



Appeal Decision

Site visit made on 29 May 2024

by **E Worley BA (Hons) Dip EP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Appeal Ref: APP/Y3940/W/23/3324550

2 Warminster Road, Monkton Combe, Wiltshire BA2 7HZ

- 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 Shaun Hillier against the decision of Wiltshire Council.
 - The application Ref is PL/2022/07850.
 - The development proposed is a proposed highway access from A36, drive, hardstanding, and erection of double garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Topographical Survey¹ is submitted as part of the appeal. As interested parties have had the opportunity to comment on this as part of the appeal no injustice would occur should I determine the appeal on the basis of this additional information.

Main Issues

3. The main issues are therefore:
 - whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and the effect on the openness of the Green Belt;
 - the effect of the development on highway safety;
 - the effect of the development on ecology;
 - the effect of the development on land stability; and
 - whether the 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

4. The appeal site lies within the West Wiltshire Green Belt. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban

¹ Drawing number WR_Topo.dwg dated July 2015

sprawl by keeping land permanently open. It states the construction of new buildings in the Green Belt should be regarded as inappropriate, other than for the exceptions set out at paragraph 154. These exceptions include c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building, and d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.

5. The appeal site comprises a detached 2 storey dwelling, which sits in a substantial plot. The land slopes away from the highway to the front of the site towards the rear boundary. The existing dwelling, which has been previously extended, has a volume of 876m³. There is no dispute between the parties that the proposed garage would form part of the main dwelling, either the existing or replacement, for the purpose of determining whether the appeal proposal would be inappropriate development.
6. The Council contends that the proposed garage, in addition to the previous extension to the existing dwelling, would result in a disproportionate addition to the original building and would therefore be inappropriate development. However, even if this were the case, the site benefits from an extant planning permission for the erection of a replacement dwelling², as shown on the submitted plans. The construction of the proposed driveway and parking/turning area could not be carried out in lieu of the demolition of the existing dwelling. The appeal proposal therefore clearly forms part of the scheme for the wider redevelopment of the site. While the garage could be constructed independently, albeit without a vehicular access, a planning condition could be imposed to prevent the commencement of building work in relation to the garage in isolation, in advance of the other parts of the scheme for the redevelopment of the site.
7. The replacement dwelling would have a volume of 957m³. It is not clear how the volume of 150m³ for the proposed garage, as suggested by the Council, was derived. The appellant's figure of 103m³, however, more closely reflects the measurements shown on the proposed plans. Using this figure, the replacement dwelling, including the proposed detached garage, would result in an overall increase in volume of 184m³ above the volume of the existing dwelling (876m³), which would equate to an increase of 21%.
8. The Framework does not provide a definition of what constitutes a materially larger replacement building. While a numerical calculation is not definitive in determining whether a replacement building would be materially larger, it provides an indication of the overall scale of development. The replacement dwelling would be of a similar scale to the existing, and the garage would be relatively modest in scale and visually subordinate to the host dwelling. Furthermore, by virtue of the height and siting of the garage, the appeal proposal would not result in a significantly more prominent development on the site, and the replacement dwelling and garage would not be disproportionate in size having regard to the overall size of the site.
9. Therefore, when assessed as part of the overall redevelopment of the site, comprising the replacement of the existing dwelling, the proposed garage, in combination with the new dwelling, would not be materially larger than the building they would replace. In this regard the proposal would therefore fall

² LPA Ref. PL/2021/09930

- within the exception d) of paragraph 154 of the Framework and would not constitute inappropriate development.
10. Paragraph 155 of the Framework sets out that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are developments such as engineering operations, which would include the proposed access and driveway.
 11. The laying of hardstanding for the access and driveway would introduce built form on part of the site, albeit at ground level, which is currently free from development. Furthermore, while vehicles using the access and driveway would be transient, the proposal would be likely to give rise to vehicles parked on the area of hardstanding to the foreground of the garage, which would contribute to a loss of openness of the Green Belt in spatial terms.
 12. The main part of the access driveway and hardstanding would be at a much lower ground level than the highway and within the existing garden to the property. In that context they would not be readily visible from the road. In addition, in longer distance views towards the site from the rear they would be viewed against the backdrop of the rising ground and the replacement dwelling and would therefore not be unduly conspicuous. The access itself, however, would most commonly be seen in public views from Warminster Road. Consequently, there would be harm to the openness of the Green Belt from a visual aspect.
 13. For the foregoing reasons the proposed engineering work would not preserve the openness of the Green Belt and would conflict with the purposes of including land within it, specifically to safeguard the countryside from encroachment. As such, this part of the scheme would constitute inappropriate development within the Green Belt. In accordance with paragraph 153 of the Framework, substantial weight is to be given to any harm to the Green Belt.

