



Appeal Decision

Site visit made on 21 January 2025

by **Samuel Watson BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20th February 2025

Appeal Ref: APP/C3430/W/24/3346119

The Orchards, Old Stafford Road, Cross Green, Wolverhampton WV10 7PL

- 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 Ian Smith against the decision of South Staffordshire District Council.
 - The application Ref is 23/00752/FUL.
 - The development proposed is demolition of existing buildings and construction of a new detached dormer bungalow.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

- The effect of the proposal on the Cannock Chase Special Area of Conservation (the SAC);
- 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;
- Whether the location of the appeal site is suitable for a new dwelling, with particular regard to accessibility; and,
- The effect of the proposal on biodiversity.

Reasons

The SAC

3. The appeal site is within the 15km zone of Influence of the SAC, which is a designated site under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations). The qualifying features for this SAC are the presence of Northern Atlantic wet heaths with *Erica Tetralix*, wet heathland with cross-leaves heath and, European dry heath. New dwellings within the zone of influence adversely affect the SAC through recreation that can lead to new paths, path widening, erosion, nutrient enrichment and vehicular emissions.
4. The SAC's conservation objectives are namely to maintain or restore the extent and distribution of the qualifying natural habitats, the structure and function of these habitats, and the supporting process on which they rely. The Council's Cannock Chase Special Area of Conservation Guidance to Mitigate the Impact of

New Residential Development (the SACG) which was made in partnership with Natural England sets out site access management and monitoring for the SAC.

5. The proposal would result in a net increase of one new dwelling within the 15km zone of influence and, as such, would likely have a significant effect on the above qualifying features of the SAC, both alone and in combination with other plans and projects. This would principally arise from recreational disturbances associated with an increase in population as described above.
6. As a means of mitigation for this effect, the SACG sets out a payment of £290.58 for each new dwelling within the SAC's zone of influence. This payment would go towards funding site access management and monitoring as identified within the SACG. Given the likely significant effect outlined above such a payment would be necessary to secure mitigation. However, I have not been provided with a way in which this mitigation payment could be secured. Whilst a signed draft unilateral undertaking was submitted during the appeal process, it is not dated and is watermarked "draft". It is not, therefore, a complete and binding undertaking which can be relied upon to secure the above payment as mitigation against the likely significant effect.
7. Although a condition can be used to ensure a planning obligation is entered into prior to the commencement of development, the Planning Practice Guidance is clear that this is only appropriate in exceptional circumstances, such as particularly complex schemes. Moreover, without seeing the final wording of the unilateral undertaking, I cannot be certain that it would suitably secure the above payment and, consequently, that it could mitigate the harm identified.
8. Consequently, and as the competent authority undertaking the appropriate assessment of the proposed development, I cannot ascertain that it would not adversely affect the integrity of the site.
9. The Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest. In this case, and irrespective of whether there are any alternative solutions to the project, the provision of one new dwelling is not sufficient to amount to an overriding public interest.
10. In light of the above, the Habitats Regulations indicate that permission must not be granted. The proposal would also conflict with Policy EQ2 of the Core Strategy (the CS) which seeks to protect the SAC from any likely adverse effect upon its integrity.

Whether Inappropriate Development

11. Paragraph 153 of the Framework establishes that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 also states that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
12. Subject to a number of exceptions, as listed in Paragraph 154, the Framework makes it clear that the construction of new buildings should be regarded as inappropriate in the Green Belt. The listed exceptions include limited infilling in

villages and, the redevelopment or previously developed land which would not cause substantial harm to the openness of the Green Belt.

13. The proposal comprises the erection of a new dwelling set on garden land between two existing dwellings as part of a wider row of development. To this extent I am content that the proposal would be limited development infilling a gap in a built-up frontage. However, the appeal site is some distance away from Coven, the nearest settlement, and is separated from it by a dual carriageway. Given the degree of separation, both physical and visual, I find that the appeal site is not within the settlement. As such, and although the proposal would be limited infilling, it would not comply with the first exception set out above.
14. However, as noted above, the appeal site comprises the garden of an existing dwelling. The garden also contains two existing outbuildings which are to be removed as part of the proposal. Although there is some development surrounding the site it is not within a built-up area and so, mindful of the guidance set out within the Framework, I find that the appeal site is previously developed land.
15. As the site is previously developed land and the proposal seeks its redevelopment, it would comply with exception 154(g), as set out above, so long as it does not cause substantial harm to the openness of the Green Belt.
16. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and permanence. Openness has both a spatial and visual aspect, and an adverse impact to either can harm the openness of the Green Belt as a whole.
17. The proposed replacement dwelling would have two-storeys with the first floor in the roof. Therefore, while the footprint of the dwelling would be the same as that of the removed buildings, its overall floor space and height would be greater. This increased scale would reduce openness. The creation of a new driveway, the parking of private motor vehicles and the proliferation of residential paraphernalia would further erode openness.
18. The Framework is clear that the exception under 154(g) will only apply where this harm is substantial. However, given the scale of the proposal, the development's effect on openness would be relatively limited.
19. Therefore, as the appeal proposal would not cause substantial harm to the openness of the Green Belt, the proposal is not inappropriate development within the Green Belt. It consequently complies with CS Core Policy 1 and Policy GB1 which, insofar as they are relevant to this case, reiterate the controls set out within the Framework. The proposal would also comply with the Framework, including section 13 and Paragraphs 142, 153 and 154 as set out above.

