



Appeal Decision

Hearing held on 19 November 2024

Site visit made on 19 November 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2024

Appeal Ref: APP/C3430/W/24/3343357

The Firs Care Home, Wodehouse Lane, Gospel End, Staffordshire DY3 4AE

- 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 Mr Mark Haines of Northgate Health Care Limited against the decision of South Staffordshire District Council.
 - The application Ref is 23/01084/FUL.
 - The development proposed was originally described as: Retrospective planning application for the construction of staff and customer car park extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form refers to "The Firs Residential Home". However, the appeal form and signage at the site indicates that the property name is The Firs Care Home. I have therefore used this name in my banner heading above.
3. The appeal scheme is substantially complete and in general accordance with the submitted plans, although the fencing is higher than proposed. The Council considered the proposal as retrospective development, and so shall I.
4. During the appeal, reference was made to the boundaries of a Local Wildlife Site and Ancient Woodland as depicted in an emerging plan (EP): South Staffordshire Council Publication Plan (Regulation 19), April 2024. The main parties do not rely on any policies of this plan, and the Council advises that it is at an early stage; that representations have been made but have not yet been reported; and that the plan attracts no weight in the appeal. I find no reason to consider otherwise. Furthermore, during the hearing the appellant referred to the written ministerial statement and consultation on proposed changes to the Framework, published on 30 July 2024, which include changes to Green Belt policy. The proposed changes to the Framework are in draft form. As they may change depending on the Government's response to the consultation, I give them only limited weight.

Background and Main Issues

5. The Firs Care Home accommodates about 57 residents with a variety of care needs relating to old age and disability, including cognitive dysfunction. The care home is located within the defined settlement boundary of the village of Gospel End, and the appeal site is immediately adjacent, outside the defined settlement boundary and within the Green Belt.

6. The appeal site benefits from planning permission¹ for a staff and customer carpark extension (the original permission), and a non-material amendment² (NMA). Certain conditions of the original permission have been discharged by the Council. However, the main parties are in dispute regarding the scope of the approved NMA, with reference to the description of the amendment sought, the status of drawings and information submitted, and the interpretation of the Council's letter of approval. The appellant contends that the NMA authorised changes in level and the use of a Geoweb retaining system, while the Council considers that the NMA only permitted a change in the surface from grasscrete to a Geoweb system. In effect, the appeal scheme before me seeks to regularise this matter.
7. For the avoidance of doubt, and as I set out at the hearing, it is not the role of an Inspector considering a section 78 appeal to determine whether development has been lawfully undertaken or completed, nor to determine the scope of the NMA granted by the Council. Nonetheless, the original permission and the disputed NMA are material considerations in the appeal before me.
8. Therefore, the main issues in the appeal are:
 - whether the proposal is inappropriate development in the Green Belt, having regard to national and local planning policies, including the effect upon openness;
 - the effect of the proposal upon:
 - the character and appearance of the area with particular regard to boundary treatments and trees;
 - the living conditions of neighbouring occupiers, with particular regard to light pollution;
 - biodiversity, with particular regard to light spill; 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

Whether inappropriate development, including the effect upon openness

9. The National Planning Policy Framework (the Framework) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
10. Policy GB1 of the South Staffordshire Core Strategy 2012 (CS) sets out that development acceptable within the terms of national planning policy will normally be permitted, with reference to certain criteria, including criterion f), which refers to the carrying out of engineering or other operations, or the making of a material change of use of land, where the works or use would have no material effect on the openness of the Green Belt, or the fulfilment of its purposes. The main parties agreed at the hearing that Policy GB1 is in general conformity with the Framework, and that the proposal falls to be considered under paragraph 155 b) of the Framework, which sets out that

¹ Ref: 19/00901/FUL, granted 22 April 2021

² Ref: 19/00901/AMEND, granted 30 May 2023

engineering operations are not inappropriate development, provided they preserve its openness and do not conflict with the purposes of including land within it. I find no reason to consider otherwise.

