



## Appeal Decision

Inquiry held on 9-11, 16-18 July 2024

Site visits made on 10, 18 July 2024

**by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 2<sup>nd</sup> August 2024**

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**Appeal Ref: APP/G4620/W/24/3341688**

**Land North of Wilderness Lane, Great Barr B43 7AJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Wain Estates (Land) Ltd against the decision of Sandwell Metropolitan Borough Council.
  - The application Ref is DC/23/68822.
  - The development proposed is up to 150 new dwellings, a countryside park and associated works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was made in outline with all matters except access reserved for future consideration. Parameters plans relating to the general layout and routes through the site (the framework plan) and building heights have however been provided, and the appellant is content for these plans to guide details submitted in clearance of the relevant reserved matters. A detailed draft management plan has also been provided in relation to the proposed countryside park. I have therefore taken these details into account within my assessment, whilst acknowledging scope which may exist for variation.
3. The effect of the development on the Peak House Farm Site of Importance for Nature Conservation (SINC) was a subject of one the Council's reasons for refusal. During cross examination the Council's witness however agreed that the reason for refusal was capable of resolution through improvements in biodiversity. To the extent that the matter remains relevant to my assessment I shall consider it further below.
4. Since the Inquiry was held the Government has published a list of proposed changes to the National Planning Policy Framework (the Framework) for consultation. Some of these proposals, which centre on further boosting the delivery of housing, were anticipated, and might eventually have a bearing on matters subject of dispute in this appeal. However, for the time being they remain in draft and may be subject of change. They therefore carry limited weight in my consideration of this appeal.
5. An application for costs was made by Sandwell Metropolitan Borough Council against Wain Estates (Land) Ltd. This application is the subject of a separate Decision.

## **Main Issues**

6. The main issues are:

- whether the development would be inappropriate in the Green Belt;
- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area; and
- whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

## **Reasons**

*Whether the development would be inappropriate*

7. The site is located within the West Midlands Green Belt, in relation to which Policy SAD EOS 2 of the Black Country Core Strategy 2012 (the BCCS) seeks to restrict inappropriate development as defined within PPG2. It thus seeks to defer to national policy in place when the BCCS was adopted. PPG2 was superseded the same year by the Framework. Though whilst its citation of national policy is outdated, Policy SAD EOS 2 remains capable of interpretation with reference to the most recent iteration of the Framework.
8. Paragraph 154 of the Framework states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. The proposed development would meet none of the exceptions that it also sets out.
9. The appellant has nonetheless suggested that the proposed countryside park would be not inappropriate if considered alone, drawing attention to the exception set out within paragraph 155(e) of the Framework. This relates to material changes in the use of land, including for recreation.
10. There is a somewhat tenuous relationship between the 2 main components of the scheme. They nonetheless overlap to the extent that the framework plan shows SuDs and a play space related to the proposed housing located within the countryside park. That being so, and given that the terms of the Section 106 agreement securing public access to the countryside park ties it to delivery of the housing, the 2 parts of the scheme are not severable. There is therefore no scope to consider the countryside park separately.
11. Even if there was, beyond the SuDs and play area, which are each more properly components of the housing scheme, little or no change would occur. Here the appellant has drawn a distinction between what is proposed and what are generally understood to constitute 'country parks'. Unlike the latter, no significant visitor infrastructure would be provided. The land within the countryside park would remain subject of agricultural management with the only significant differences being provision of limited access, chiefly via 'mown paths', and a few benches. The extent to which provision of the countryside park would involve development or require any change of use of land is therefore open to doubt.

12. It remains the case that regardless of the status of the proposed countryside park, it makes no difference to the inappropriateness of the proposed housing development.
13. For the reasons set out above I conclude that the appeal scheme would involve development that is inappropriate within the Green Belt.

