



Appeal Decision

Site visit made on 5 February 2025

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2025

Appeal Ref: APP/V4630/W/24/3349820

192 Erdington Road, Aldridge, Walsall WS9 0SA

- 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 Joseph Moran of Moran Construction & Development Ltd against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 23/1201.
 - The development proposed is erection of a replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a replacement dwelling at 192 Erdington Road, Aldridge, Walsall WS9 0SA in accordance with the terms of the application, Ref 23/1201, subject to the conditions in the attached schedule.

Preliminary Matters

2. A revised National Planning Policy Framework (Framework) was published on 12 December 2024. The main parties were given the opportunity to comment on the implications of this policy change in relation to the appeal.
3. Subsequent to the Council's refusal of the appeal scheme, the Council advised that planning permission (Ref 24/1023) was granted for a development of a similar design to the appeal scheme but slightly reduced in scale. In the event of the appeal being unsuccessful it appears highly likely that that approved development would be implemented. Therefore, it amounts to a valid fallback scheme (the fallback scheme) to which I afford considerable weight.

Main Issue

4. The main issue is whether or not the proposal would be inappropriate development in the Green Belt.

Reasons

5. The proposal relates to the development of previously developed land (as defined in the Framework). Also, it does not strongly contribute to Green Belt purposes (a), (b) or (d) as set out in the Framework. These relate to checking unrestricted sprawl, preventing the merging of neighbouring towns, and preserving the setting and special character of historic towns. The appeal site thus satisfies the Framework definition of grey belt land.
6. For non-major housing developments in the Green Belt such as this, the Framework establishes that proposals will not be inappropriate development where

criteria 155.a to c are satisfied. As a replacement dwelling, the proposal would not fundamentally undermine the purposes of the remaining Green Belt across the plan area. Also, as reasoned above, it would use grey belt land. This satisfies Framework criterion 155.a. Also, there is an unmet need for housing as evidenced by the Council's acknowledged lack of a five year housing land supply. The proposal would replace an existing dwelling in a poor state of repair with a modern home. Consequently, there is a demonstrable unmet need for the type of development proposed. This satisfies Framework criterion 155.b.

7. In addition, the proposal would be in an existing residential area with access to bus services. Also, I am satisfied that the proposed use of the existing vehicular site access would be acceptable with regard to highway safety. The proposal therefore comprises a sustainable location in accordance with Framework criterion 155.c. Accordingly, under paragraph 155 of the Framework the proposal should not be regarded as inappropriate development in the Green Belt. I note that in light of the new Framework, the main parties are also in agreement that the proposal is not inappropriate development in the Green Belt.
8. As the proposal is not inappropriate development it should also not be regarded as harmful to Green Belt openness. Furthermore, very special circumstances are not required to justify the development. Therefore, the proposal would accord with Policy GB1 of the Walsall Site Allocation Document (2019). Amongst other matters, this requires that whether or not proposals are inappropriate development is assessed using the definition in the Framework. It would also comply with saved Policy GP2 of Walsall's Unitary Development Plan, which includes a requirement for developments to contribute positively to the character of the environment having regard to the effect on the Green Belt.

Other Matters

9. I note the concerns raised by the nearby residents and have given careful consideration to these, including the photographs from No 37. Together with my appeal site visit, these were sufficient to assess the proposal. I appreciate that the proposed building scale and footprint would be more substantial than the existing appeal building in views from No 37's rear windows and garden. However, No 37 has a good sized garden that extends up to Erdington Road. As such, even if the proposal would be circa 9m from the rear elevation of No 37 at its closest point, the proposal would not interrupt views of their own garden and beyond. Moreover, the closest part of the proposal would be single storey with a pitched roof sloping away from No 37 which would limit its prominence.
10. Furthermore, the two storey elements of the proposal would be set further back than the single storey element, and on lower ground relative to No 37, thus limiting the prominence of that part of the appeal scheme. As such, I am not persuaded that outlook from the house and garden at No 37 would be so changed for its occupants as to result in harm to their living conditions. In addition, in the event of the appeal being unsuccessful, the implementation of the fallback scheme would likely have a broadly similar effect on their outlook.
11. Whilst rear facing windows are proposed at first floor level, those would provide for bathrooms and a false window for a dressing room. As such, the potential for overlooking No 37 from those would be very limited. In any event, a condition could reasonably be imposed to ensure those windows are obscure glazed and non-

opening above 1.7m for the lifetime of the development. This would further restrict overlooking, or the perception of it, to the extent that it would not result in a harmful loss of privacy for the occupants of No 37.

