

Name of Applicant	Proposal	Expiry Date	Plan Ref.
Mr Brian Higgins	Demolition of part of existing building and conversion of remainder to a single dwelling Balan Farm , Packhorse Lane, Hollywood, Worcestershire, B38 0DN	11.08.2015	15/0492

RECOMMENDATION: That planning permission be Granted

Councillor Geoff Denaro has requested that this application be considered by Planning Committee rather than being determined under delegated powers.

Consultations

Worcester Regulatory Services- Contaminated Land Consulted 14.07.2015

No Objection

Highways Department- Worcestershire County Council Consulted 13.07.2015

No objection subject to conditions regarding vehicle access construction, parking provision and cycle parking.

Drainage Engineers Internal Planning Consultation Consulted 13.07.2015

No objection

Wythall Parish Council Consulted 13.07.2015

Objection on Green Belt grounds. No special circumstances have been provided and we uphold the comments made by Bromsgrove District Council relating to previous application number 12/0886 when refusing it, in 2014.

Publicity:

2 letters sent on the 14th July 2015 (expired 4th August 2015)

1 site notice posted on the 30th July 2015 (expired 20th August 2015)

No neighbour responses received.

Councillor Denaro: I wish to draw to the attention of Members, the complex history surrounding the building.

Relevant Policies

NPPF National Planning Policy Framework

Bromsgrove District Local Plan 2004 (BDLP):

DS2 Green Belt Development Criteria
C27 The Re-use of existing Rural Buildings
DS13 Sustainable Development
SPG1 Residential Design Guide

Relevant Planning History

Circa 2003 - Building erected without planning permission

19th May 2005 - Enforcement Notice served upon the applicant (PI/2003/00554)

26th April 2006 - Appeal against Enforcement Notice dismissed by Inspector (APP/P1805/C/05/2002818). The Inspector agrees that the building should be demolished within 4 months.

24th July 2006 - Application is refused to demolish the western end of the building and adapt the remaining building for use as stables (B/2006/0774)

30th July 2007 - The Council's decision in relation to application B/2006/0774 is overturned by the Inspector (APP/P1805/A//07/2040200)

Early 2009 - The eastern end of the building is demolished (the wrong end)

February 2009 - An Enforcement Officer visits the site and then confirms in writing to both the Parish Council and applicant that although the wrong end of the building has been demolished it would not be expedient to pursue the matter further.

5th June 2014 - Planning permission refused to convert building into 2 dwellings (12/0886)

Assessment of Proposal

The site and its surroundings

The application site consists of a building that was built in the past 15 years on land outside of the defined residential curtilage Balan Farm. The site is located in the Green Belt outside of any defined settlements. The building is accessed via the main drive into Balan Farm off Packhorse Lane. The area is rural in nature within only a small number of residential properties in the vicinity.

The Proposed Development

This application seeks planning permission is sought to demolish the western end of the building and convert the remainder of the building to a single detached dwelling. The existing access of Packhorse Lane would be used to serve the dwelling.

Planning Considerations

The main issues to be considered in assessing the application are the following:

- o The legal status of the building;
- o Impact on the Green Belt;
- o Impact on character and street scene;
- o Impact on residential amenity; and
- o Highways considerations;

The Legal Status of the Building

Whilst application 12/0886 was under consideration legal opinions were submitted by the following:

- o Sarah Reid (Kings Chambers) dated 29th January 2013 (on behalf of the Council); and
- o Hugh Richards (Chambers No. 5) dated 14th October 2013 (on behalf of the applicant)

These tackled the following key issues:

- o Is the Enforcement Notice still extant?
- o Is the building lawful?

Both questions are tackled below:

Is the Enforcement Notice still extant?

Both legal opinions agree that the Enforcement Notice still applies to the western end of the building. This because Enforcement Notices do not time expire and only cease to have effect when a subsequent granting of planning permission overrides the notice. In this case, the granting of application B/2006/0774 via the appeal process, still proposed the demolition of the western end of the building.

The Legal Opinions disagree whether the enforcement notice applies on the other sections of the building. The disagreement centres on whether it is the 'granting' or 'implementation' of application B/2006/0774 that overrides the Enforcement Notice.

Of greatest relevance is Section 180 of the Town and Country Planning Act 1990, which states:

"Where after the service of an Enforcement Notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission".

Whilst some of case law debated within the legal opinions is contradictory it would appear that on balance it is the granting, rather than the implementation that overrides the Enforcement Notice. The Council's own Legal Officer also agrees with this stance.

In summary, the Enforcement Notice only applies to the western end of the building that fell outside the scope of permission B/2006/0774.

Is the Building Lawful?

As discussed above, the western section is unlawful and the Enforcement Notice still applies. In the case of the remainder of the building the lawfulness of the building is again not clear cut.

Permission B/2006/0774 could never be lawfully implemented in accordance with the approved plans once the wrong end of the building was demolished in 2009. Section 171 B (1) of the Town and Country Planning Act highlights that where building operations have taken place without permission, no enforcement action can be taken 4 years after the completion of the building. The building has been unaltered since 2009 and has been used for storage since this time. So provided that the building is considered to be substantially complete, then on balance the remainder of the building is considered to be lawful.

It is also important to highlight the previous correspondence between the Council and both the applicant and Parish Council. After the wrong end of the building was demolished the Council decided it would not be expedient to pursue the matter further as the building was no larger than what had been permitted under B/2006/0774. Whilst this does not technically prevent the Council from pursuing further enforcement action in the future it could be viewed to be unreasonable to do so. Importantly, 6 years have elapsed since the wrong end of the building was demolished and the Council have taken no further action.

