

**23/00700/COU
NON MAJOR**

Miss J Cowles

SWINDON

Councillor R Lees

The Old Chapel Chapel Lane Smestow DUDLEY DY3 4PL

Change of use of land to extend residential garden

Pre-commencement conditions required:	Pre-commencement conditions Agreed	Agreed Extension of Time until
n/a	n/a	20 October 2023

SITE DESCRIPTION AND APPLICATION DETAILS

1.1 Site Description

1.1.1 The application relates to a residential property off Chapel Lane, a private road in Smestow. There is a gravel drive/parking area to the side of the dwelling, which has recently been granted a certificate of lawfulness (23/00218/LUE); and there is a small amenity area at the rear and side of the dwelling.

1.2 The Proposal

1.2.1 The application proposes to change the use of agricultural land to the west of the house adjacent to the existing drive/parking area, to extend the residential garden. The area of land measures around 240sqm. It is proposed to enclose the garden with a post and rail fence and a native hedgerow.

1.2.2 The recently refused application (23/00485/FUL) was for a much larger site area and included land to the north and west. It occupied an area of around 1450sqm (0.35acres).

1.3 Agents Submission

1.3.1 The application is accompanied by a planning statement which details the very special circumstances.

Date of site visit - 30 June 2023

SITE HISTORY

Planning Applications

93/00927 Change Of Use And Alterations To Form A Dwelling **Refuse** 3rd December 1993

85/00839 Change Of Use And Extensions To Chapel To Form A House And Garage **Refuse** 17th December 1985

77/00377 Conversion Of Existing Chapel To Dwelling **Approve Subject to Conditions** 17th August 1977

91/01208 Change Of Use And Extension To Form A Dwelling **Approve Subject to Conditions** 10th March 1992

23/00218/LUE Certificate of Lawfulness for use of land for parking and garden area in connection with the residential property, The Old Chapel. **Approve** 2nd May 2023

23/00485/FUL Change of use of land to extend residential garden **Refuse** 1st August 2023

POLICY

Constraints

Green Belt
Great Crested Newt Green Impact Zone
D Class Road

Policies

National Planning Policy Framework
National Planning Practice Guidance

Core Strategy

Core Policy 1: The Spatial Strategy

Policy GB1: Development in the Green Belt

Policy EQ4: Protecting and Enhancing the Character and Appearance of the Landscape

Policy EQ9: Protecting Residential Amenity

Policy EQ11: Wider Design Considerations

Policy EV12: Parking Provision

Supplementary Planning Documents

Green Belt and Open Countryside SPD

CONSULTATION RESPONSES

All consultation periods have expired unless noted otherwise.

Site Notice Expires	Press Notice Expires
29 September 2023	n/a
Any comments received will be added to the committee late list and addressed	

Ms Jenny Cree

15th September 2023

Recommend refusal on the grounds that the greenbelt land should not be converted into garden land as it would result in a loss of Greenbelt land.

Councillor Roger Lees J.P - Himley And Swindon Ward

No Response Received

Contributors

No Response Received

APPRAISAL

The application is to be heard at Planning Committee as the proposal is inappropriate development in the Green Belt contrary to policy GB1 of the Core Strategy.

- 1. Policy & principle of development**
- 2. Layout, design & appearance**
- 3. Access, parking & highway safety**
- 4. Residential Amenity**

5. Ecology & biodiversity

6. Arboriculture

7. Human Rights

1. Policy & principle of development

Green Belt and Impact on Openness

1.1 The site is within the Green Belt, where there is a presumption against inappropriate development. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness derives from an absence of built form. Safeguarding the countryside from encroachment is one of the purposes of including land within the Green Belt.

1.2 The change of use from agricultural to garden land is not a use which is considered to be acceptable within the Green Belt as it leads to encroachment and creates additional domestic paraphernalia. Whilst lawn or planting associated with the proposed garden would have no discernible effect on the openness of the Green Belt, domestic paraphernalia such as play equipment or garden sheds would reduce the openness of the Green Belt.