Highway safety

14. The appeal site is not served by a vehicular access, but rather a small area to the front boundary of the site alongside the carriageway is currently used for the parking of vehicles, where drivers pull off the A36 into an informal layby. The appellant's Technical Note³ (TN) sets out that this arrangement makes it difficult for vehicles to leave the layby to travel in the same direction from which they arrived, as this would involve manoeuvring in the busy carriageway. In addition, it indicates that, due to the limited space available, getting in and out of parked vehicles safely is difficult and parked vehicles may obstruct the adjacent footpath. Moreover, due to the limited parking capacity at the property, visitors, and delivery and refuse vehicles are often required to stop in the road or park on the edge of the carriageway.
15. The proposed new access would provide off road parking provision within the site for future residents of the replacement dwelling and visitors and would allow vehicles to enter and leave the site in a forward gear. It would also include the closure of the existing layby for residents' use, and its extension to enable a refuse vehicle to service the site without causing an obstruction to the traffic flow.

³ Technical Note by SYSTRA dated 4 April 2018

16. Manual for Streets (MfS) and Manual for Streets 2 (MfS2) set out nationally accepted standards for visibility. However, given the 40mph speed limit of the A36 the Design Manual for Roads and Bridges (DMRB) provides more appropriate visibility distances. The DMRB sets out a visibility splay requirement of 90m, if accompanied by acceptable speed surveys, or 120m otherwise. The TN sets out that, having regard to the 85th percentile speed of 37mph, a visibility splay of 90m is required. Drawing number 106247-01 'Visibility Splay (Maximum Achievable & Tangential)' indicates that the proposed new access from the A36 would achieve visibility splays of 81.2m to the south and 63.9m to the north. This is significantly less, particularly in a northerly direction, than the minimum required by the DMRB guidance. Therefore, the proposed access, despite serving a single dwelling, would not provide a safe and suitable access and would be harmful to highway safety.
17. My attention is drawn to Personal Injury Accident (PIA) data for the period from 1 May 2012 to 30 April 2017 which confirms that 5 incidents took place in the vicinity of the site, one of which was serious, and none of which related specifically to the layby. The TN suggests therefore that there are no inherent road safety issues that would be exacerbated by the proposal. However, for lower highway safety standards than normal to be accepted, it would be incumbent upon the appellant to demonstrate why the introduction of a new access, with reduced visibility, would not have any adverse effects on highway safety. A lack of accidents in relation to the operation of the existing highway would not be robust evidence of this.
18. The proposal would offer benefits in terms of the cessation of the use of the layby for residents parking. Nevertheless, given that the proposed access, by virtue of the shortfall in visibility, would itself not constitute a safe alternative, the proposal would not represent a benefit overall in highway safety terms to justify the proposal.
19. For the foregoing reasons I find that the proposal would be harmful to highway safety. Accordingly, it would fail to comply with Core Policy 57 of the Wiltshire Core Strategy adopted January 2015 (WCS) which seeks to ensure that new roads are designed to be safe, Core Policy 61, in so far as it requires development to be served by safe access to the highway network, and Core Policy 62 of the WCS which requires developments to provide appropriate mitigating measures to offset any adverse impacts on the transport network and that proposals for new development should not be accessed directly from the national primary route network outside built-up areas, unless an over-riding need can be demonstrated. It would also fail to reflect the aims of the Framework, including that safe and suitable access can be achieved; and that development should be refused on highways grounds if there would be an unacceptable impact on highway safety.