Whether Location is Suitable

20. The appeal site is located in a short row of development set apart from Coven and separated from it by a dual carriageway. As set out above, I consider this degree of physical and visual separation to mean the appeal site is outside of the local service village. The appeal site is instead part of a small cluster of development outside of Coven within the countryside.

21. Through Core Policy 1 of the CS the Council sets out their spatial strategy and settlement hierarchy. Its principal aim is to meet local needs by way of locating growth at the most accessible and sustainable locations. Under the hierarchy local service villages can support development where it meets local needs. However, outside of these villages the strategy seeks to limited development to where it provides affordable housing, supports tourism, sport or recreation, or the rural economy and its diversification.
22. As the appeal site is outside of the local service village, it is against these last requirements that I must consider the proposal. On a plain reading of the policy, it is clear that the proposal would not meet any of these requirements by way of being for an open market residential dwelling.
23. Nevertheless, the appeal site is part of a ribbon of development that extends close to the edge of Coven. Therefore, whilst it is outside of Coven, it is closely related and clearly not isolated. As such, the proposal would not conflict with Paragraph 84 of the Framework which seeks to prevent isolated development within the countryside.
24. I noted a somewhat informal path leading towards on the opposite side of the road from the appeal site that leads towards Coven and local bus routes. Future occupiers could therefore walk to reach services, facilities and alternative transport options. I am mindful that it may not be an attractive prospect at night or during inclement weather as portions of the route were unlit and unpaved. Nevertheless, I find that future occupiers would have the option to walk, cycle and take public transport rather than being reliant upon private motor vehicles.
25. I am also mindful of the relatively short distance from the appeal site to either Coven or Wolverhampton. Therefore, although some journeys are likely to be made by private motor vehicles, any adverse effect from this would be modest, especially given the scale of the development.
26. Although the proposed dwelling would be outside of Coven, it would be closely related to it and future occupiers would not be reliant upon private motor vehicles. Moreover, the proposed dwelling would not be isolated. Consequently, although the proposal would not meet the specific requirements CS Core Policy 1 sets out for “outside the Service Villages” it would comply with the aims of the policy’s spatial strategy with regards to meeting local needs by siting housing in accessible and sustainable locations.
27. The appeal site would therefore be in an accessible location where future occupiers are not reliant upon private motor vehicles and, as such, is in a suitable location for a new dwelling. It therefore complies with CS Core Policy 1 as outlined above, and CS Core Policy 11 and EV11 which seek to ensure that proposals provide access to sustainable transport options as realistic alternatives to the use of private motor vehicles. It would also comply with Paragraphs 83 and 84 of the Framework which seek to direct housing away from isolated locations and to where they can enhance and maintain the vitality of rural communities.

Biodiversity

28. At the time of my visit the appeal site primarily comprised an area of grassland supporting a number of trees and hedgerows surrounding and across the site. The appellant has provided ecological and arboricultural impact assessments

identifying that those trees proposed to be removed are in a poor state of health, with the exception of a very young whip. I noted that two trees, which were identified for removal, have come down. These assessments and the Council identify the site as a traditional orchard which is considered a UK priority habitat.

29. During my site visit I noted that the appeal site is surrounded by, and close to hedgerows and mature trees, including along the nearby canal. I find that these would create connections to the nearby orchards raised by the Council and, as such, there is the potential for an important insect presence at the site. Similarly, and whilst I note the reports found no evidence of use, the trees and appeal site in general have potential for roosting and foraging by bats.
30. Nevertheless, the trees proposed for removal are not protected, are of some age and are in poor health. They could, therefore, easily die or be otherwise removed by the appellant, irrespective of this appeal. Therefore, whilst I am mindful of the contribution the trees make, this is not secured and would be short-lived. As such, although their loss as part of the appeal proposal would be detrimental to the overall biodiversity and habitat provision at the site, this harm would be modest. Moreover, should the appeal be allowed, conditions could be imposed securing a new planting scheme to mitigate any loss and achieve a biodiversity net gain.
31. Subject to suitable mitigations, the proposal would not unacceptably affect biodiversity and the provision of habitats on site as a result of the existing trees. The proposal would therefore comply with CS Policies EQ1 and EQ4 which, in part, require developments to retain trees and hedgerows unless appropriate mitigation can be achieved and to build in biodiversity by incorporating ecologically sensitive design. It would also comply with Framework Paragraphs 187 and 193 which seek for proposals to minimise impacts on, and provide net gains for, biodiversity and to mitigate, or compensate, for any harm caused.

Other Matters

32. The Government's objective is to significantly boost the supply of housing and the proposal would provide one new dwelling in a location with adequate access to services. It would also lead to a small and time limited economic benefit during the construction phase, as well as some limited social and economic benefits resulting from future occupiers. Given the small scale of the proposal these matters would at most attract modest weight.

Conclusion

33. The proposal would not result in inappropriate development in the green belt or unacceptably affect biodiversity and the provision of habitats on site. It would also be sited in an accessible location where future occupiers are not reliant upon private motor vehicles. As outlined above, the proposal would also result in some modest benefits.
34. Nevertheless, I cannot ascertain that the proposal would have no adverse effect on the integrity of the SAC. As such, this matter provides a strong reason for refusing the proposed development.
35. I note that the council have raised that they are only be able to demonstrate a four-year housing land supply. However, the Framework provides a strong reason for refusing the development, the effect of the proposal on the SAC, and therefore

the proposal does not benefit from the presumption in favour of sustainable development.

36. Therefore, and taking into account all other matters raised, the appeal is dismissed.

Samuel Watson

INSPECTOR