The Planning Inspectorate

Appeal Decision

Site visit made on 27 February 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th March 2017

Appeal Ref: APP/G2245/W/16/3163445
Froghole Farm, Chevening Road, Chipstead TN13 2SA

- 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 Mr Matthew Stevens of Country House Developments against the decision of Sevenoaks District Council.
- The application Ref SE/16/02461/FUL, dated 5 August 2016, was refused by notice dated 4 October 2016.
- The development proposed is the demolition of existing commercial buildings, construction of two new detached homes and implementation of landscape and ecology enhancements.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A number of additional and amended drawings have been submitted with the appeal. However, the nature of the development is not materially changed from that shown in the drawings upon which the Council based its decision and I am satisfied that no party would be prejudiced by my consideration of them.

Main Issues

3. The main issues are:

   i. Whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;

   ii. The effect on the openness of the Green Belt and the purposes of including land within it;

   iii. The effect on the character and appearance of the area, including the Kent Downs Area of Outstanding Natural Beauty (AONB);

   iv. The effect on the living conditions of neighbouring occupiers, with particular regard to outlook and privacy;

   v. The effect on highway safety on Chevening Road; and

   vi. If the development would be inappropriate, whether the 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 proposal would be inappropriate development

4. The site lies within the Metropolitan Green Belt. Paragraph 89 of the Framework specifies that, other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. The first three exceptions listed relate to forms of development not relevant to the appeal proposal. The fourth exception relates to 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 site currently consists of a dilapidated former cowshed towards the front of the site, referred to as Barn B, and an 'Atcost' type barn set well back from the road, referred to as Barn A. Barn B is very rundown, somewhat overgrown, and has no roof. Barn A is open on three sides, has a roof, and is in a useable condition. The remainder of the site is a rather unkempt associated 'yard' area. There is no existing residential use on the site and it is clear that the proposed dwellings would not be of the same use as the buildings to be replaced, whether that use is commercial or agricultural, and that the fourth exception therefore does not apply.

6. While the Council has not referred to any development plan policies in its first reason for refusal, I consider that the proposal would conflict with Policy GB9 of the adopted Sevenoaks District Council Allocations and Development Management Plan 2015 (the ADMP), which the Council has provided with the appeal. This policy supports the replacement of non-residential buildings in the Green Belt, subject to certain criteria including that the replacement building would be in the same use as the building to be demolished.

7. Chipstead is identified in Policy LO 1 of the adopted Sevenoaks District Council Core Strategy 2011 (the CS) as being included in the Sevenoaks urban area, which is the principle focus for development in the district. However, the site is outside the built confines of the settlement, where Policy LO 1 advises that priority will be given to protecting rural character, including by ensuring that development is compatible with policies for protecting the Green Belt. The fifth listed exception of Paragraph 89 relates to the limited infilling of villages and therefore also does not apply in this location.

8. The sixth exception is for the limited infilling or the partial or complete redevelopment of previously developed sites, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. The Framework's definition of previously developed land (PDL) expressly excludes land that is or has been occupied by agricultural buildings, among other things.

9. During my site visit, I saw some storage taking place on the site including building supplies, rubble and garden waste. I note that the site has benefitted from a number of temporary permissions for storage of building materials, the most recent of which appears to have expired over 20 years ago. The appellant considers that the site is, and has been, in use for storage in connection with building and landscaping operations and that the site therefore constitutes PDL. The appellant has sought to establish the storage use by way

of an application for a certificate of lawful use[1] but the Council advises that this has recently been refused, primarily on the basis of insufficient evidence. Therefore, for the purposes of this appeal, I consider that there is no substantive evidence before me upon which to conclude otherwise than that the site is currently land that is occupied by agricultural buildings and that it has not been demonstrated that it meets the definition of PDL. The appellant has recently submitted draft statutory declarations, and I return to this below.

10. The site lies adjacent to residential development on one side but next to a largely open field with a low-key timber stable building on the other. While a further ribbon of houses continues along Chevening Road on the other side of the field, I do not consider that the proposal represents infilling, given that a significant undeveloped gap, provided by the field, would remain between the site and the next house. Accordingly, the proposal would not represent limited infilling or the partial or complete redevelopment of a previously developed site and in these circumstances the sixth exception of Paragraph 89 also does not apply.

11. For these reasons, I conclude that it has not been demonstrated that any of the listed exceptions to Paragraph 89 apply. Consequently, the proposal would be inappropriate development in the Green Belt, which Paragraph 87 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I attach substantial weight to such harm, in accordance with Paragraph 88 of the Framework.