### *Openness*

14. The site consists of a large piece of agricultural land subdivided into several fields. With the exception of a few small sheds, the land is open. Given the size of the site, its topography, and boundary treatment, it is not visible as a whole from any location on the ground. Its openness, and the absence of development upon it, is however publicly appreciable from various locations, including Birmingham Road and Wilderness Lane.
15. The scheme would provide up to 150 new dwellings and supporting infrastructure. This, together with associated paraphernalia including vehicles, would occupy a significant amount of space which is currently open. A correspondingly significant adverse effect on the spatial openness of the Green Belt would result. This loss of openness would occur regardless of whether or not it was visually appreciable from within the public realm.
16. The adverse effects would nonetheless be observed from Wilderness Lane, from which the site would be accessed, and from Birmingham Road, relative to which the development would have a broad frontage. Effects in relation to the latter would be further accentuated by the likely 3-storey scale of development in this location, as indicated by the building heights parameters plan.
17. Most of the other parts of the site identified for housing are visible from private properties, but are not currently capable of being publicly viewed from outside the site. Consequently, scope for the perception of change would be more limited. These parts of the site however lie within a larger block of currently inaccessible open land which would become accessible post-development. Within this context the presence of new housing and other paraphernalia would be visually apparent to anyone entering the site, as would the fact that it formed part and parcel of the same development as that fronting Wilderness Lane and Birmingham Road. The ability of the public to visually perceive the scheme's adverse spatial impacts on openness would therefore extend across the site, albeit the effects would be most acute in relation to those locations currently most open to public view. For this and the above reasons the scheme would have a significant adverse effect on the visual openness of the Green Belt.
18. Land within the countryside park would remain open, simply reflecting the fact that it would undergo little physical change. This would again not diminish or make any difference to the adverse effects that would arise within those parts of the site which would be developed for housing. Indeed, no matter how large a neutral effect the countryside park might have on the openness of the Green Belt, this would not cancel out the harm identified above. Consequently, the appellant's argument that only 15% of the 27 Ha site area would be developed does not alter my findings above.
19. I therefore conclude that the appeal scheme would have a significant adverse effect on the openness of the Green Belt in both spatial and visual terms.

### *Character and appearance*

20. As outlined above, the site comprises several agricultural fields. These fall immediately beyond the established developed edge of Great Barr. This edge is at present strongly defined towards the north and south of the site by Wilderness Lane and Birmingham Road. It is also somewhat less strongly, but nonetheless softly, defined along the east edge of the site by the back garden boundaries of dwellings fronting Peak House Road. In each case, notwithstanding some intervisibility, a distinct and direct change in character exists between the built-up area and the open countryside within the site.
21. Ground levels within the site fall generally towards the west, providing extensive views across the developed landscape of the Black Country. Within both this and the above context the site's role as part of a vestigial gap between surrounding settlements is apparent.
22. The fields within the site are of irregular size and shape and enclosed by a reasonably intact network of hedgerows. These are likely to date to the medieval/post-medieval period, and may have been incrementally formed as part of the process of woodland clearance. Agricultural landscapes of this type are distinctive in terms of both their character and appearance, and locally rare; no doubt more so in this case given that the site is located both within a metropolitan Borough, and within a wider conurbation, neither of which now contain much open agricultural land. The field system has therefore been locally identified as an area of high historic landscape value, and thus also as a non-designated heritage asset.
23. The hedges are overgrown, and at the time of my visit most of the fields contained long grass. Some areas had however been swamped by brambles and other vegetation, including the group of small sheds noted above. Other fields contained scattered bales of haylage which appeared to have been standing in place for some time. The resulting impression of neglect was particularly noticeable from Birmingham Road.
24. Public views into the site are elsewhere available from various locations, with the most extensive being from Wilderness Lane and from the footpath which skirts the southern edge of the site. These views are likely to vary on a seasonal basis. Their extent and availability would most likely increase generally if the overgrown hedges along the site's boundaries were to be subject of ordinary management. Either way, and as discussed above, the fields currently form an appreciable parcel of both attractive and distinctive open countryside within a broader setting otherwise dominated by development and highway infrastructure. For these reasons they make a strongly positive contribution to the character and appearance of the area.
25. The scheme would see housing developed within all the fields abutting Birmingham Road and plots fronting Peak House Road, together with part of Wilderness Lane. This development would encroach into the adjacent open countryside across a long section of the existing settlement edge. This would in turn result in diminution of the established gap and formation of a new, and far less distinct edge. As envisaged by the framework plan, housing would effectively be inserted into the field system. This, together with the overspill of SuDs and play space into adjacent fields, would subject the remaining open area to a much stronger degree of suburban influence than at present, undermining its character, identity and value as open countryside.