1.3 The conversion of The Chapel into a residential dwelling was approved (91/01208) on the basis that there would be no adverse harm on the openness or visual amenity of the Green Belt and as such the residential curtilage was tightly defined. Further, whilst the proposal represents a much smaller area than previously proposed and refused (23/00485/FUL) it would still result in encroachment into the Green Belt, and it would introduce domestic paraphernalia, causing harm to the openness of the Green Belt. At the time of the site visit there was a trampoline and football equipment outside of the defined residential area and these items would likely increase with formal sitting areas, washing lines etc if formal permission is granted.

1.4 For the reasons mentioned above the proposed development represents inappropriate development in the Green Belt harmful by definition and contrary to GB1 of the Core Strategy and should not be approved except in very special circumstances, as noted in paragraph 147 of the National Planning Policy Framework.

Very Special Circumstances

1.5 Paragraph 148 of the NPPF [2018] states that Local Planning Authorities should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

1.6 The planning statement in support of the application provides that:

- The proposal would create a commensurately sized garden area for the dwelling with other neighbouring properties in the locality, with notably 'Pudding Cottage' to the immediate west, and 'The Homestead' to the west having much larger garden areas. The existing garden area for The Old Chapel residential property is highly constrained and out of character with the surrounding plot sizes;
- The proposals would not result in the loss of productive agricultural land, as the site has not been used for any agricultural purposes since at least 2003 based on aerial photography. Furthermore, it is not reasonably considered that given the restricted size of the land and as it has no separate vehicular access, it could be utilised for any meaningful agricultural purposes. In any case, the proposals retain the majority of the field in an agricultural use;
- The proposals would allow the current, and indeed future occupiers of the property, a suitable amenity space to support reasonable health and wellbeing.

1.7 It is acknowledged that the The Old Chapel has a restrictive garden area, and whilst a small extension to the garden may be acceptable to allow a reasonably sized usable area for health and wellbeing, this needs to be weighed against the need to protect the openness and visual amenity of the Green Belt. In the previous application The Council had suggested a smaller area of land which runs parallel from the parking area to the rear boundary of No.37 (extending the existing lawful garden area). This application proposes land to the west of the parking area, on a similar floor area. Space has been left for a potential access to the agricultural land from Chapel Lane if the need arises.

1.8 Paragraph 130 (f) of the NPPF provides that planning policies and decisions should ensure that developments “*create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users*”.

1.9 The Council's space about dwellings standards, appendix 6 of Local Plan (1.5, d) provides that the provision of adequate space is important, and the following should be provided “*a reasonable area of private amenity space to allow such uses as drying washing, gardening and children's play space, together with space for garden sheds, greenhouses and an extension to the dwelling*”.

1.10 The proposed extension would allow the dwelling to have a higher standard of amenity space where children can play, and the amended plan shows how the parcel of land will be separated from the surrounding agricultural land. The land being adjacent to the road, would follow the form and layout of the surrounding dwellings, and would therefore have a limited impact on the openness and visual amenity of the Green Belt, if permitted development rights for outbuildings, fencing and hardsurfacing are removed. If any ancillary buildings are required (sheds etc) these can be placed within the existing curtilage of the property (side or rear of dwelling) under existing permitted development rights, where less harm will be caused on the character and appearance of the area.

1.11 Careful consideration must be given to the benefits of outdoor residential amenity for existing and future occupiers alongside the purpose of the Green Belt. On balance it is considered that very special circumstances exist which clearly outweigh the policy objection.

2. Access, Parking & Highway Safety

2.1 There are no highway or access issues.

3. Residential Amenity

3.1 In accordance with Local Plan Policy EQ9, all development proposals should take into account the amenity of any nearby residents, particularly with regard to privacy, security, noise and disturbance, pollution, odours and daylight.

3.2 The use of the land as residential garden would cause no adverse harm on neighbouring amenity. There is no conflict with policy EQ9.