12. The proposal would be positioned broadly to the east of No 37. Therefore, evidence indicates that any additional shading of part of their garden would be limited to first thing in the morning and not so extensive as to be harmful to their living conditions. Moreover, given the degree of separation between the proposal and the rear windows of No 37, no substantive evidence indicates that the proposal would result in a harmful loss of light within their habitable rooms.
13. As the proposal is located alongside No 190 Erdington Road, where outlook is primarily to their front and rear, the proposal would not harm their outlook. The proposed single storey garage would adjoin the boundary with No 190 and would be positioned on lower ground levels, such that it would not result in unacceptable shading or loss of light in their habitable rooms. Views of the proposal from other houses on Knights Hill would not be intrusive by virtue of the appeal site being on lower ground. In any event, a change of view from nearby houses is not of itself a planning consideration.
14. The proposed modern house design with a front projecting gable and half hipped roof would appear uncontroversial and generally in keeping with the character of house types in the locality. The scale of the proposal relative to the size of its plot would be broadly consistent with that of its neighbouring house at No 190. As such, the proposed building to plot ratio it would not appear at odds with its surroundings. No substantive evidence is before me to indicate that the existing building is worthy of retention due to its historic use or design.

Conditions

15. The Council suggested conditions in the event the appeal is successful. I have considered these and amended them as necessary, without altering their meaning, in light of the Framework and Planning Practice Guidance. Where the conditions are pre-commencement, the appellant has confirmed their agreement. In addition to the standard time limit condition (1), it is necessary to impose a condition (2) requiring compliance with the relevant plans for certainty.
16. I have amended the Council's suggested condition (3) regarding a construction environmental management plan to include reference to dealing with asbestos in the event that it is found within the existing building. This addresses the Council's environmental protection officer request for a condition on that matter. This condition is required to be pre-commencement to ensure the development is carried out in accordance with it.
17. Demolition is required to be carried out in accordance with the condition (4) on precautionary measures with regard to bats, to ensure they are suitably protected. This is in line with the Council's suggested condition and the appellant's submitted ecology report. In light of those measures, further bat survey work is not necessary. A condition was suggested by the Council's ecology officer in respect of minimising external lighting with respect to bats. However, as the proposal relates to a single dwelling with a private domestic garden and no lighting is proposed, such a condition is not necessary in this instance.

18. A pre-commencement condition (5) on foul and surface water drainage is added to ensure the scheme is suitably drained. In addition, a pre-commencement condition relating to finished floor levels (6) is added to ensure the development achieves an acceptable relationship with surrounding buildings. The appellant agreed to such conditions. A condition (7) requiring submission of details of external materials is necessary in the interests of achieving an acceptable appearance.
19. Conditions are necessary to require implementation of the parking area (8) and visibility splay (9) in the interest of highway safety. A condition (10) requiring installation of bat and bird boxes is necessary to ensure the development provides for wildlife. A condition (11) requiring rear facing first floor windows are obscure glazed is necessary to protect the living conditions of the occupants of No 37.
20. Under the Framework, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. However, it is appropriate to impose a condition (12) to remove permitted development rights relating to Classes A (enlargement, improvement or other alterations), B (additions to the roof), and C (other alterations to the roof). This is to ensure an acceptable relationship is maintained for the occupants of neighbouring plots.
21. However, restrictions on permitted development right Classes D (porches), and Class F (hardstanding), the effects of which would be very limited, are not justified. Similarly, a restriction to prevent Class E being exercised (building incidental to the enjoyment of a dwelling house) is not justified, given the permitted development limitations to the size and position of such a building. Class AA permitted development rights (additional storeys) would not apply to this as a new dwellinghouse. Furthermore, restrictions to prevent works under Schedule 2, Part 2, Class A (gates, fences, walls etc), and a restriction to prevent side facing windows or other openings other than those on the approved plans, are not clearly justified and therefore are not included.