26. The appellant again places emphasis on the small proportion of the site that would be developed, and the fact that the majority of the field system would remain intact. Again however, this would simply reflect the limited change required in relation to the proposed countryside park. Whether or not hedges were largely retained, in those locations developed for housing the field system would cease to meaningfully exist. Its overall integrity, and thus both its significance and the positive role it plays in relation to the character and appearance of the area, would be seriously undermined. These adverse effects would not be altered by changes in agricultural management, or by the replanting of a few hedges removed in the past.
27. During the Inquiry the Council accepted the appellant's assertion that the countryside park might one day achieve the status of a 'valued landscape'. This does not however exist as a designation, and though the term appears within paragraph 180 of the Framework, it lacks definition. How and why the countryside park would obtain such a status within the context of future plan and decision making remains unclear. Insofar as the setting of the fields within it would become more suburbanised than at present, their character would in any case be harmed rather than enhanced. Ultimately, the identified potential is so vague, speculative, and counterintuitive, that it cannot be credibly held to attract weight in favour of the scheme.
28. For the reasons set out above I conclude that the development would have an adverse effect on the character and appearance of the area, including the distinctive role played within it by a non-designated heritage asset. As harm to a non-designated heritage asset requires a balanced judgement to be made, I shall return to the matter below. To the extent that it is otherwise broadly relevant, the development would conflict with Policy ENV2 of the BCCS which seeks to protect and promote the historic character and local distinctiveness of the Black Country, including those aspects recognised as being of landscape quality.

#### *Other considerations*

##### *(a) Purposes of including land within the Green Belt*

29. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. As I have found that the proposed housing development would sprawl beyond the established edge of the settlement causing significant loss of openness, it would directly conflict with this aim. I have additionally found that this sprawl would involve encroachment into the adjacent open countryside, resulting in a reduction of the existing gap between adjacent settlements. Insofar as the above would strongly offend 3 of the 5 purposes of including land within the Green Belt, I attach little weight to appellant's opinion that the housing development would have a limited effect.
30. The matter is otherwise broadly addressed within a review of the Green Belt conducted jointly in 2019. This review forms part of the evidence base of the Council's emerging plan, and its findings stand to be properly considered within that context. Whilst I appreciate that Inspectors in some of the selected appeals drawn to my attention might have taken a different approach, I see no reason to question its findings. I am satisfied that the site as whole makes an important contribution to the openness and function of the broader Green Belt, and that this would be greatly undermined by the proposed housing development.

