



Appeal Decision

Site visit made on 4 November 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2024

Appeal Ref: APP/C3430/W/24/3342944

Land adjacent to Mile Flat House, Mile Flat, Greensforge DY6 0AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jason Round of Harrison Round Ltd against the decision of South Staffordshire District Council.
 - The application Ref is 24/00149/VAR.
 - The application sought planning permission for demolition of existing buildings and erection of 5 no. dwellings with associated parking and garden areas with foul treatment plant without complying with a condition attached to planning permission Ref 21/00058/FUL, dated 22 April 2021.
 - The condition in dispute is No 5 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other subsequent equivalent order, no development within the following classes of development shall be carried out to the dwelling(s) hereby approved without the prior approval of the Local Planning Authority:
 - a. Schedule 2, Part 1, Class A - enlargement, improvement or other alteration
 - b. Schedule 2, Part 1, Class B - addition or alteration to the roof
 - c. Schedule 2, Part 1, Class C - any other alteration to the roof
 - d. Schedule 2, Part 1, Class D - porches
 - e. Schedule 2, Part 1, Class E - garden buildings, enclosures, pool, oil or gas storage container
 - i. Schedule 2, Part 2, Class A - gate, wall, fence or other means of enclosure.
 - The reason given for the condition is: The site is within the Green Belt within which, in accordance with the planning policies in the adopted Core Strategy, there is a presumption against inappropriate development.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and erection of 5 no. dwellings with associated parking and garden areas with foul treatment plant at Land adjacent to Mile Flat House, Mile Flat, Greensforge DY6 0AU in accordance with the application Ref 24/00149/VAR, without compliance with condition number 5 previously imposed on planning permission 21/00058/FUL dated 22 April 2021 but subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Jason Round of Harrison Round Ltd against South Staffordshire District Council. This application is the subject of a separate decision.

Background and Main Issues

3. Planning permission was granted for the erection of 5 dwellings (the approved scheme) which has been implemented. The approved scheme was found not to be inappropriate development in the Green Belt. However, the Council indicates that condition 5 is necessary to ensure that the proposal remains acceptable in Green Belt terms, particularly with regard to maintaining the openness of the Green Belt.
4. In addition, the Decision Notice and Officer Report suggest that the condition is necessary to protect the character and appearance of the site and surrounding area. These reasons are different to the one given in the Decision Notice for the approved scheme which refers to the site being within Green Belt where there is a presumption against inappropriate development. However, the Council may argue that the condition is necessary for different additional reasons. My consideration of the appeal must be based on present circumstances and so is not confined to the original reasons given for imposing the condition.
5. The appellant is seeking removal of the condition on the grounds that it is not reasonable or necessary. Furthermore, the appellant contends that permitted development is not inappropriate development and exceptional circumstances have not been demonstrated to justify the condition.
6. Given this background, the effect of the proposal on the Green Belt is a relevant matter for consideration in this appeal. Comments have been sought from the main parties with regard to the effect of the proposal on the Green Belt.
7. Accordingly, the main issues are the effect of removing the condition on:
 - the openness of the Green Belt;
 - the character and appearance of the site and surrounding area; and
 - in the event that allowing the proposal would lead to inappropriate development in the Green Belt, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt Openness

8. The appeal site is in Green Belt where, under Policy GB1 of the Core Strategy (December 2023) (the CS), development is acceptable within the terms of the National Planning Policy Framework (the Framework). The Council states that the approved scheme was determined under paragraph 154(g) of the Framework and thus found to comply with Policy GB1. The approved scheme involved the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development.
9. The Framework indicates that openness is an essential characteristic of the Green Belt with a fundamental aim of Green Belt policy being to prevent urban sprawl and keep land permanently open.

