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# Appeal Decision

Site visit made on 29 October 2024

**by J Smith MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 December 2024**

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**Appeal Ref: APP/W4325/W/24/3346639**

**Greenbank, 5 Wittering Lane, Heswall, Wirral CH60 9JL**

- 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 Stephen Anderson and Mrs Janette Anderson against the decision of Wirral Metropolitan Borough Council.
  - The application Ref is APP/23/00692.
  - The development proposed is erection of new two storey dwelling on land adjacent to 5 Wittering Lane.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appellant submitted an alternative scheme during the application phase. The Council contends that these plans were for discussion only. They show a materially different proposal to the original application, and furthermore I have seen no evidence to indicate that they were the subject of public consultation. In the interests of fairness, my decision is based on the plans submitted with the application in the first instance, and which formed the basis for the Council's decision.

## Main Issues

3. The main issues are:
  - whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any development plan policies; and
  - the effect of the proposal on biodiversity within sites of nature conservation value.

## Reasons

*Whether the proposal is inappropriate development in the Green Belt*

4. The appeal site is located in the Green Belt and has not been previously developed. The Framework sets out that the provision of new buildings in the Green Belt should be regarded as inappropriate other than for certain exceptions. Policy GB2 of the Wirral Unitary Development Plan 2000 (UDP) notes that within the Green Belt, there is a general presumption against inappropriate development unless it falls within a list of set purposes.

5. The Council notes that the site is outside of a defined settlement area and therefore suggests that these purposes, and the exceptions noted in the Framework do not apply. The appellant however contends that the application should have been assessed against the list of exceptions found in the Framework, with specific regard to limited infilling in villages as found in paragraph 154 (e).
6. There is no definition of 'village' within the Framework or Policy GB2 of the UDP. The site falls outside of the defined settlement boundary. However, the appellant suggests that following a previous judgment (*Wood v SSCLG*, 2015), the boundary of a village defined on a plan may not be the only determinative method of understanding if a site is within a village or not. As such, in line with that judgment, an 'on the ground' assessment approach should be undertaken with regard to the overarching consideration of whether a site is within a village for the purposes of Green Belt policy.
7. The plot is situated between two residential properties which make up a small line of dwellings. When viewed in this context, the proposed dwelling would be situated in-between domestic boundaries and the paraphernalia associated with residential properties. To the rear of the site, the built form of Heswall is evident and visually apparent. The site has a strong physical relationship with Heswall itself and it is contiguous with, and in my view part of, the built-up area of the settlement.
8. Therefore, having regard to the specific characteristics in this case in terms of the spatial pattern of development as well as the relationship of the appeal site with other residential properties in the locality, the site is in a village for the purposes of the Framework test.
9. The term 'limited infilling' is not defined in the Framework or in Policy GB2 of the UDP. The site hosts a small area and is bound tightly by residential properties to both sides, the highway to the front and other residential properties to the rear. Several of these neighbouring dwellings also have outbuildings within their boundary. The proposal for one dwelling, bound by these existing residential properties and the highway to the front, is therefore limited by the modest scale of the plot. As such, I conclude that the development under consideration would constitute limited infilling.
10. The Council and interested parties have referred to planning application and planning appeal decisions. Several are referenced but limited information is provided. However, three previous appeal decisions relating to the construction of a dwelling on the appeal site have been provided by an interested party.
11. In all three cases, the appeals were dismissed on a finding of harm to the Green Belt. Two of these decisions predate the Framework<sup>1</sup>. However, one appeal decision was made in the light of the 2012 version of the Framework (Appeal Ref APP/W4325/W/15/3132307) (the 2015 appeal decision). Both the 2012 version of the Framework and the current version against which the appeal proposals have been assessed cite 'limited infilling in villages' as an exception when having regard to whether the construction of new buildings are inappropriate in the Green Belt.

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<sup>1</sup> Appeal Refs T/APP/W4325/A/91/196733/P2 and T/APP/W4325/A/93/225849/P2

12. The Wood v SSCLG judgement was published in the same year as the 2015 appeal decision. However, it is not clear whether this judgement was brought to the attention of the Inspector by the parties in that case. By contrast, the appellant has brought this judgement to my attention, and I have undertaken an 'on the ground' assessment on that basis. In returning to the two decisions which predate the Framework, I have no way of knowing what the site characteristics were at the time and if they remain the same. In my analysis of the site and the wider area as it exists presently, I conclude that the appeal scheme would amount to limited infilling in a village for the reasons set out above.
13. The exception noted in the Framework and Policy GB2 of the UDP do not state that openness is a factor in the assessment of if a proposal would be inappropriate. Therefore, there is no requirement to assess the effect of the development on the openness of the Green Belt. I have found that the proposal would not be inappropriate development in the Green Belt. As such, it is not necessary for me to have regard to other considerations to weigh against Green Belt harm.
14. To conclude, I find that the proposal would not be inappropriate development in the Green Belt. The proposal would qualify as an exception under paragraph 154 (e) of the Framework and Policy GB2 of the UDP.

#### *Nature conservation*

15. The appeal site is situated a short distance away from several designated sites of nature conservation. These sites contain a variety of locally, nationally and internationally important habitats which are suitable for protected and priority species. The Wirral Lane, Wittering Lane and Bush Way Local Wildlife Sites are located approximately 350m from the site. The Dee Estuary Special Protection Area, Special Area of Conservation, Ramsar site and Site of Special Scientific Interest is also located within 350m of the appeal site. Several other sites are located within 1km of the appeal site.
16. Given the proximity of the appeal site to the large number of designated sites, I cannot rule out the possibility that the proposal could have an adverse effect upon them. As such, further on-site ecological survey work and an analysis of the potential impact of the proposal on these sites is justified. The appellant does not appear to challenge this.
17. Policy NC1 of the UDP sets out that proposals which would have an adverse effect on the integrity of a designated international European site will not be permitted. Policy NC3 states that development proposals which are likely to affect sites of national importance for nature conservation will not be permitted unless it can be demonstrated that the reasons for the development clearly outweigh the nature conservation or earth science value of the site. Policy NC5 states that the Council will protect habitats of special local importance for nature conservation. Finally, Policy NC7 states that development proposals which would have an adverse effect on wildlife species protected by law will not be permitted unless the Local Planning Authority is satisfied that the protection of the species can be secured through the use of planning conditions or planning obligation.
18. The appellant has not provided any information to demonstrate that the proposal would not have an unacceptable effect upon the biodiversity of sites

of nature conservation value. Without this information, no such assessment against the abovementioned policies can be made. Whilst I recognise that the appellant has incurred costs in the submission of the planning application, it is essential that the effect of the proposed development on these sites is established before any planning permission is granted.

19. The appellant suggests that this information could be sought by way of planning condition. However, it is necessary to address the effect of the development upon nature conservation before planning permission is granted. Based on the evidence, there are no grounds to make an exception to this general principle.
20. Therefore, based on the absence of information before me, I conclude that the proposed development would not meet the requirement of Policies NC1, NC3, NC5 or NC7 of the UDP.

### **Planning Balance and Conclusion**

21. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework indicates that a decision should be taken in accordance with the development plan.
22. The proposal would provide an additional dwelling to the supply of housing. Economic benefits would also be realised during the construction period, and the future occupiers would provide economic benefits to the area once the development is complete through their use of local shops and services.
23. However, these benefits are modest and they do not outweigh the potential harm in respect of nature conservation and biodiversity. The proposal would conflict with the development plan and there are no material considerations to indicate a decision otherwise than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

*J Smith*

INSPECTOR