11. During the hearing, the main parties described the appeal site before any development took place, with reference to photographs submitted in evidence. From all I have read, seen and heard, it seems to me that the appeal site appeared as part of the land framing the entrance to the nearby Baggeridge Country Park, and was undeveloped land, despite some degree of fly-tipping. The appeal site had a degree of self-containment, such that its openness was limited in visual terms due to the presence of trees, scrub and other vegetation. Even so, as undeveloped land adjacent to the settlement boundary, it assisted in safeguarding the countryside from encroachment.
12. The appeal scheme results in the raising of land levels at the appeal site, to a height of about 1.3-1.4m near the highway, with a Geoweb Earth Retaining System (ERS) installed along its northern and western boundaries, planted with grass. As built, the close boarded fencing above is about 1500mm high and untreated, but the proposal would result in the fencing being lowered to about 900mm and stained either green or brown. However, this would not diminish the urbanising effect of the proposal, which results in urban form beyond the settlement boundary into the countryside, conflicting with the safeguarding purpose of the Green Belt.
13. The urbanising effect is seen when approaching the entrance to the village from the west, where the northern boundary treatment appears in prominent view after the entrance to the country park. The western boundary has some limited screening from trees and vegetation and is presently not well established, although re-seeding and maintenance is taking place. From the east, the northern boundary of the car park appears as part of the care home premises. As the existing and extended car park share the same access to/from the highway, increased car movements are seen as part of the operation of the care home. Vehicle movements within the extended car park are transitory and largely screened from view by the boundary treatment. Consequently, the proposal results in a moderate impact on openness in spatial terms, with a limited visual impact.
14. I therefore conclude that the proposal would be inappropriate development in the Green Belt, with a moderate overall effect upon openness, in conflict with CS Policy GB1 and the Framework.

Character and appearance – boundary treatments

15. The character of the district is predominantly rural, with villages scattered across the landscape. Consequently, the rural landscape setting of settlements is a key characteristic of the district. The Council's Design Guide³ sets out that for sites near or adjacent to the wider countryside, landscape design should be kept simple, reflecting the simple, informal rural setting, and seeks native planting rather than 'suburban' borders. Furthermore, that boundaries should not be visually intrusive, and usually it will be appropriate to continue the pattern of adjacent boundaries (such as low walls, fences or hedges) as well as matching the building line and degree of set back from the pavement.

³ Supplementary Planning Document: South Staffordshire Design Guide 2018

16. The proposed boundary treatment would comprise the grassed ERS, with close boarded fencing above, with an overall height of about 2.2-2.3m near the highway, in sharp contrast to the unbounded adjacent land towards the entrance to the country park, despite the presence of some trees and other vegetation. It would not be of the same character and appearance of the hedging which bounds the properties on the opposite side of the highway, as it appears as a steep grassed embankment with fencing above.
17. The boundary treatment to the easterly frontage of the care home comprises vertically aligned stone walling with black railings above. The height of the wall falls towards the east with the rise in the level of the land, such that its highest point is adjacent to the access to the care home, and it serves largely as a retaining structure. It seems to me that the ERS is a retaining structure performing the same function as the retaining stone wall opposite, with a slight fall in height. However, the grassed ERS and fencing is of a markedly different character and appearance to the stone wall and railings.
18. The appellant draws my attention to other boundary treatments within the village, including the rear boundaries of Nos 15-16 Baggeridge Close which comprise retaining walling with fencing above to a significant height. This is in prominent view along the main route through the village. I saw other examples of retaining walls to the front and side boundaries of properties along Fir Lane and Penn Road, and a very high, angled gabion retaining structure to the opposite side boundary of the care home. I accept that boundary treatments within the village are varied and include treatments responding to significant changes in level. However, unlike the appeal site, the examples I saw do not form part of the entrance to the westerly side of the village, where the rural landscape setting forms a distinctive characteristic of the district.
19. For the reasons above, the proposal fails to respect boundary treatments within the immediate area and the landscape setting of the entrance to the village. I therefore conclude that the proposal fails to respect the character and appearance of the area, with particular regard to boundary treatments. It conflicts with CS Policies EQ4 and EQ11, which when taken together, seek to ensure that the intrinsic rural character and appearance of the landscape is protected and enhanced, and that development proposals are of high-quality design, consistent with adopted design guidance. I attach moderate weight to this conflict.