10. The development is arranged in a courtyard style with the all the front of the dwellings facing each other. The rear of the dwellings and their gardens are exposed to the surrounding area, particularly to the east and south which overlook open rolling countryside. There is a paddock to the west and three large houses with substantial curtilages to the north.
11. The appellant states their intentions are yet unconfirmed but have submitted drawings to the appeal indicating the intention to erect a garage with a pitched roof in the rear garden of plot 2 and install roof lights to the dwelling of plot 4. The garage would be accessed through the rear garden of the adjoining plot and during my site visit I saw that closed boarded timber fencing has been erected to delineate the boundary of the access. Similar fencing has also been erected to the boundaries of three of the plots in the north part of the development, enclosing their rear gardens.
12. Class A Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) limits the size and height of extensions or alterations that are permitted. Nevertheless, permitted development rights can in some circumstances permit sizeable extensions. Given the layout of the development, this would lead to an unacceptable reduction in the spatial and visual openness of the Green Belt. Furthermore, as the appeal site contains 5 dwellings, the cumulative impact of their enlargement would potentially cause significant harm to the openness of the Green Belt. Therefore, this part of condition 5 is necessary to make the approved scheme acceptable.
13. Class B Part 1 of the GPDO permits additions or alterations to a roof to enlarge a house. However, no part of the house once enlarged is permitted to exceed the height of the highest part of the roof of the existing house. Given the specific limitations and conditions set out in the GPDO, the exercise of this particular permitted development right would be unlikely to harm the openness of the Green Belt.
14. Class C Part 1 of the GPDO provides for other alterations to the roof of a house, such as rooflights. Such alterations would be unlikely to impact the openness of the Green Belt as they are small-scale and would not increase the overall height or mass of the buildings.
15. Class D Part 1 of the GPDO permits the erection of a porch outside any external door of a house. Given the size limitations set out in the GPDO, as well as the courtyard style layout of the development with all the front elevations of the dwellings facing inward, development under this permitted development right would be unlikely to harm the visual openness of the Green Belt.
16. Class E Part 1 of the GPDO provides for any building or enclosure, swimming or other pool incidental to the enjoyment of the dwelling. It also permits a container for the storage of oil, liquid or gas for domestic heating purposes. While such development must not exceed 50% of the total area of the curtilage, given the relatively exposed siting of the dwellings within the Green Belt, the exercise of this permitted development right would likely lead to an unacceptable reduction in the spatial and visual openness of the Green Belt.
17. Class A Part 2 of the GPDO permits the erection or alteration of a gate, fence, wall or other means of enclosure. The Council indicate that the appeal site is

subject to an enforcement case where closed boarded timber fencing has been erected in lieu of approved post and rail fencing and hedging. During my site visit I was able to see the effects of the closed boarded timber fencing which has been erected around the plots in the north part of the site. This had the effect of enclosing the site and harming the visual openness and rural character of the area. The south and east parts of the site are particularly exposed to the surrounding area and have a close visual and spatial relationship with the open countryside. The erection of similar fencing, to that which I saw during my site visit to these plots, would further enclose the site and disconnect it from its surroundings.

18. The appellant refers to a version of the Planning Practice Guidance (PPG) where it states that "conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances." The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. The latest version of the PPG states that "conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn." Condition 5 is precisely defined by reference to the relevant provisions in the GPDO and confined to a small area.
19. Notwithstanding the fact that permitted development rights have not been withdrawn in total or in part in the Green Belt in the GPDO, I have found that parts of condition 5 relating to Class A Part 1, Class E Part 1 and Class A Part 2 are necessary to make the approved scheme acceptable. Therefore, the condition passes the tests of reasonableness or necessity as set out in the PPG. The removal of permitted development rights under Class A Part 1, Class E Part 1 and Class A Part 2 is clearly justified to preserve the openness of the Green Belt.
20. For the reasons given, I find that development under Class B Part 1, Class C Part 1, and Class D Part 1 would not have a harmful effect on the openness of the Green Belt. Hence, it would comply with Policy GB1 of the CS which seeks to protect the Green Belt from inappropriate development. Nevertheless, I find that development under Class A Part 1, Class E Part 1 and Class A Part 2 of the GPDO would cause harm to the openness of the Green Belt, conflicting with Policy GB1 of the CS. In accordance with the Framework, substantial weight must be given to this harm.