Conclusion

22. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

Rachel Hall

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: P010 Rev C; P200 Rev B; P300 Rev B; P600 Rev B
- 3) No development shall take place, including any works of site clearance and demolition, until a Demolition and Construction Environmental Management Plan has been submitted to, and approved in writing by the local planning authority. The Plan shall include:
 - i) demolition and construction working hours;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) information on how any asbestos material found within the existing building is to be identified and treated or disposed of;
 - vi) the erection and maintenance of security hoarding;
 - vii) measures to prevent mud or other material emanating from the application site reaching the highway;
 - viii) measures to control the emission of dust and dirt during construction;
 - ix) noise and vibration mitigation measures (if piling and/or ground stabilisation is to be conducted); and
 - x) a scheme for recycling/disposing of waste resulting from demolition and construction works.

The development thereafter shall not be carried out otherwise than in accordance with the approved Demolition and Construction Environmental Management Plan throughout the period of construction.

- 4) No demolition works shall take place until all workers on the site shall have been made aware that bats may be present. Thereafter, demolition works (including the dismantling of roofs, soffits, gables or in the vicinity of cracks and crevices) shall proceed following the precautionary methods of working identified within the Preliminary Bat Roost Assessment and Bird Survey, conducted by S. Christopher Smith, dated 24/08/2023 (pages 29 and 30) under the supervision of a suitably qualified ecologist and only with the use of hand tools.

If during the construction period bats or evidence of bats or their roosts are found:

- i) bats shall not be handled or touched;
- ii) the vicinity of the roost shall be immediately reinstated;
- iii) no further destructive works shall be carried out until the need for Natural England licence has been established;
- iv) within one week of finding bats or evidence of bats or their roosts, a written report by the supervising ecologist who shall be a person qualified in ecology and/or nature conservancy shall be submitted to and

approved in writing by the local planning authority. The report shall record what was found, and propose appropriate mitigation measures, including a timetable for their implementation;

- v) the development hereby permitted shall thereafter continue only in accordance with the approved mitigation measures and timetable throughout the period of construction.
- 5) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the foul and surface water drainage for the site. The foul and surface water drainage scheme shall then be installed in accordance with the approved details prior to first occupation and maintained as such thereafter.
- 6) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 7) No development above ground level shall take place until details of the materials to be used in the construction of all external facing materials of the development hereby permitted (including details of the colour, size, texture, material and specification of bricks, render, roof tiles, windows, doors, rainwater products and soffits) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 8) The development hereby permitted shall not be occupied until the vehicle parking area has been hard surfaced and drained so that surface water run-off from the parking area does not discharge onto the highway or into any highway drain. The parking area shall thereafter be retained for the parking of motor vehicles for the lifetime of the development.
- 9) The development hereby permitted shall not be occupied until a 2.4m x 3.4m pedestrian visibility splay at the Erdington Road vehicular access point has been provided. The visibility splay shall thereafter be kept free of all obstructions to visibility over a height of 600 mm above the footway level and retained as such for the lifetime of the development.
- 10) The development hereby permitted shall not be occupied until one brick bat box and one bird box have been installed in the western (rear) elevation of the dwelling. These shall be located at a point not lower than 3 metres from the natural ground level, away from obstructions to the entrances and sources of artificial light and retained as such for the lifetime of the development.
- 11) The building hereby permitted shall not be occupied until the rear facing windows at first floor level have been fitted with obscured glazing to meet Pilkington level 4 or equivalent, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. The obscured glazing shall be retained thereafter.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development

permitted by virtue of Classes A (enlargement, improvement or other alterations), B (additions to the roof) or C (other alterations to the roof), of Part 1 of Schedule 2 to the Order shall be undertaken.