



Appeal Decision

Hearing held on 20 September 2022

Site visits made on 19th and 20th September 2022

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal Ref: APP/P1805/W/22/3294824

Land Between The Croft And Hopwood Garden Centre, Ash Lane, Alvechurch, Worcestershire B48 7TT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs P Robinson against the decision of Bromsgrove District Council.
 - The application Ref 21/00872/FUL, dated 21 May 2021, was refused by notice dated 17 February 2022.
 - The development proposed is construction of No. 15 affordable (Discounted Market Sales Housing) dwellings including No. 3 retirement bungalows with associated provision for car parking, open space, landscaping and infrastructure works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council agreed at the Hearing that should an executed Unilateral Undertaking (UU) be submitted by the appellant within the agreed timescale, reason for refusal number 4 on the Council's Decision Notice (ie the lack of any agreement to secure planning obligations required to mitigate harm) would no longer apply.
3. The appellant submitted the UU as requested. I am satisfied that the planning obligations sought are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. I am therefore satisfied that the UU meets the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations and paragraph 57 of the National Planning Policy Framework (the Framework). As such, I attribute full weight to the UU, and reason for refusal number 4 is no longer applicable.
4. The appellant notes that policies BDP2 and BDP4 of the Bromsgrove District Plan 2011-2030, (2017), (BDP), and H2 of the Alvechurch Parish Neighbourhood Plan, 2011-2030, (2019), (NP), allow for settlement boundaries/village envelopes to be revised. Policy BD4 of the BDP states that a review of the Green Belt will be undertaken, prior to 2023, and that such a review may result in settlement boundaries/village envelopes being revised; this is acknowledged in Policy H2 of the NP.

5. It is confirmed in the Council's statement that a review of the BPD may result in alterations to settlement boundaries/village envelopes. The Council has also confirmed that the southern part of the site has been submitted to the Council through the 2019/20 'call for sites' exercise, and that the appeal site has also been submitted via an earlier Strategic Housing Land Availability Assessment process.
6. However, at the time of the Hearing the review had not been completed, and I have not been informed that the position has since changed. Nor have I been provided with any evidence *vis a vis* paragraph 48 of the Framework which suggests weight could be given to any emerging policies. As noted in Policy BDP2 of the BDP, until such a review has been completed, the settlement boundaries remain unaltered. I have made my Decision on this basis.

Main Issues

7. The main issues are:

- whether the proposed development constitutes inappropriate development in the Green Belt, having regard to relevant development plan policies and the Framework,
- if the proposed development is inappropriate development, its effect on the openness of the Green Belt,
- whether the proposed development causes any other harm, with particular regard to: a) highway safety, and b) whether future occupiers would have suitable access to services and facilities to meet their day-to-day needs, employment opportunities and public transport links, and
- if the proposed development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations that amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

8. The site is located within the Green Belt, immediately east of the eastern-most edge of the designated settlement boundary of Hopwood. There are open fields beyond the site's northern and eastern-most boundaries, a plant nursery immediately east of part of its eastern boundary, and residential properties opposite the site's access on the southern side of Ash Lane.
9. Policy BDP4 of the BDP states that the development of new buildings in the Green Belt is inappropriate development, except in specific circumstances as outlined in the policy. The circumstances referred to in the policy are consistent with the exceptions outlined in paragraph 149 of the Framework. Exception 'f' is "*Limited infilling in Green Belt settlements...*".
10. Although Policy H2 of the NP supports new housing development, it is more restrictive than Policy BDP4 of the BDP. Thus, new housing development is subject to adhering to other policies in the NP and BDP and must satisfy the criteria listed in a-f of Policy H2, which includes "*small residential infill development...[that]...maintains the continuity of existing frontage buildings...*"

and *"is within the built-up area and does not involve the outward extension of the village envelope..."* as shown on the BPD policies map.

