



Appeal Decision

Site visit made on 11 February 2025

by **L C Hughes BA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 March 2025

Appeal Ref: APP/C3430/W/24/3352052

83-85 Springhill Lane, Lower Penn, Wolverhampton WV4 4TW

- 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 A Nijjer against the decision of South Staffordshire District Council.
 - The application Ref is 24/00431/FUL.
 - The development proposed is demolition of two no. existing bungalows and provision of single replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of two no. existing bungalows and provision of single replacement dwelling at 83-85 Springhill Lane, Lower Penn, Wolverhampton WV4 4TW in accordance with the terms of the application, Ref 24/00431/FUL, subject to the conditions in the attached schedule.

Applications for costs

2. An application of costs was made by Mr A Nijjer against South Staffordshire District Council. That application is the subject of a separate decision.

Preliminary Matters

3. I have taken the address from the appeal form and the decision notice, as this provides a more accurate location than the application form.
4. On 12 December 2024 the Government published a revised National Planning Policy Framework (the Framework). The revised Framework is a material consideration which should be taken into account from the day of publication. Both main parties have had the opportunity to comment on any implications for the appeal, and I have taken comments received into account. Where references are made to paragraph numbers of the Framework, these are references to the most recent version.

Main Issues

5. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt; and

- whether any 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

6. The appeal site lies within the West Midlands Green Belt. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. Paragraph 154 of the Framework sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate, other than in a few exceptions. One exception, at Paragraph 154d) is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Part A.d) of Policy GB1 of the South Staffordshire Core Strategy (CS) (2012) is consistent with this.
8. Whilst the Framework does not define what might be considered as materially larger, South Staffordshire Council's Green Belt and Open Countryside Supplementary Planning Document (SPD) (2014) advises that replacement buildings which are more than 10-20% larger than the buildings they replace would be considered materially larger.
9. The proposal would see the demolition of a pair of semi-detached bungalows, with a replacement single bungalow. The proposed new dwelling would be built on the footprint of the existing bungalows. However, from the evidence before me, the proposed dwelling would see an increase of over 70% in floorspace in comparison to the existing bungalows. This is far in excess of the advice in the SPD and therefore the development can be considered materially larger than the building that it would replace. As such, the development would not meet the exception of Paragraph 154d) of the Framework and it would not accord with the SPD or CS Policy GB1.
10. The appellant has contended that the development might also be considered to fall under the exception to inappropriate development at paragraph 154g) of the Framework, relating to the partial or complete redevelopment of previously developed land which would not cause substantial harm to the openness of the Green Belt.
11. Annex 2 of the Framework provides a definition of previously developed land, which includes the curtilage of a permanent structure, such as a dwelling, but excludes land in built-up areas such as residential gardens.
12. Case law has established that residential garden land outside a built-up area can be regarded as previously developed land¹. However, the question of whether a particular residential garden falls within or outside a built-up area for this purpose is a matter of planning judgement. Furthermore, the definition in Annex 2 does not specify the scale of built-up area which is relevant.

¹ Dartford BC v SSCLG [2017] EWCA Civ 141

13. There are a fair number of other dwellings along Springhill Lane, and the appeal site forms part of a linear, ribbon pattern of development. Although the appeal site is outside of a development boundary and there are areas of undeveloped land in proximity, there is nevertheless a coherent built-up character along Springhill Lane, where the appeal site is located. Therefore, drawing on the evidence before me and my observations on my site visit, I consider that the appeal site is within a built-up area with regard to the definition in Annex 2. As such, the proposal would not accord with the definition of previously developed land and would not meet the exception of Paragraph 154g) of the Framework.
14. The proposal would therefore comprise inappropriate development which is, by definition, harmful to the Green Belt. As such, it would be contrary to CS Policy GB1, the SPD and the Framework.

The effect on openness

15. The Framework identifies that the essential characteristics of Green Belts are their openness and permanence. The concept of Green Belt openness has both a spatial and visual dimension.
16. Whilst the proposal would be in a raised position within the lane, it would be set into the land to align the height with that of the existing bungalows. It would, however, have a larger roof volume and overall floorspace than the existing dwellings at the appeal site. The proposal would therefore have more of an impact on openness of the Green Belt in spatial terms than the existing circumstances.
17. The proposal would be positioned on the footprint of the original bungalows and would fit well within the plot. Notwithstanding this, the increased floorspace and larger roof volume would make the development more prominent in comparison to the existing dwellings.
18. The proposed development would therefore lead to a loss of openness in both spatial and visual terms. The harm would be localised, and due to the similarity of the proposal to the existing buildings in terms of its position and alignment of height this harm would be limited. Whilst limited, it would nevertheless erode the openness of the Green Belt. This would be contrary to the Framework which states that an essential characteristic of Green Belts is their openness.

Other considerations

19. Reference has been made to a fallback position, emphasising that extensions to the existing bungalows could be constructed as permitted development under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Specifically, the two existing bungalows benefit from Certificates of Lawful Development² for extensions and outbuildings. From the evidence before me, these Lawful Development Certificates (LDC) would allow for 64m² of extensions to the dwellings. Moreover, additional floorspace could be built through permitted development rights for house extensions under the terms of the GPDO.
20. The consideration of a fallback position, including what could be erected under permitted development, is a well-established principle. As the properties benefit from LDCs and could be extended further through utilising permitted development

² 22/00761/LUP and 22/00792/LUP

rights, there is a greater than theoretical possibility that, if the appeal is dismissed, the fallback scheme may be implemented. As such it is a material consideration in my determination of the appeal. For significant weight to be afforded to the fallback position, there needs not only to be a reasonable prospect of it being carried out, but it would also need to be more harmful than the scheme for which permission is being sought.