Openness and Green Belt purposes

12. A fundamental aim of Green Belt policy, as set out in Paragraph 79 of the Framework, is to keep land permanently open. I note that the combined footprint and volume of the proposed houses would be marginally reduced compared to the combined footprint and volume of Barns A and B, and that the houses wold be set a little further back from the road than Barn B. However, Barn B is a single storey structure, positioned end-on to the road, leaving a significant proportion of open frontage to the site, albeit there is a small electricity sub-station by the road, just outside the site. By contrast, the two houses would occupy much of the width of the site towards the front, and they would be significantly taller than both barns.

13. I am advised that Froghole Farm pre-dates the introduction of Green Belt policy in the area and the evidence indicates that the site has not been fully open, in Green Belt terms, for over 60 years. I accept this, but the site is nonetheless currently subject to Green Belt policy and it does have an existing element of openness. I therefore must consider the relative openness of the existing situation with that proposed.

14. In spatial terms, the marginal reduction in built form in terms of footprint and volume would be off-set by the effect of the increased ridge height of the houses. This would make the effect on spatial openness essentially neutral. However, in visual terms the position of both houses close to the site frontage would be perceived as a significant reduction in openness because the houses would occupy much of the width of the front part of the site. I accept that visual openness would increase to the rear of the site due to the removal of Barn A. However, the effect of this would be limited in public views, and such

[1] SE/16/03181/LDCEX

views as might exist between the new houses would be principally of residential back gardens, with likely associated domestic paraphernalia, which would also have the effect of reducing openness.

15. The appellant is of the view that the frontage of the proposal would have 100% openness, essentially because the houses would be set behind a notional front building line taken from Nos 101 to 109 Chevening Road. However, I consider that in terms of overall openness, this would have limited effect for the reasons set out in relation to the extent of built form across the width of the site, and because the area in front of the houses would be used for associated parking, turning and landscaping and therefore would not be as open and free from development as the appellant suggests, notwithstanding that part of the frontage currently consists of hardstanding.

16. Paragraph 80 of the Framework sets out the five purposes served by the Green Belt. Compared to the existing development on the site, which is appropriate to the location, the proposal would result in the encroachment of residential development, which I have found to be inappropriate development in the Green Belt, into the countryside.

17. For these reasons, I consider that overall the proposal would not preserve Green Belt openness and would impact on the purpose of safeguarding the countryside from encroachment. While the effect of this would be moderate, on the basis that the fundamental aim of Green Belt policy is to keep land permanently open, there would be moderate harm to the Green Belt arising from this in addition to the harm arising from the inappropriate nature of the development.

Character and appearance

18. The site lies within the Kent Downs AONB and close to the Chipstead Conservation Area (CCA), a designated heritage asset. The existing buildings are somewhat unsightly, particularly Barn B, and the unkempt appearance of the yard area does not contribute positively to the character and appearance of the area. However, the agricultural scale and nature of the buildings, notwithstanding the storage activity taking place on site, is not out of keeping with the location. At the rear of Barn A, there is a water course and an overgrown area of brambles and trees, which provides a backdrop to the barns, softens their appearance from the road, and accentuates the overriding countryside appearance of their setting.

19. While the site it partly enclosed by the built form of Chipstead and the nearby motorway, it is considered countryside in policy terms, and this is borne out by both its existing rural character and its appearance, which is enhanced by the setting provided by the adjacent field. This character is not significantly diminished by the lack of any associated farmstead nearby. In arriving at this view, I have had regard to the appellant's opinion that the site does not fit a rural definition. However, I consider that in both character and appearance the site relates more closely to the countryside than the defined urban area, albeit it is not remote from the built confines of the village. The motorway, including associated features such as gantry signs, is largely screened from the site by trees at the rear of the site and along the boundary of the adjacent field. While traffic noise is evident, the motorway does not otherwise significantly affect the character or appearance of the site.

20. The proposal would permanently and significantly alter the rural character of the site by introducing a residential use with the likelihood of associated paraphernalia. This would be contrary to Policy EN5 of the ADMP, which gives AONBs the highest status of protection in relation to landscape and scenic beauty. I note that the proposed design, layout and height of the new houses would generally respect the appearance and front building line of adjacent properties, and that vernacular materials are proposed. The proposal would also result in the removal of a derelict building, the tidying of the site, the retention of all existing trees and ecological improvements to the rear section of the site. These are modest benefits that weigh in favour of the scheme. However, I consider that the impact of the proposal on the character of the AONB would outweigh those benefits and the proposal would fail to conserve and enhance the character of the landscape, as is also required by Policy EN5. Moreover, Paragraph 115 of the Framework attaches great weight to conserving the landscape of AONBs.