11. Notwithstanding some of the inferences in the appellant's statement regarding the relevance of previous appeals and case law related to the exception referred to in the Framework of *"limited infilling in villages"*, and the suggestion that the proposal may partially constitute *"limited infilling"*, paragraph 2.43 of the appellant's statement confirms that she accepts the proposal is inappropriate development in the Green Belt. This was reaffirmed at the Hearing.
12. Although the appellant suggests that the frontage of the site can be considered to be infill¹, the proposal needs to be assessed as a whole, rather than being made up of constituent parts. I agree with the conclusion reached by the Inspector on a previous appeal on the site, Ref APP/P1805/W/18/3211711, referred to in submissions, ie that the properties adjacent to the western boundary of the site mark the edge of the continuous built-up frontage on the northern side of Ash Lane. Hence, these properties fall within the defined settlement boundary of Hopwood and read as being within the built-up extents of the settlement. In contrast, not only does the site lie outside the designated settlement boundary, to my mind it also reads on the ground as being outside the built-up extents of the settlement.
13. Furthermore, as the proposal is for 15 No. residential units, an internal service road and public outdoor play area, all of which would extend significantly to the rear of the existing built-up frontage, I consider the proposal would not constitute 'infill' development. Additionally, due to the size of the site and the number of dwellings proposed relative to the size of the Hopwood settlement and the number of dwellings within it, I do not consider the proposal to be 'limited'. Hence, the proposal does not constitute limited infilling in a village. As it does not meet any of the other exceptions outlined in Green Belt policies, I therefore conclude that the proposal constitutes inappropriate development in the Green Belt, which is harmful by definition².

Effect on openness

14. The Framework advises that the essential characteristics of Green Belts are their openness and permanence³. The openness of the Green Belt has both spatial and visual dimensions. The Framework also advises that one of the purposes of Green Belts is to assist in safeguarding the countryside from encroachment⁴.
15. To support the proposal, the appellant draws upon the conclusion reached by the Inspector in the previous appeal regarding openness. The Inspector concluded that a) the proposal would have a greater impact on openness than the existing situation in both spatial and visual terms, and b) the degree of harm to openness would, overall, be moderate. The appellant suggests that the same conclusion could be reached regarding the current proposal. However, I disagree with this view.

¹ Paragraph 2.8 of the statement of case

² Paragraph 147 of the Framework

³ Paragraph 137

⁴ Sub paragraph 138 c)

16. The previous appeal related only to 3 detached dwellings with hard standing/parking areas and gardens to the front and rear. The dwellings were to be sited between 'The Croft' and the garden centre. The plots and buildings were to be broadly in line/in keeping with the frontages and gardens of the dwellings to the west of the site on the northern side of the road.
17. In contrast, as noted, the proposal would introduce 15 No. dwellings with driveways and gardens, an internal access/service road with 2 turning areas, and a public outdoor play area, into an area of land that is currently devoid of development. As with the previous scheme, it would therefore inevitably reduce the spatial and visual openness of the Green Belt. Moreover, in my opinion the proposal would amount to an extension of the settlement, given the size of the site relative to the size of the settlement. Consequently, in spatial terms the extent of development would be considerable. As such, the current proposal would have a far greater impact on spatial openness than the previous scheme; the impact of which I consider to be significant.
18. Furthermore, as the proposed development would be much more extensive than the 3 dwellings previously dismissed at appeal, the view from the access point off Ash Lane would include much more development than the previous scheme, and the nature and extent of use of the land would be much more intensive.
19. Even with additional landscaping and boundary treatments as proposed, although the section of internal road serving 4 of the 5 bungalows and the 4 bungalows themselves would not be visible from the access point, they, along with the other dwellings, would be visible from several properties immediately west of the site. Additionally, the upper sections of the proposed dwellings would be visible from part of Ash Lane close to the entrance to the garden centre and from within the grounds of the garden centre.
20. I therefore conclude that the proposal would also have a far greater impact on the visual openness of the Green Belt than the previous scheme. Again, I consider the harm to visual openness to be significant. Furthermore, as noted above, due to the size of the site and the scale of proposed development relative to the size of the settlement of Hopwood, in my opinion the proposal would amount to an extension of the settlement. Consequently, I consider the proposal would encroach into the Green Belt, thereby threatening one of the purposes of Green Belt land.
21. I note that the appellant considers the impact on openness to be less significant than the harm derived from being inappropriate development. However, I do not share this view. The Framework is clear⁵, when considering any planning application, the decision-maker needs to ensure that *substantial weight* is given *to any harm* to the Green Belt.