*(b) Housing supply*

31. The Council's strategic and housing policies are dated, and its demonstrable supply of deliverable housing sites currently stands at 1.4 years. It thus falls 2.6 years short of the 4-year requirement applicable in this case. This is a significant shortfall and reflects persistent underdelivery over an extended period. It also has yet to be successfully addressed by actions identified by the Council, and is expected to continue. It is therefore a pressing matter which the Council will need to address within its emerging Plan, in relation to which there remains a need to identify capacity for 16647-18606 dwellings.
32. It is apparent that the Council faces significant challenges in delivering and planning for growth. Though building higher and denser has been advanced as a possible way forward, there is currently no local policy in place to secure this. The appellant instead asserts that the only solution both is and will be to develop Green Belt land, and that no alternative sites currently exist outside the Green Belt. Whether or not some release of Green Belt land may be justified to accommodate future growth remains a matter for the emerging Plan. As outlined above, the evidence before me otherwise indicates that there is a current shortage of identified sites outside the Green Belt, rather than that no sites exist at all. The appellant further acknowledges that no investigation of alternative sites has been undertaken. That is not to say that an investigation was required, but rather that the appellant's assertion that no alternative sites currently exist outside the Green Belt appears baseless. Though the Council's witness nonetheless accepted the appellant's assertion during cross examination, it therefore attracts very little weight.
33. Given that the application was in outline the scheme's deliverability would remain to be demonstrated at a later stage. Here the Framework notes that small and medium sized sites are often built-out relatively quickly, and in support of this the appellant has suggested a reduced timeframe for clearance of the reserved matters. The success of this strategy would remain to be demonstrated once a developer was found.
34. Notwithstanding uncertainty, on the assumption of deliverability, the development would provide a modest boost of up to 150 dwellings. As it would also account for less than 1% of the current shortfall, its contribution to the Council's supply would be miniscule. The very small scale of the contribution would nonetheless partly reflect the very large size of the shortfall. That and the above being so I attach moderate weight to the scheme's general provision of housing.

*(c) Affordable housing*

35. Based on the most recent evidence, 6517 affordable dwellings are required within the Borough during the period 2020-2039, or 343 dwellings per annum. The level of need has increased over time and is reflected in a high number of entries on the Council's register. Delivery has again generally been below target, with the stock of affordable housing also suffering continued erosion as a result of right to buy. Consequently, the net delivery of affordable housing within the Borough during the 2 most recent monitoring periods stood at an average of 14% of need per annum. There is therefore a high level of ongoing unmet need, albeit this does not directly correlate with the number of new units which have been built.



36. Policy HOU3 of the BCCS sets out the requirement for developments of over 15 units to provide 25% affordable housing subject to viability. The requirement seeks to address need, and meeting such need is clearly socially beneficial. It is however a policy expectation applicable to all developments of the requisite size. In this regard the scheme's proposed provision of 40% affordable housing would exceed policy requirements by 15%, delivering a small number of additional affordable units and thus an enhanced level of benefit.
37. I am mindful of the fact that exceptions set out within paragraph 154(f) and (g) of the Framework provide scope for the provision of affordable housing within the Green Belt. As established above, the appeal scheme would meet neither. The appellant argues that these exceptions are incapable of operation given the lack of policy support within the development plan and lack of previously developed land (PDL), and that they are otherwise incapable of enabling housing provision on the scale necessary to address local need. Policies relating to affordable housing are however contained within the development plan, surrounding parts of the Green Belt evidently do contain PDL, and the extent to which a compliant scheme would address local need would depend on the circumstances of the case. Again, it cannot be held that the Borough's need for affordable housing necessitates inappropriate development of the type proposed.
38. For the above reasons I find that whilst the provision of affordable housing as a component of the overall scheme would be beneficial, as a consideration to be weighed in favour of the appeal scheme, it attracts only limited weight.

(d) *Biodiversity enhancement*

39. A 20% gain in biodiversity has been offered, which would chiefly be delivered by changes in the agricultural management of land within the proposed countryside park.
40. The application pre-dates the requirement for a mandatory net gain in biodiversity. It would however involve the development of land falling within the Peak House Farm SINC, which covers the whole of the site. This was designated in 2018 on the basis of its hedgerows and grassland, the quality of which has declined since.
41. Land within the site has never been the subject of 'conservation management'. Even so, the way in which the site was previously managed must have been sufficiently sensitive to enable its designation as a SINC. Notwithstanding the fact that the appellant has been the site's registered owner since 2015, I have been provided with no clear explanation of how and why changes in management might have occurred over this time, and how and why these might have contributed to decline. Insofar as the hedgerows and parts of the site have however been allowed to become overgrown, at least some of the decline in quality appears to have been due to simple neglect. In this regard the appellant's primary interest in the site appears to be to promote its development rather than to actively farm the land.
42. If the proposed changes in management were successfully implemented, the quality of those parts of the SINC not built on would improve. This would take time, and at least part of this improvement would account for deterioration since 2018. At least part could also be delivered by ordinary management of the type presently neglected. The overall level of improvement itself would be

less than could be achieved in relation to the site as a whole were it to remain free from housing.