Character and Appearance

21. The appeal site is set behind the large curtilage of a dwelling which faces Mile Flat. The site's position away from the highway, overlooking open countryside to the east and south, give it a distinctly rural character. This rural character is further enhanced by the undulating topography of the area, the Dawley Brook and the agricultural fields to the east and south of the site.
22. The design of the development reflects the rural character of the area and features a courtyard style layout along with simple single storey brick buildings that create a cohesive and aesthetically harmonious development. Contrary to the appellant's view, I do not consider it be typical of suburban

style housing development due to its layout and design. Class A Part 1 of the GPDO can in some circumstances permit sizeable extensions that would not appear subordinate to the host dwelling and would therefore be harmful to the character and appearance of the site and surrounding area. Therefore, this aspect of the condition is necessary to ensure the development remains sympathetic to the design of the site and the rural character of the surrounding area.

23. Given the specific limitations and conditions set out in the GPDO in relation to Class B Part 1, Class C Part 1 and Class D Part 1, any additions or alterations in these respects would be limited in scale and would therefore appear subordinate to the host dwellings. On this basis, such development would be unlikely to cause harm to the character and appearance of the site and surrounding area.
24. Under Class E Part 1 any building, enclosure, swimming or other pool would be allowed to take up to 50% of the total area of the curtilage. Due to the layout of the development, such permitted development would be clearly visible and visually obtrusive to the coherent design of the development. Consequently, it would have an unduly harmful effect on the character and appearance of the site and surrounding area.
25. The low height and visually open appearance of the existing post and rail fencing suits the countryside character of the site and surrounding area. Development under Class A Part 2 such as the erection of higher closed boarded timber fencing, which has taken place on parts of the site, would have the effect of eroding the rural character of the site and the surrounding area, as observed during my site visit.
26. For the reasons given, I find that development under Class B Part 1, Class C Part 1, and Class D Part 1 would not have a harmful effect on the character and appearance of the site and surrounding area. Consequently, it would comply with Policies EQ4 and EQ11 of the CS insofar as they require development to maintain intrinsic rural character and take account of local character and distinctiveness. Nevertheless, I find that development under Class A Part 1, Class E Part 1 and Class A Part 2 of the GPDO would cause significant harm to the character and appearance of the site and surrounding area, conflicting with the aforementioned CS policies.

Other Considerations and Very Special Circumstances

27. Development under Class A Part 1, Class E Part 1 and Class A Part 2 of the GPDO would lead to a loss of openness of the Green Belt. Substantial weight is given to the harm to the Green Belt and development should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt, and any other harm resulting from the proposal, are clearly outweighed by other considerations.
28. The appellant has drawn my attention to an appeal decision¹ relating to a site in Warrington, in the Green Belt. However, that site was described by the Inspector as being well-contained and physically restricted so is not directly comparable to the appeal site. The appellant has also referred to appeal decisions² relating to site near the appeal site. However, there is limited

¹ APP/M0655/W/20/3260646.

² APP/C3430/W/21/3278321 and APP/C3430/W/21/3278322.

information before me to establish whether they are comparable to this appeal proposal. Furthermore, the Inspector determined that the condition in dispute was necessary and reasonable to ensure that development under Class A Part 2 of the GPDO does not harm the character and appearance of the area and the openness of the Green Belt.

29. The appellant suggests that the Council's Core Strategy policies are inconsistent with national planning policy. However, no substantive evidence has been advanced to demonstrate how they are inconsistent. In any event, I find Policy GB1 which seeks to protect the Green Belt from inappropriate development to be consistent with the Framework's Green Belt policies. I also find Policies EQ4 and EQ11 which require development to reflect local character to be consistent with the Framework's design policies.
30. The appellant contends that the erection of fencing is required in the interests of the security and privacy of future occupiers of the dwellings. However, no substantive evidence has been submitted to demonstrate that there are, or would be, issues in relation to these matters. Notwithstanding this, I have had due regard to the appellant's rights under Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998 (HRA). These are qualified rights and interferences may be justified where they are proportionate and in the public interest.
31. I have identified harm with regard to the openness of the Green Belt and the character and appearance of the site and surrounding area under development permitted by Class A Part 2 of the GPDO. The objectives of preserving the openness of the Green Belt and achieving well-designed places are well-established planning policy aims. As such, the removal of permitted development under Class A Part 2 of the GPDO would be proportionate and necessary. It would not result in a violation of the Human Rights of the appellant. Protection of the public interest cannot be achieved by means that are less interfering of their rights.
32. The other considerations before me do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify development under development under Class A Part 1, Class E Part 1 and Class A Part 2 do not exist.