Character and appearance - trees

20. The existing trees within the appeal site are protected by a Tree Preservation Order⁴. The Arboricultural Impact Assessment submitted with the application for the original permission indicates that the retained trees on site are generally mature, with a remaining lifespan of 20-40 years. Due to their location and maturity, the trees at the appeal site make a positive contribution to the visual amenity of the area and the setting of the village.
21. The appeal scheme has resulted in changes to land levels and the installation of an ERS within proximity to the root protection areas (RPAs) of protected trees. Prior to works taking place, the land had a gradient of about 1:6 and is now about 1:12. The main parties agree that observable harm has occurred to

⁴ Ref: No 53, 1973

two trees at the appeal site (T0616 and T3907) which are located near to the highway. I find no reason to consider otherwise. The dispute centres on the degree of harm, whether other protected trees have been harmed by the proposal, and whether harm can be mitigated.

22. Prior to the hearing, the appellant submitted further evidence in the form of a report prepared by Mr Bailey of Old Oak Tree Care, (the Bailey Report), and photographs of the construction phase. The report is based on the builder's position that the ERS was installed in accordance with the method statement, including a base layer of cellular confinement system (CCS), said to support a weight of at least 40 tonnes, with fill material above, and a layer of CCS near the surface. In essence, the report finds it unlikely that root severance would have occurred but accepts that ground compaction will have taken place within RPAs, but not across the whole of the site, due to variances in the degree of levelling. It states that a calculation will need to be carried out to put the weight of the installation beyond doubt. However, no such calculation is before me. Moreover, the Bailey report explicitly states that it would not be easy to justify the proposed design using BS 5837:2012⁵ for building so close to trees.
23. The Bailey report indicates that at least one case study shows that if suitable ground protection is used, then a significant permanent load can be placed on an RPA without substantial harm to the soil or tree roots below it. However, no case study is named or provided, and the report acknowledges that the specifications in the case study are different. Consequently, the case study attracts negligible weight in my deliberations.
24. The photographic evidence taken during the construction phase is limited in scope and coverage. For example, it does not demonstrate the nature of all fill material used to achieve the change in level, and it is not clear what depth of CCS layers were used. Overall, the appellant's evidence is not sufficiently clear and compelling in terms of the detailed nature of operations that took place, and whether sufficient tree protection measures were deployed, with reference to BS 5837:2012. It is notable that the appellant suggested that up to 50% of the RPAs of some trees may have been covered by the installation, which is a significant proportion.
25. At the hearing, the Council advised that the photographs indicate the use of 'fines' as a fill material which is considered to significantly impede gaseous exchange. This factor, together with likely ground compaction leads the Council to the view that further harm to trees is likely to manifest itself over time. It seems to me that the Bailey Report fails to take account of the nature of fill materials used at the appeal site and the potential effects upon gaseous exchange. For these reasons, I apportion greater weight to the Council's evidence that harm is likely to manifest itself over time to other trees at the appeal site, even when taking account of the fact that levels have not been uniformly raised across the site.
26. During the hearing, the main parties agreed that a two for one replacement planting scheme for the two trees which presently show observable harm could not be accommodated within the appeal site, due to a lack of space within which newly planted trees could thrive. However, it was agreed that offsite compensatory planting in reasonable proximity to the appeal site could be secured by condition.

⁵ Trees in relation to design, demolition and construction – Recommendations

27. The proposed mitigation measures advocated in the Bailey report include mulching the surface of affected trees within a radius of about 5m and a monitoring programme. However, the radius would be impeded by the presence of the car park. The Council's oral evidence indicates that to encourage the recovery of affected root systems, it would be necessary to remove fill material and deploy suitable below ground protection measures, and/or use a decompaction lance. Given my finding that the Bailey Report fails to take full account of the nature of fill material used, I give greater weight to the Council's evidence on this matter.
28. Drawing all of the above together, I conclude that the proposal has resulted in harm to protected trees, and that it has not been robustly demonstrated that further harm to protected trees would not occur, nor that any harm could be reversed or successfully mitigated. For these reasons, the proposal conflicts with CS Policy EQ4, which seeks to ensure that trees are protected from damage and retained, and that the intrinsic rural character of the landscape of the district is protected. I attach significant weight to this conflict.