Other harm – a) highway safety and b) access to services & facilities, employment opportunities and public transport

Highway safety

22. Ash Lane is an unclassified road. It is relatively narrow in parts and doesn't have footpaths or street lighting. The speed limit on the road is 30 mph from the junction with the A441 to the right-angled bend in the road around 100m

⁵ Paragraph 148

east of the site access, where it changes to the national speed limit. There are no parking restrictions on the road. During my visit I observed cars parked along the north-western stretch of the lane, thereby restricting its width further in parts.

23. The most direct, and shortest (around 250 m), route from the site to the junction of Ash Lane and the A441, where a small convenience store (located within the car fuel/service station), public house and bus stops are located, is to travel in a north-westerly direction along Ash Lane. The Council considers walking to these local services and facilities along the road would create an unacceptable highway safety issue.
24. Another route to the facilities and services referred to using streets which do have footpaths and street lighting, would be via Woodpecker Close and Smedley Crook Place. However, this would require future occupiers of the proposed dwellings to walk from the site along Ash Lane for around 70 m without footpaths or street lighting, before accessing Woodpecker Close, a situation the Council considers to be unsafe. Additionally, this route would be non-direct and longer (around 400 m).
25. To address the issue of highway safety the appellant proposes to construct a 'virtual footway' from the point opposite the site access on the southern side of Ash Lane, to the point where it would meet a footpath on the eastern side of Woodpecker Close. The 'virtual footway' would be funded via a Section 278 Agreement, identified in the UU. The footway would be 1.2 m wide, constructed of/denoted by materials, and signage, that clearly identify it as a pedestrian route on the road surface. I understand this to be a method that has been used in rural areas in recent years to improve pedestrian safety in situations where roads are too narrow to construct raised pavements. The general concept is that drivers slow down and drive more carefully in such situations.
26. The evidence submitted confirms that there have been no collisions within a 150 m radius of the site access over the most recent 5-year period data was available for.
27. Concerns have been raised about the possible displacement of vehicles that park along the verge/edge of road where the 'virtual footway' would be located. However, even if vehicles were prevented from parking along this section of road due to the 'virtual footway', the number of cars involved would not be extensive. As such, I am satisfied that any displacement would not create an unacceptable highway safety issue.
28. Although the proposed 'virtual footway' would not extend from the site to the junction of Ash Lane and the A441, having considered all the evidence, and for the reasons outlined, I am persuaded that the provision of the footway would provide a safe route for pedestrians from the site to Woodpecker Close; from where pedestrians could access a route on footpaths with street lighting to the available local services and facilities. As such, I conclude that the proposed development would not have an unacceptable impact on highway safety, having particular regard to pedestrians.

Access to services & facilities, employment opportunities and public transport

29. Policy BDP2 of the BDP outlines the settlement hierarchy for the district. The introduction to the policy explains that it is based on an understanding of the

current size and level of service provision within each of the settlements. New development is required to be located in accordance with the settlement hierarchy, to, among other things, reduce the need to travel, promote sustainable communities, and assist villages to remain viable and provide for the needs of the catchment population they serve. Hopwood is identified as one of the 'smaller settlements', where there are limited opportunities for growth.

