured from the back edge of the public footway.