Ecology

20. The appeal site comprises a substantial verdant plot surrounded by open countryside and includes numerous mature shrubs, hedges, and trees. The appellant contends that, in light of the extant permission for a replacement dwelling, and the size of the area affected, which is part of the existing garden, and includes an area of hardstanding, and that no trees would be removed, an ecological assessment was not required as part of the planning application.

21. However, the part of the site on which the access drive would be constructed comprises a section of the steep vegetated bank and is close to mature trees. While opportunities to enhance biodiversity could be secure through a planning condition, without the information provided by a Preliminary Ecological Appraisal (PEA), I am unable to determine the full effects of the proposal on ecology, including protected species and habitats that may support them.
22. I note the appellant's willingness to accept a pre-commencement planning condition to undertake the necessary survey work. However, guidance⁴ is clear that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. It also sets out that the need to ensure ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. As such, given the characteristics of the site and in the absence of a PEA, I must take a precautionary approach.
23. I therefore find that the proposal would fail to accord with Core Policy 50 of the WCS which requires proposals to demonstrate how they protect features of nature conservation and incorporate appropriate measures to avoid and reduce disturbance of sensitive wildlife species and habitats. It would also conflict with the Framework where it seeks to ensure development minimises impacts on biodiversity.

Land stability

24. The appeal site is at a significantly lower level than the adjacent highway. The land slopes steeply away from the front boundary of the site and continues to descend towards the rear boundary. In this context, excavation and construction work in relation to the formation of the proposed access in the steep bank to the front of the site, could give rise to potential land instability. Indeed, in its response to the planning application National Highways express concern that the development may compromise the stability and integrity of the A36, and that in such circumstances proposals are expected to be supported by a geotechnical risk assessment to demonstrate that the risk to National Highways assets can be managed in accordance with relevant guidance.
25. Accordingly, in the absence of any detailed information in that regard, such as a land stability assessment, it has not been demonstrated that the appeal scheme would not have an impact on land stability. The appellant suggests that this matter could be dealt with by condition, requiring further site investigation to be undertaken. However, I consider that it would be unreasonable to address this matter through the imposition of a planning condition as such investigations may confirm that the land is insufficiently stable to support the proposal.
26. I note the Council's concern in relation to the effect of any retaining structures which may be required, on the landscape and scenic beauty of the Cotswolds National Landscape. However, in the absence of any substantive evidence that any such structures would be required, I have based my assessment on the

⁴ Paragraph 99 of ODPM Circular 06/2005

information before me. If in the future it transpires that such structures are required, they would be considered on the merits of the scheme at that time.

27. Consequently, I therefore conclude that it has not been demonstrated that the proposed development could be carried out without an adverse effect on land stability. In that regard it would fail to accord with the aims of the Framework which require decisions to ensure a site is suitable for its proposed use, taking account of ground conditions and any risks arising from land instability.

Other considerations

28. The appellant asserts that the proposal would be an improvement in relation to the use of the existing layby and would offer benefits in terms of highway safety through the provision of safe and convenient parking within the appeal site. However, I have found that, as the required visibility splays cannot be provided, the proposal would not allow safe egress from the new access. In light of this, I attribute any benefits in relation to highway safety little weight.

Green belt balance

29. The new access, driveway and parking area would be inappropriate development in the Green Belt which is harmful by definition and should not be approved except in very special circumstances. The Framework confirms that very special circumstances only exist where the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. It would also conflict with the purposes of including land within the Green Belt.
30. I have also found harm to ecology and land stability and that the proposal would fail to achieve a safe and suitable access. These matters carry further significant weight.
31. Set against these, material considerations put forward in support of the proposal do not clearly outweigh the totality of the harm the scheme would cause. Consequently, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist.

Other Matters

32. The site lies within the consultation zone for the Bath and Bradford on Avon Bats Special Area of Conservation (SAC), however there is no substantive information before me regarding the qualifying features of the SAC, or the likely effects of the development. If I were minded to allow the appeal, I would need to be satisfied that the proposal would have no adverse effects on the integrity of the SAC including through the undertaking of an Appropriate Assessment. Nevertheless, given my decision on the appeal overall, there would be no pathways to adverse effects on the SAC.

Conclusion

33. For the reasons set out above, having taken account of the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

E Worley INSPECTOR