The Green Belt

Policies DS2 of the Bromsgrove District Local Plan states that the construction of new buildings or the change of use of existing buildings in the Green Belt shall not be permitted unless a number of exceptions apply. The re-use of rural buildings in accordance with policy C27 is one of the exceptions.

Policy C27 of the BDLP essentially requires that the building to be re-used is of a permanent and substantial construction and capable of conversion without any major new building works, extensions or other alterations that would have a materially greater effect on the openness of the Green Belt. Policy C27 also requires that regard is paid to the form, bulk and general design of the conversion scheme so to ensure that it is in keeping with its surroundings.

Policy C27 is considered to be consistent with paragraph 90 of the NPPF insofar as it regards the re-use of an existing building in the Green Belt as not being inappropriate development providing that the building is of permanent and substantial construction and the conversion scheme preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.

As the building involves partial demolition and the construction of new walls to make the building watertight the proposal does not strictly comply with the guidance within paragraphs 89 and 90 of the NPPF or in policy DS2 of the local plan. However, it is important to consider whether there are any very special circumstances that exist.

The approval of the scheme would result in the removal of 86sqm of built form which is technically still covered by the enforcement notice. This is not something that the Council would have sought to achieve after informally agreeing in 2009 that no further action would be sought after the wrong end of the building was demolished. The loss of this section of the building greatly reduces the impact on the openness of the Green Belt. When determining the application 12/0886 the Council took the view that the central section of the building was unlawful but in the past year has taken no further action. It would be unreasonable to expect the building to remain 'as is' in perpetuity and therefore the approval of the scheme would not only reduce the impact on the Green Belt but bring to a conclusion the lengthy saga regarding this building. On balance, it is considered that this amounts to very special circumstances that clearly outweighs the harm to the Green Belt in accordance with Policy DS2 of the BDLP and the NPPF.

It is also important to consider the size of the proposed residential curtilage. Initial plans were submitted showing a curtilage in excess of 2,500sqm however amended plans have been submitted to show a greatly reduced curtilage that is more appropriate for a modest 2 bedroom bungalow. A condition has also been attached to remove permitted development rights to further ensure that the openness of the Green belt is retained.

Impact on Character and Street Scene

The building is set back from the street, sited discretely close to a grouping of trees. As the proposal seeks to reduce the size of the building its prominence would be reduced. The changes proposed also include the insertion of windows and the enclosure of the west and east elevations. These changes are considered acceptable within the context of this building that was never intended for agricultural or equestrian purposes. The proposal has minimal impact on the street scene and does not harm the wider character of area and is therefore in accordance with the advice of the National Planning Policy Framework, the provisions of Policy DS13 of the Bromsgrove District Local Plan and the guidance of Supplementary Planning Guidance Note 1 - Residential Design Guide.

Residential Amenity

The building is located a substantial distance from other residential properties and is single storey and has been substantially reduced in size. Subsequently no issues of residential amenity arise. The proposal is therefore in accordance with the guidance contained in Supplementary Planning Guidance Note 1 (Residential Design Guide).

Highway and Access Issues

Policy TR11 of the Bromsgrove District Local Plan requires development proposals to incorporate safe means of access and egress and provide sufficient off-street car parking in accordance with the Council's adopted standards.

The 2 bedroom bungalow is provided with sufficient space for the parking of two cars. This provision is in accordance with adopted parking standards set out in the Local Plan and the adopted standards of Worcestershire County Council.

Worcestershire County Council Highways have raised no objection to the proposed development, subject to conditions.

In view of the above, it is considered that the proposed development would be in accordance with the provisions of Policy TR11 of the Bromsgrove District Local Plan.

Conclusion

In view of the above, the proposal amounts to an inappropriate form of development however it is considered that there are very special circumstances that clearly outweigh the harm to the Green Belt. The proposal is also acceptable in terms residential amenity, street scene and highways considerations. It is considered that the proposed development would be in accordance with the advice of the National Planning Policy Framework, the provisions of Policies DS2 and DS13 of the Bromsgrove District Local Plan and the guidance of Supplementary Planning Guidance Note 1 - Residential Design Guide (Adopted January 2004).

RECOMMENDATION: That planning permission be Granted

Conditions:

- 1) The development hereby permitted shall be carried out in accordance with the Approved Plans/ Drawings listed in this notice:

Project 9767 Dwg. 05

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: Required to be imposed pursuant to Section 51 of the Planning and Compulsory Purchase Act 2004

- 3) All new external walls and roofs shall be finished in materials to match in colour, form and texture those on the existing building.

Reason: To protect the visual amenity of the area in accordance with policy DS13 of the Bromsgrove District Local Plan January 2004

- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no development included within Schedule 2, Part 1, Classes A to E shall be carried out without the prior approval of the local planning authority to an application in that behalf.

Reason: To maintain the openness of the Green Belt in accordance with Policy DS2 of the Bromsgrove District Local Plan January 2004.

- 5) Before the commencement on site of any works which are the subject of this permission, a scheme of landscaping and planting shall be submitted to, and approved by the Local Planning Authority in writing. The scheme shall include the following:-
- a) full details of all existing physical and landscape features on the site including the position, species and spread of all trees and major shrubs clearly distinguishing between those features to be retained and those to be removed;
 - b) full details of all proposed fencing, screen walls, hedges, floorscape, earth moulding, tree and shrub planting where appropriate.

The approved scheme shall be implemented within 12 months from the date when the building hereby permitted is first occupied. Any trees/shrubs/hedges removed, dying, being severely damaged or becoming seriously diseased within 5 years of the date of the original planting shall be replaced by plants of similar size and species to those originally planted.

Reason: In order to protect the trees which form an important part of the amenity of the site in accordance with policy C17 of the Bromsgrove District Local Plan January 2004.

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