30. The settlement has a limited number and range of services and facilities, and there are very few employment opportunities. Thus, as noted above, there is a car fuel/service station with a small convenience store (selling a very limited range of items required for day-to-day living), a car sales and associated repair/maintenance site, and a public house, located close to the junction of Ash Lane and the A441, around 250 m north-west of the site. There is a community hall and associated playing fields located to the rear of properties on the western side of the A441, around 300 m south-west of the site. Around 350 m south-east of the site are the access points to a sports club and a local rugby ground. As noted above, there is a garden centre immediately east of the appeal site.
31. The services, facilities, and potential employment opportunities outlined are within walking/cycling distance of the site. However, due to the very limited number and range, the settlement of Hopwood would not provide future residents with a range of local services, facilities, or employment opportunities that would meet their day-to-day needs.
32. I note there is a network of Public Rights of Way (PRoW) accessible from the site providing links to neighbouring settlements. However, due to the nature of the routes, ie primarily through fields across open countryside, and the distances involved, I consider it highly unlikely that future occupants of the proposed dwellings would consider using the PRoW network to access services, facilities and/or employment opportunities in a manner that would meet their daily needs.
33. Alvechurch is around 3 km from the site and Barnt green is around 4 km. Both villages offer a range of services, facilities and employment opportunities that could meet the day to day needs of future occupiers of the proposed dwellings. However, due mainly to their respective distances from the site, I consider it unlikely that future occupiers would use walking as their primary mode of transport to access the services, facilities, and employment opportunities available in these villages.
34. Although one would need to cross the A441 before linking with the minor roads that lead to Alvechurch and Barnt Green, due to the distances involved, the topography of the area, and the nature of the roads, I consider future occupiers could use cycling as a regular mode of transport to access the range of services, facilities, and employment opportunities available in these villages.
35. The evidence submitted indicates that the nearest railway stations are located at Alvechurch and Barnt Green. The appellant contends, and the Council has not challenged this, that services are available from these stations to Four Oaks and Redditch, around every 30 minutes, and Bromsgrove and Lichfield Trent Valley, around every hour. Some of the services provide access to Birmingham New Street. Given that I have concluded that it would be feasible to cycle to Alvechurch and Barnt Green, it follows that it would be feasible to cycle to their

respective railway stations to catch trains to surrounding villages, towns, and the City of Birmingham.

36. As indicated above, there are bus stops close to the junction of Ash Lane and the A441. The evidence submitted suggests there are 2 available services, providing buses to Redditch and Bromsgrove twice a day. I note that residents who attended the Hearing suggested that the few bus services referred to no longer run. Although I have no reason to doubt this, I note that I have not been provided with any substantive evidence confirming the situation.
37. Considering the above, even if the few bus services referred to in submissions were running, I accept that most of the future occupants of the proposed dwellings are likely to use the private motor car as their primary mode of transport to access services, facilities, and employment opportunities to meet their day-to-day needs.
38. Nevertheless, the proposal would provide some, all-be-it minor, opportunities to promote modes of transport other than the private motor vehicle. The appellant would contribute towards both community transport and school transport infrastructure in the Bromsgrove area, secured via the UU. The Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be considered in decision-making.⁶ I consider the appellant has taken opportunities within her control to maximise sustainable transport solutions.
39. The Framework also advises that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities, and where there are groups of smaller settlements, development in one village may support services in a village nearby.⁷ At minimum, I consider the proposal would assist in maintaining the vitality of the rural community of Hopwood as well as supporting services in nearby villages.
40. Furthermore, the BDP and NP allow for some development within the rural settlement of Hopwood. Even though I have concluded that the site is outside of the settlement, given its close proximity to it, in locational terms residential development on the site would barely be any different to residential development that is allowed for by development plan policies within the defined settlement boundary.
41. In light of all the above, I conclude that the proposal would accord with policies BDP1 and BDP16 of the BDP, and paragraphs 79, 104, 105, 110 and 112 of the Framework. Collectively, and among other things, these policies require development to have regard to accessibility to public transport options, provide a safe and convenient access related to the wider transport network, promote modes of transport other than the private motor vehicle taking account of the rural setting, minimise the scope for conflicts between pedestrians, cyclists and vehicles, and locate houses in rural areas where they will enhance or maintain the vitality of rural communities and support services in nearby villages.