21. From the evidence before me, the appeal scheme would be slightly larger in terms of floorspace than the fallback scheme. However, maximum use of permitted development rights would be likely to lead to the appeal property taking on a piecemeal and ad-hoc appearance. The proposal would have a larger roof volume than the fallback scheme, which would include elements with a flat roof. However, the appeal proposal would be a more attractive and cohesive design. As it would be located on the existing footprint of the original dwellings it would be less disjointed and sprawling than the fallback scheme. Given these considerations, the fallback position would be more harmful to the openness of the Green Belt than the proposed development, even accounting for the roof design and volume and the small increase in floorspace. This is a matter which carries considerable weight in favour of the appeal scheme.

Other Matters

22. The Council can only demonstrate a 1.17 year land supply against a requirement to demonstrate a 5 year supply. The proposal would see the loss of one bungalow, which would further aggravate the existing shortage. The Government is seeking to boost the supply of housing. However, as the loss would be for one dwelling and is unlikely to significantly affect the Council's ability to meet its housing targets, the weight that I attach to this is limited.
23. I note concerns regarding the loss of a bungalow. However, the new dwelling would likewise be one-storey, and I have no substantive evidence regarding housing needs within the district, or whether specific types of dwellings are particularly in demand. Accordingly, I afford this matter limited weight.

Green Belt Balance

24. The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, openness is an essential characteristic of the Green Belt, so a reduction in openness would also be harmful. Substantial weight is given to any harm to the Green Belt, and very special circumstances will not exist unless that harm, and any other harm, are clearly outweighed by other considerations.
25. The proposal would be inappropriate development in the Green Belt and would erode its openness. However, I give considerable weight to the fallback position which may be implemented. This would have a more harmful effect on openness than the appeal scheme. Accordingly, I find the fallback in this instance provides sufficient justification to outweigh the harm that would arise to openness and from inappropriateness and that very special circumstances therefore exist to justify the development.

Conditions

26. I have considered the conditions suggested by the Council, having regard to the Planning Practice Guidance on conditions. I have amended a number of the conditions in the interest of clarity. The appellant has confirmed their agreement to the pre-commencement condition.
27. In addition to the standard timeframe condition, it is necessary to impose a condition requiring the development to be carried out in accordance with the submitted plans in the interest of certainty (conditions 1 and 2).
28. Pre-commencement condition 3 which relates to drainage is necessary to minimise the risk of flooding and pollution from the outset.
29. Conditions 4 and 5, relating to vehicle parking spaces, a turning area, and site access are necessary in the interests of highway safety. Conditions regarding the materials to be used and landscaping are necessary in order to protect the character and appearance of the area (conditions 6 and 7). I have attached condition 8 relating to bats and nesting birds in order to protect and enhance biodiversity. Conditions 9-11, which relate to methods and timings of the construction of the development are necessary to protect the living conditions of neighbouring occupiers.
30. The GPDO does not withdraw permitted development rights for land within the Green Belt. However, the benefits of the appeal scheme over the fallback position would potentially be undermined if the proposed replacement dwelling were to retain those permitted development rights which relate to extensions. In the interests of safeguarding the openness of the Green Belt, condition 12 is therefore necessary and reasonable, removing permitted development rights in relation to enlargement, improvement or other alteration.
31. I have not imposed a condition regarding an external lighting scheme at the appeal site, as I consider it would be unreasonable and unnecessary given the proposed private residential use of the development.

Conclusion

32. Although there would be conflict with the development plan, the balance of planning considerations in this case indicate that a decision should be made other than in accordance with it.
33. For the reasons given above, I conclude that the appeal should be allowed.

L C Hughes

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos : Proposed Dwelling Type A, 24 73 04; and Street Scene Levels 24 73 02.
- 3) No development shall take place until drainage plans for the disposal of foul and surface water flows have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 4) The development hereby permitted shall not be occupied until details of parking and turning for two vehicles within the curtilage of the site, which shall include details of surfacing and surface water drainage, have been submitted to and approved in writing by the local planning authority. Thereafter those parking spaces and turning area shall be retained for the parking and turning of vehicles only.
- 5) The development hereby permitted shall not be occupied until the existing site access serving no. 83 Springhill Lane, which shall include the access crossing between the site and carriageway edge made redundant as a consequence of the development hereby permitted is permanently closed and the access crossing reinstated as highway verge.
- 6) No development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted 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.
- 7) No development above ground level shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented concurrently with the development and completed within 12 months of the completion of the development.
- 8) The development hereby permitted shall not be occupied until artificial roosting opportunities for bats and nesting opportunities for wild birds shall be provided at the site in accordance with full details of their types and positions, that have previously been submitted to and approved in writing by the local planning authority. These shall include:
 - a minimum of one external bat box or integrated bat bricks suitable for nursery or summer roosting by small crevice-dwelling UK bat species; and
 - a minimum of 1 artificial nest of either integrated brick design or external box design, suitable for small birds (32mm hole, standard design).
 - a minimum of 1 artificial nest of integrated brick design, suitable for swifts (swift bricks). These shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting.These shall be retained thereafter for the lifetime of the development.
- 9) Demolition or construction works and deliveries shall take place only between the hours of 0800 and 1800 Mondays – Fridays and between the hours of

0800 and 1400 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

- 10) There shall be no burning on site during development.
- 11) Facilities shall be provided at the site and used when necessary for damping down to prevent excessive dust.
- 12) 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 class of development shall be carried out to the dwelling hereby permitted without the prior approval of the local planning authority:
 - Schedule 2, Part 1, Class A - enlargement, improvement or other alteration.

*****END OF SCHEDULE*****