Living conditions of neighbouring occupiers

29. The appeal site faces the two storey detached properties of Foxglove and Cornaways on the opposite side of the highway. Due to the topography of the area, they are sited at a lower level. Foxglove is well set back from the highway, with windows to habitable rooms in its front elevation, including bedrooms at the first-floor level. Cornaways has windows to its first-floor flank elevation which face towards the appeal site and serve a bedroom. As vehicles enter and exit the extended car park and manoeuvre into spaces during the hours of darkness, the use of headlights could result in some degree of intrusion into the bedrooms of these neighbouring occupiers. The bollard lighting installed within the car park could also cause some degree of intrusion.
30. In any facing relationship between properties across the highway with an intervening change in level, some degree of headlight intrusion during the hours of darkness would not be unusual as vehicles are manoeuvred in and out of driveways. However, in this case, the frequency of such movements would be significant due to the capacity of the extended car park and the associated comings and goings at the care home. The proposed fencing and the proposed cover to bollard lighting would minimise such impacts. Furthermore, the appellant is willing to not operate the bollard lighting from 20:00 to 06:00 during October to March, and from 19:00 to 07:00 during April to September. These matters could be controlled by suitable conditions.
31. For these reasons, I conclude that the proposal would not result in unacceptable harm to the living conditions of neighbouring occupiers, with particular regard to light pollution. Consequently, the scheme accords with CS Policy EQ9, which seeks to protect neighbouring amenity.

Biodiversity

32. The appeal site is close to a Local Wildlife Site and Ancient Woodland. It was agreed at the hearing that regardless of any discrepancies in the exact boundaries of such designations in the CS, EP and the Council's interactive mapping system, the determining factor for this main issue is the proximity of the appeal site to a sensitive receptor, namely the foraging routes of bats,

which are a protected species. The proposed bollard lighting is installed and does not meet best practice⁶ in terms of mitigating the impact of artificial light upon bat populations. Consequently, the appeal scheme would result in harm to protected species by adversely affecting foraging routes through unmitigated light spill.

33. The main parties agree that the proposed cover to the existing lighting would reduce adverse impacts upon protected species. During the hearing, the appellant indicated a willingness to make further modifications to minimise adverse impacts. With the advice of the Council's Senior Ecologist, it was agreed that this matter could be controlled by a condition, whereby full details of mitigation measures could be submitted for approval, including but not limited to lighting specifications, luminaire type, colour temperature, means of activation and luminance plans.
34. I therefore conclude that subject to a condition, the proposal would not result in unacceptable harm to biodiversity, with particular regard to light spill. Consequently, the scheme accords with CS Policy EQ1, which seeks to ensure that development does not cause significant harm to habitats and protected species and incorporates ecologically sensitive design.

Other considerations

35. The proposal would provide parking spaces for residents of the care home, as well as staff employed on a shift basis, and visitors, including about 12 visiting practitioners each day. The main parties agree that the proposal would alleviate double parking at the care home and reduce demand for on-street parking. There is no substantive evidence to indicate otherwise. For these reasons, the proposal would improve the operation of highway, to which I attach positive moderate weight.
36. The appellant considers that the changes in land levels are necessary to achieve a safe and accessible car park for residents, staff and customers, and draws my attention to guidance by the Department for Transport: Inclusive Mobility, December 2021 (the guidance) which describes features that need to be considered in the provision of an inclusive environment. Its main purpose is to provide good access for disabled people, but it also sets out that designs for such persons can also meet the needs of others. While it is primarily aimed at the public realm, its advice is also relevant to private land accessible to the public. For these reasons, I consider it relevant to the appeal.
37. A maximum gradient of 1:12 is advocated in section 4 of the guidance, which relates to footways, footpaths and pedestrian crossing facilities, and this is the gradient of the appeal scheme. Section 8 refers to car parking and advocates firm and level ground for designated accessible parking spaces. The extended car park in the appeal scheme does not include any accessible parking spaces – all spaces are of a standard size. The existing car park is partly on sloping ground, before becoming flat near the entrance doors to the care home, which allows for drop-off and pick up arrangements on flat ground and includes one disabled space and a space marked for an ambulance.
38. A sloping site is not of itself a barrier to the provision of car parking. However, the proposal results in a larger area of relatively level land within the grounds