Conditions

33. Where planning permission is granted under section 73, it is not automatically subject to the conditions which were attached to the original permission. The PPG therefore advises that the conditions which continue to have effect should be restated in the interests of clarity. I have considered the conditions suggested by the Council and shall impose those conditions from the original planning permission that remain relevant, alongside replacing condition 5. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

34. For the reasons given, condition 5 is not reasonable or necessary to prevent harm to the openness of the Green Belt by way of development under Class B Part 1, Class C Part 1, and Class D Part 1 of the GPDO. Nor is the condition

necessary to prevent harm to the character and appearance of the site and surrounding area by way of such development.

35. Condition 5 is necessary and reasonable, however, to ensure that development by way of Class A Part 1, Class E Part 1 and Class A Part 2 does not harm the openness of the Green Belt, and the character and appearance of the site and surrounding area.
36. In conclusion, for the reasons given above, and taking into account all other matters raised, the appeal should succeed. I will grant a new planning permission substituting condition 5 with a replacement and restating those undisputed conditions that are still subsisting and capable of taking effect.

U P Han

INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out in accordance with the approved drawings: 1265/A/003 Rev A, 1265/A/005 Rev A, 1265/A/002B Rev A, 1265/A/002A Rev A, 1265/A/004B and 1265/A/004A received 19/01/2021, 23/03/2021 and 25/03/2021.
- 2) Within 3 months of any development commencing on the site a landscape scheme shall be submitted to the Local Planning Authority for approval. The approved scheme shall be implemented concurrently with the development and completed within 12 months of the completion of the development. The Local Planning Authority shall be notified when the scheme has been completed. Any failures shall be replaced within the next available planting season and the scheme shall be maintained to the satisfaction of the Local Planning Authority. The planting shall be retained and maintained for a minimum period of 10 years by the property owner from the notified completion date of the scheme. Any plant failures that occur during the first 5 years of the notified completion date of the scheme shall be replaced with the same species within the next available planting season (after failure).
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other subsequent equivalent order, no development within the following classes of development shall be carried out to the dwellings hereby approved without the prior approval of the Local Planning Authority:
 - a. Schedule 2, Part 1, Class A - enlargement, improvement or other alteration
 - b. Schedule 2, Part 1, Class E - garden buildings, enclosures, pool, oil or gas storage container
 - c. Schedule 2, Part 2, Class A - gate, wall, fence or other means of enclosure
- 4) The development hereby approved shall not be occupied until all of the buildings labelled A, B, C, D and E on plan 1265/A/005 Rev A have been demolished and all materials removed from the site.

- 5) The development hereby permitted shall not be brought into use until the existing access to the site within the limits of the public highway has been reconstructed and completed.
- 6) The development hereby permitted shall not be brought into use until the access road, parking and turning areas have been provided in accordance with the approved plans.
- 7) The garages indicated on the approved plan shall be retained for the parking of motor vehicles and cycles. They shall at no time be converted to living accommodation without the prior express permission of the Local Planning Authority.
- 8) All site works must comply with measures set out in the Risk Avoidance Method Statement (Camlad Ecology Ltd., January 2021).
- 9) Within three months of commencement of the development, details of biodiversity enhancement measures including 1 swallow feature on the new buildings shall be submitted to and approved in writing by the local planning authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to occupation of the buildings and retained as such thereafter.
- 10) Within 3 months of commencement of the development, details of the type and location of biodiversity enhancement measures including 1 group of 3 number swift boxes and 2 number house sparrow terraces on or integrated into north- or east- facing brickwork of the new buildings shall be submitted to and approved in writing by the local planning authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to occupation of the buildings and retained as such thereafter.
- 11) Within 3 months of commencement of the development, details of biodiversity enhancement measures including 3 number integrated bat tubes or bat boxes within the new building, shall be submitted to and approved in writing by the local planning authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to occupation of the buildings and retained as such thereafter.
- 12) Within 3 months of commencement of the development, boundary fence details for gardens that include gaps of minimum 130mm square at ground level at least every 10m running length or that do not seal to the ground at all between posts with a 120mm gap from fence base to ground shall be submitted to the Local Planning Authority for approval. The development shall be carried out in accordance with the approved details.

End of Conditions