43. The appellant has emphasised that there is currently no incentive to take any positive action in relation to the site's management. However, more accurately in this case, the potential of developing part of the site appears to exist as an ongoing incentive to do nothing.
44. The appellant has indicated that inaction and decline in quality would continue were the appeal to be dismissed. Whilst the matter is open to speculation, the possibility of intentional neglect cannot be considered to lend any positive weight to the appellant's case.
45. For the above reasons I find that whilst improvement in the quality of hedges and grassland would provide clear ecological benefits across a reasonably large area, these benefits attract only limited weight as a consideration in favour of the scheme.

(e) *Countryside park*

46. The provision of public access to the proposed countryside park would allow new opportunities for recreation. Based on the framework plan and draft management plan this would be generally limited to walking routes, with broader access to space discouraged in order to support the objective of biodiversity enhancement. In relation to the latter, grazing by livestock has not been ruled out, raising some uncertainty over likely compatibility with public access.
47. There is no current shortage of accessible open space within the surrounding area, and the space provided would be substantially more than required to directly service any demand generated by the proposed housing development. There is also no evidence that provision of the countryside park would address any future demand for space generated by population growth. As outlined above, the proposal is not for a country park, or intended to draw in or cater for visitors from beyond the immediate area. The provision of public access to the countryside park would therefore be of very limited benefit to the broader population.
48. The countryside park is characterised within the appellant's submissions as providing Green Belt 'compensation'. It was also initially presented in this way at the Inquiry. The appellant however subsequently drew back from this position acknowledging that paragraph 147 of the Framework, which addresses compensatory improvements to land in the Green Belt, relates to review within the context of policy/plan making. This is again a matter for the emerging Plan.
49. The appellant nonetheless sought to make additional reference to paragraph 150 of the Framework, which encourages planning positively to enhance the beneficial use of Green Belt land. Though again not directly relevant to my assessment of the appeal, to the extent that this paragraph provides an indication that recreational use might be beneficial, I have addressed the matter above.
50. In summary I attach very limited weight to the scheme's proposed provision of a countryside park.



(f) *Beacon Way*

51. Scope to provide an 'alternative' route for part of the Beacon Way long distance footpath through the countryside park has been identified. The footpath currently runs just outside the northwest edge of the site, and at the time of my visits was partly obstructed by brambles and a large sign. These obstructions cannot be said to exist due to a lack of use. Indeed, simply walking along a footpath does not prevent its inundation by brambles, which are both quick growing and viciously thorny. Inundation by brambles does however prevent normal use. As does signage where this blocks a waymarked point of access. Each appear to be matters that could be simply rectified in the absence of development.
52. If I was instead to accept the appellant's assertion that the footpath is unused even in the absence of its obstruction, it is unclear why provision of an alternative route through the countryside park would provide any benefit. Though it is further suggested that an alternative route would be safer, I have been provided with no convincing reason why that should be so. Provision of an alternative route for the Beacon Way does not therefore lend any weight in favour of the scheme.

(g) *Connectivity*

53. The framework plan shows a surfaced cycle/pedestrian route along the edge of the countryside park adjacent to Wilderness Lane. This route ultimately connects with Birmingham Road. Though the west side of Wilderness Lane currently lacks a pavement, this would not be directly addressed by the proposed route, which would be located on the opposite side of the boundary hedge. Nor would it serve any obvious need, given that Wilderness Lane currently appears capable of being safely crossed, including by large numbers of school children. Though the route might be attractive to future occupants of the development, and could enable cyclists to bypass part of Wilderness Lane and Peakhouse Road, the broader benefits would be very limited. As such they attract very limited weight.