⁶ Paragraph 105

⁷ Paragraph 79

Other considerations, planning balance, very special circumstances, and conclusion

42. Paragraphs 2 and 47 of the Framework advise that applications for planning permission shall be determined in accordance with the development plan, unless material considerations indicate otherwise.
43. As noted, paragraph 148 of the Framework advises that when assessing planning applications in the Green Belt, substantial weight shall be given to any harm to it. Additionally, very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
44. The Council accepts that it cannot, at present, provide a 5-year supply of housing land (5YHLS). The parties agree that, according to the latest data available, April 2022, the Council can demonstrate a supply of 3.23 years.
45. Taking account of paragraph 11 d) of the Framework, and footnote 8, in such circumstances the policies that are most important for determining the application are deemed to be out of date and planning permission should therefore be granted...unless one of 2 circumstances apply. The first of these, 11 d) i., says unless *"the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed."*
46. Footnote 7 of paragraph 11 d) i. confirms that land designated as Green Belt is one of the areas/assets of particular importance referred to in footnote 8. As such, a proposal that does not accord with Green Belt policies in the Framework provides a clear reason for refusal.
47. I have concluded that the proposal constitutes inappropriate development in the Green Belt, that it would have significant impacts on its spatial and visual openness, and that it would encroach into it. Therefore, the application of policies in the Framework which protect Green Belts provide a clear reason for dismissing the appeal. Consequently, the proposal does not benefit from a presumption in favour of sustainable development. Nevertheless, the planning balance required by s38(6) of the Planning and Compulsory Purchase Act 2004 still needs to be undertaken.
48. Given the extent of the 5YHLS shortfall, I attach significant weight to the provision of 15 dwellings. Additionally, taking account of the number of completions of affordable dwellings in recent years, ie none in 2020/2021 and only 8 in 2021/2022, I attach substantial weight to the provision of 15 affordable dwellings.
49. The proposal would provide an area of public open space (POS) aimed particularly at the younger age group. I appreciate that the provision of POS is a policy requirement. However, the extent of the POS proposed would be beyond that required by development plan policies. I have noted above that there is a sports field in Hopwood. Nevertheless, it is clear from the NP that additional POS is sought after, especially of the type that is suitable for young people. The POS would be a facility accessible to people that also reside outside of the site. Bearing all these factors in mind, I attach moderate weight to the provision of the POS.

50. The proposal would provide economic benefits, especially during the construction phase but also post construction with future occupiers contributing to the local economy. I attach moderate weight to this factor.
51. The proposal would include enhancements to biodiversity, resulting from the provision of small ponds within the POS area and additional planting within/around the site. Within the context of local and national planning policies requiring new development to enhance biodiversity, I attach limited weight to this matter.
52. The appellant contends that the housing mix that would be provided and the quality of the architectural design are matters that should attract additional weight in favour of the proposal. However, high quality design and the provision of a mix of dwellings that meet the needs of different groups within the community are clearly requirements of local and national planning policies. Consequently, I consider such matters to have a neutral weighting in the planning balance. I also consider the provision of the virtual footway to be a matter of neutral weighting, as it is proposed to overcome identified harm. I do not consider it would provide a significant benefit to the wider community.
53. I have found that the proposal constitutes inappropriate development in the Green Belt, and that it would have a significant degree of impact on both its spatial and visual openness. Additionally, I have found that the proposal would encroach into the Green Belt.
54. Notwithstanding my conclusions regarding highway safety and access to services, facilities and employment opportunities, in accordance with the Framework, substantial weight is attached to any harm to the Green Belt. I consider that the harms I have found to the Green Belt would not be clearly outweighed by the other considerations outlined above. Consequently, the very special circumstances required to justify the proposed development do not exist. As such, the proposal does not wholly accord with policies BDP4 of the BDP, H2 of the NP, or Green Belt policies in the Framework.
55. For the reasons outlined, I therefore conclude that the appeal is dismissed.

J Williamson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr C Whitehouse Agent for the appellant, Nextphase Development Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Lester Principal Planning Officer, Bromsgrove District Council

Mr S Agimal Local Highway Authority: Worcestershire County Council

OTHER INTERESTED PERSONS:

Mrs D Brown Local resident

Mr N Lodge Local resident

Mr A Johnson-Warburton Council Officer

ADDITIONAL DOCUMENTS SUBMITTED PRIOR TO/SHORTLY AFTER THE HEARING:

1. Unilateral Undertaking from the appellant
2. Community Infrastructure Levy Statement from the Council
3. Statement of Common Ground
4. Details of the Councils 5YHLS, and Affordable Housing Completions

<<<<< ----- >>>>>