⁶ Institution of Lighting Professionals: Guidance Note GN08/23 - Bats and Artificial Lighting at Night

of the care home, notably between the entrance doors of the care home and the extended car park. It seems to me that this results in a more accessible environment for all, including residents of the care home who do not drive and/or require relatively level access to ensure safe movement. For these reasons, this consideration attracts moderate weight in favour of the scheme.

39. The residents of the care home share the protected characteristics of age and/or disability. Under the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, I have had due regard to the impact of the proposal in relation to this matter, and I am therefore required to balance the harm I find against the purpose of the proposal. As set out above, the proposal would result in a more accessible environment for all, including the residents of the care home, and this matter attracts moderate weight in favour of the proposal. The purpose of the proposal would therefore be a positive consideration, in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others.
40. However, it has not been shown that the appeal scheme is the only way of achieving the car parking sought, nor that it would represent the least harmful option. I am therefore satisfied that if I were to dismiss the appeal, it would be proportionate and necessary to do so in the pursuit of a well-established and legitimate aim: the protection of the Green Belt in the wider public interest.
41. The original permission without the NMA is a fallback position, where the land would retain a sloping profile and the car park surface would be grasscrete. The boundary treatment would comprise simple post and rail fencing with low hedging. It would therefore have a less harmful effect upon the openness of the Green Belt, and it would be more sympathetic to the landscape setting of the village. Overall, the original permission would be less harmful than the appeal scheme. In similar terms, the original permission with the NMA as interpreted by the Council would also be less harmful than the appeal scheme, taking account of the fact that a Geoweb based system for the car park surface is considered less harmful to trees than grasscrete.
42. The detailed costs of any necessary works at the appeal site to accord with the original permission with or without the NMA are not before me, but I have no reason to doubt that such costs would be significant, and there is no compelling evidence to indicate a significant probability that either of the two fallback positions would be constructed should this appeal be dismissed. This limits the weight that I can attach to these fallback positions. While the appellant suggests that weight should be apportioned to the appellant's interpretation of the NMA, this is not a settled matter, nor a matter for me to determine in the context of a s78 appeal. Therefore, this matter attracts no weight either for or against the proposal.

Green Belt Balance

43. I have found that the proposed development would be inappropriate development in the Green Belt, which is, by definition, harmful. I have also found that the proposal would have a moderate effect upon openness. By virtue of the Framework, I am required to give substantial weight to any harm to the Green Belt. The Framework makes clear that the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the

development, must be clearly outweighed by other considerations for planning permission to be granted.

44. The benefits of the proposal would be a more accessible car park for all, including residents of the care home, and an improvement to the operation of the highway. These benefits each attract moderate weight. I have also found that if I were to dismiss the appeal, it would be a proportionate and necessary act in the wider public interest of the Green Belt. Although there are benefits that weigh in favour of the scheme, they do not individually or cumulatively clearly outweigh the substantial harm arising to the Green Belt, and the harm that I have found to the character and appearance of the area in terms of boundary treatments and trees, to which I have respectively attached moderate and significant weight.
45. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case.

Conclusion

46. For the reasons above, the proposal conflicts with the development plan read as a whole, and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

J Moore

INSPECTOR

APPEARANCES:

FOR THE APPELLANT:

Ms A Henson MPlan MRTPI	Senior Planning Consultant
Mr A Bruce BSc (Hons) MA	Planning Consultant
Mr M Haines	Northgate Healthcare Limited
Mr A Haines	Northgate Healthcare Limited

FOR THE LOCAL PLANNING AUTHORITY:

Mrs L Moon BA (Hons) MSc MRTPI	Senior Planner
Mr M Wall BSc (Hons) MSc ACIEEM	Senior Ecologist
Mr G Pearce	Senior Arboricultural Officer

DOCUMENTS:

Cover page of the South Staffordshire Council Publication Plan, (Regulation 19) April 2024.