(h) *Economic benefits*

54. There would be nothing unique, or locally remarkable about the scheme's economic effects. Indeed, they would be somewhat generic in nature, and much the same as would be inevitably generated by any housing development of a similar size. Provision of the countryside park would itself offer no obvious source of economic advantage. The provision of economic benefits is therefore a consideration to which I attach limited weight in favour of the scheme.

(i) *Access to services and facilities*

55. Occupants of the proposed housing development would have good access to services and facilities. As both the site and Borough are located within the heart of a conurbation, this is however neither surprising nor remarkable. It is otherwise a general objective of growth management that development should be located so as to limit the need for travel. The above being so I attach very limited weight to the accessibility of the location as a consideration in favour of the scheme.

### **Planning Balance**

56. The scheme would constitute inappropriate development within the Green Belt and would cause significant harm to its openness. I attach substantial weight to the overall harm that would be caused.
57. In addition, the development would cause harm to the character and appearance of the area, including the distinctive role played within it by a non-designated heritage asset. I attach significant weight to the overall harm that would be caused.
58. The combined weight of harm by reason of inappropriateness, and any other harm is not clearly outweighed by other considerations advanced in favour of the development. Consequently, these other considerations do not demonstrate the existence of the very special circumstances necessary to justify approval. The scheme would therefore conflict with Policy SAD EOS 2 of the BCCS, and , with further reference to paragraph 11(d) of the Framework, my findings provide a clear reason for refusing the development proposed.

### **Conclusion**

59. The appeal scheme would conflict with the development plan taken as a whole, and there are no considerations which alter or outweigh this finding. I therefore conclude that the appeal should be dismissed.

*Benjamin Webb*

INSPECTOR

## **APPEARANCES**

### **For the Appellant**

Killian Garvey Counsel for the appellant, Kings Chambers

*He called:*

Tom Armfield (Planning) Turley

Kurt Goodman (Ecology) FPCR

Gary Holliday (Green Belt, Character and Appearance) FPCR

Jeff Richards (Housing delivery) Turley

Jamie Roberts (Affordable Housing) Tetlow King

### **For the Local Planning Authority**

Simon Smith Counsel for the LPA, Sandwell MBC

*He called:*

David Austin (Ecology) Sandwell MBC

Michelle Bolger (Green Belt, Character and Appearance) Michelle Bolger Expert Landscape Consultancy

Bart Shirm (Housing delivery) Sandwell MBC

William Anderson-Stevens (Planning) Sandwell MBC

### **Interested Parties**

Wendy Brown Local Resident

Christine Cliff Local Resident

Jim Collingwood Local Resident

Sarah Coombes Member of Parliament for West Bromwich

Connor Horton Ward Councillor

Jenny Hulme o/b/o Julia Howship and Jagdave Chauhan Local Resident(s)

Heidi Salter o/b/o Local Residents

Mark Smith Local Resident

Trevor Stephenson-Airey Local resident

Dalbinder Tung Local Resident

Graham Quinn Local Resident

Bob Winkle Chairman of Beacon Action Group

## **INQUIRY DOCUMENTS**

- ID1. Chiswell Green Appeal Decision.
- ID2. LPA Bundle of appeal decisions.
- ID3. Appellant opening.
- ID4. Appellant list of appearances.
- ID5. Council Opening.
- ID6. Bundle of objections from interested parties.
- ID7. Errata to the Affordable housing proof of Mr Jamie Roberts.
- ID8. Amended Table 3 from the Housing Statement of Common Ground.
- ID9. Michelle Bolger Figure 34 development area measurements.
- ID10. Finalised conditions list.
- ID11. Appellant response to costs application.
- ID12. Mills and Reeve note on the meaning of in perpetuity.
- ID13. Submission by Ms Heidi Salter.
- ID14. Council closing submissions.
- ID15. Appellant closing submissions.
- ID16. Appellant response to the Council's closing submissions.
- ID17. Council response to the costs application.
- ID18. Submission by Mr Winkle.