4. Ecology & Biodiversity

4.1 The Wildlife and Countryside Act (as amended) 1981 covers the protection of a wide range of protected species and habitats and provides the legislative framework for the designation of Sites of Special Scientific Interest (SSSIs). To comply with the guidance contained within Paragraphs 9, 108 and 118 of the NPPF and the Council's biodiversity duty as defined under section 40 of the NERC Act 2006, new development must demonstrate that it will not result in the loss of any biodiversity value of the site. Strategic Access Management and Monitoring Measures (SAMMMs) document.

4.2 The application is not likely to impact the biodiversity of the site or affect any protected species. The application site is however in a Green Impact Zone for GCN and an informative is proportionate.

5. Arboriculture

5.1 Paragraph 175 of the NPPF advises that permission should be refused for development resulting in the loss of aged or veteran trees, unless the benefits of the development outweigh the harm. Strategic Objective 3 and 4 seek to protect, conserve and enhance the District's natural environment, whilst Policy EQ4 states that "The intrinsic rural character and local distinctiveness of the South Staffordshire landscape should be maintained and where possible enhanced. Trees, veteran trees, woodland, ancient woodland and hedgerows should be protected from damage and retained, unless it can be demonstrated that removal is necessary and appropriate mitigation can be achieved".

5.2 There are no arboricultural considerations.

6. Human Rights

6.1 The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report in having regard to the representations received and, on balance, is justified and proportionate in relation to the provisions of the policies of the development plan and national planning policy.

7. CONCLUSIONS

7.1 The proposal is considered to be inappropriate development in the Green Belt, however very special circumstances exist which includes the need to provide existing and future occupants with usable outdoor amenity space comprising of a small area and this clearly outweighs the potential harm. The proposal will not impact on the amenity of neighbouring residential properties and there are no highway or ecological implications. Approval is therefore recommended subject to appropriate conditions.

8. RECOMMENDATION – APPROVE SUBJECT TO CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. The development authorised by this permission shall be carried out in complete accordance with the approved plans and specification, as listed on this decision notice, except insofar as may be otherwise required by other conditions to which this permission is subject.
3. The proposed hedgerow shall be implemented concurrently with the development and completed within 12 months of the completion of the development. The Local Planning Authority shall be notified when the scheme has been completed. The planting shall be retained and maintained for a minimum period of 10 years by the property owner from the notified completion date of the scheme. Any plant failures that occur during the first 5 years of the notified completion date of the scheme shall be replaced with the same species within the next available planting season (after failure).

4. Before the development is brought into use a post and rail fence shall be erected in the position shown on the approved plan and shall thereafter be retained in the approved position throughout the life of the development.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any other subsequent equivalent order, no development within the following classes of development shall be carried out to the dwelling hereby approved, without the prior approval of the Local Planning Authority:

Schedule 2, Part 1, Class E— buildings etc incidental to the enjoyment of a dwellinghouse
 Schedule 2, Part 1, Class F— hard surfaces incidental to the enjoyment of a dwellinghouse
 Schedule 2, Part 2, Class A— gates, fences, walls etc.

Reasons

1. The reason for the imposition of these time limits is to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
2. In order to define the permission and to avoid doubt.
3. To safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy.
4. To safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy. To prevent further encroachment into the Green Belt, in accordance with policy GB1 and Chapter 13 of the NPPF.
5. To safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy. To preserve the openness and visual amenity of the Green Belt, in accordance with policy GB1 and Chapter 13 of the NPPF.

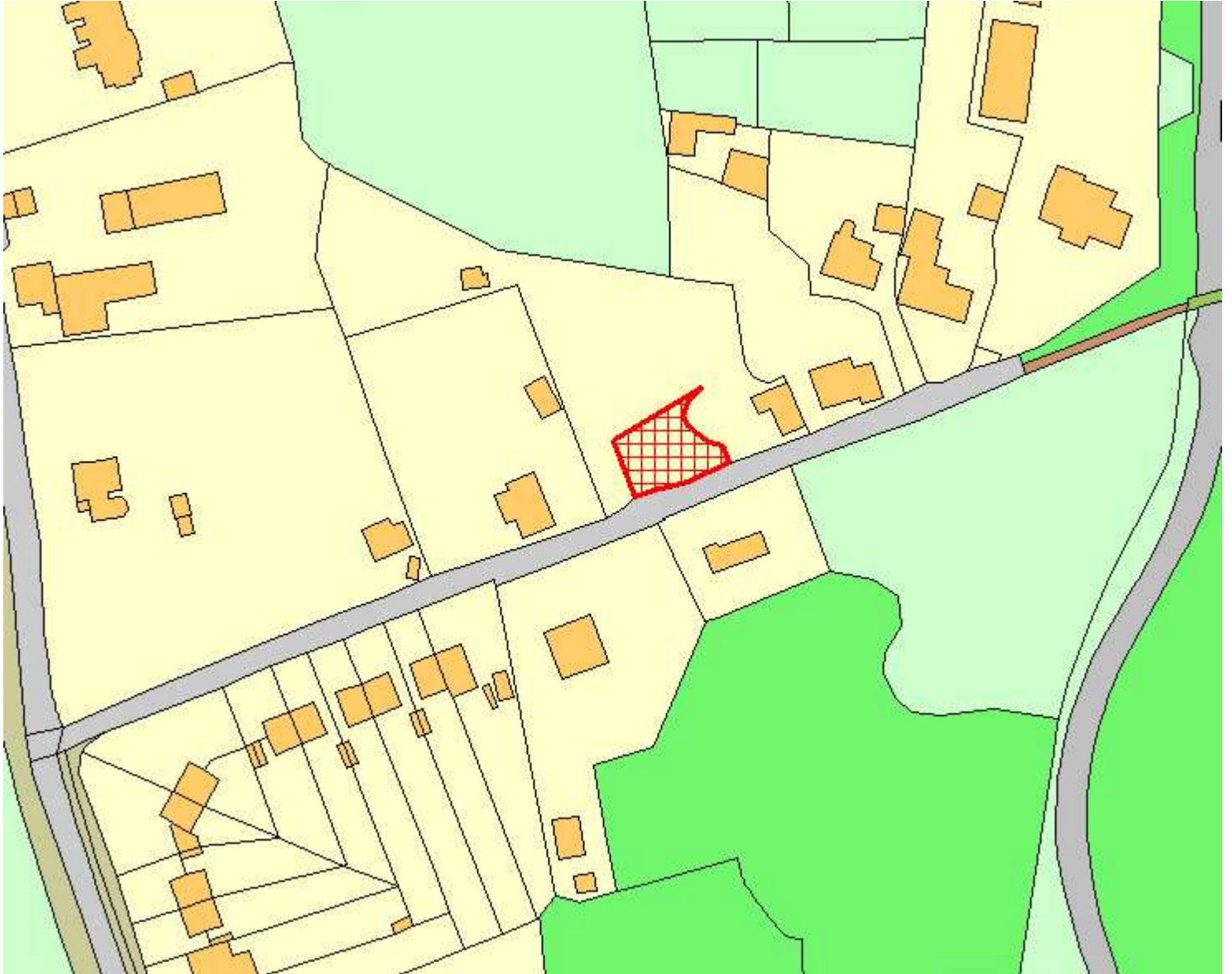
Informative

Please note that the application site is within a Green Impact Risk Zone for Great Crested Newts. Whilst the proposal is considered to be low risk, there is the possibility that those species may be encountered once work has commenced. The gaining of planning approval does not permit a developer to act in a manner which would otherwise result in a criminal offence to be caused. Where such species are encountered it is recommended the developer cease work and seek further advice (either from Natural England or NatureSpace) as to how to proceed.

Proactive Statement - In dealing with the application, the Local Planning Authority has approached decision making in a positive and creative way, seeking to approve sustainable development where possible, in accordance with paragraph 38 of the National Planning Policy Framework, 2021.

Plans on which this Assessment is based

Plan Type	Reference	Version	Received
Location Plan			12 September 2023



The Old Chapel Chapel Lane Smestow DUDLEY DY3 4PL