21. The front of the site is close to the boundary of the CCA. However, there is agreement between the main parties that the proposal would not result in significant harm to the character or appearance of the CCA. While the new houses would be clearly visible in the street scene, given that the design, height and layout of the houses would generally respect the adjacent properties, I agree that the character and appearance of the CCA would not be harmed. The proposal would therefore accord with the relevant requirements of Section 12 of the Framework in relation to conserving and enhancing the historic environment.

22. Notwithstanding, for the reasons given above, I conclude that the proposed development would harm the character and appearance of the area, including the Kent Downs AONB. It would therefore conflict with adopted Policy EN5 of the ADMP, the relevant requirements of which are set out above. It would also be contrary to Paragraph 115 of the Framework.

Living conditions

23. 109 Chevening Road (No 109) is positioned close to the common boundary with the appeal site. No 109 has a door and a first floor obscure-glazed window in the main flank elevation, facing the site. There is a single storey extension to the rear, which includes a ground floor window to a habitable room. The principal window to that room faces rearward down the back garden and a third window faces the side, away from the appeal site. The closest new house would be positioned very close to the common boundary with No 109.

24. While the proposal would lead to a reduction in outlook at the side of No 109, the effect of this on the living conditions of occupiers there would be limited because the outlook from principal windows would not be significantly affected by the position and proximity of the closest new house. Furthermore, the outlook from the ground floor window facing the appeal site is already restricted to a degree by the wooden boundary fence. Therefore, while the development would be clearly perceptible from No 109, including because it would extend marginally beyond the rearmost part of No 109, it would not be unduly overbearing so as to amount to significant harm to neighbouring occupiers' living conditions.

25. Amended drawing 500/JB/004/A submitted with the appeal shows no windows proposed in the main side elevation of the new house at Plot 1, facing No 109.

While some overlooking of the garden of No 109 would be possible from the first floor bedrooms, this would not include direct views of the part of the garden closest to the house, where a greater degree of privacy might reasonably be expected. In this respect the relationship between No 109 and the proposed houses would be similar to its existing relationship with Nos 107 and 105 Chevening Road. Furthermore, the removal of Barn A would bring about some improvement to the general outlook from the rear garden of No 109.

26. I therefore conclude that the proposal would not harm the living conditions of neighbouring occupiers, with particular regard to outlook and privacy. It would accord with adopted Policy EN2 of the ADMP, which seeks to provide adequate residential amenities for existing and future occupants of nearby properties, including with regard to overlooking, visual intrusion and unacceptable loss of privacy. It would also accord with Paragraph 17 of the Framework, which among other things seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

27. The Council's decision also refers to adopted Policy SP1 of the CS, which principally relates to the design of new development and conservation but does not specifically address living conditions. I have had regard to it, but it has not been determinative in my conclusion on this main issue.

Highway safety

28. Amended drawing 500/JB/050A, provided with the appeal, shows visibility splays of 2m x 43m in both directions from the accesses proposed to serve the two houses, as well as a third access to the field and stable to be retained by the appellant. The drawing also shows parking and turning provision sufficient for two cars at each house. On this basis I am satisfied that the proposal makes adequate provision for the parking and turning of cars such that drivers could enter and exit using a forward gear. On the basis of my site visit, I am also satisfied that the specified visibility would be adequate and I see no significant reason why the indicated visibility splays could not be achieved. I also note that the Council considers the amended layout and sightlines to address its fourth reason for refusal.

29. I conclude that the proposed development would have no significant effect on highway safety on Chevening Road. It would accord with adopted Policy EN1 of the ADMP, which sets out design criteria, including requiring satisfactory means of access and the provision of adequate parking, and with adopted Policy T1 of the ADMP, which requires the mitigation of any adverse travel impacts, including in relation to safety.

Other considerations

30. The site is in an accessible location with services in Chipstead village within walking distance and further services available in the wider Sevenoaks urban area. Landscaping and ecological measures could enhance the biodiversity of the site. Two dwellings would also make a modest contribution to the local housing stock.

31. I note the appellant's opinion that piecemeal development has previously been permitted in the vicinity and accordingly the village boundary should have been extended through previous Local Plans to include the appeal site. The

appellant also opines that the result of the Green Belt wash-over in this location is to preserve land in a sustainable village, whereas the purpose of the Green Belt is to protect openness, not villages. However, it is not for me in the context of this S78 appeal to review the settlement boundary or the Green Belt. Furthermore, I note that the adopted CS established no need to amend the Green Belt to meet development needs.

32. The appellant further considers that the Council failed to determine the application in a positive and proactive way including because paid-for pre-application advice was not passed on to the application case officer, the correct planning weight was not applied, and because a landscape consultant was not consulted by the Council. These matters principally relate to the processing of the application by the Council and not to the planning merits of the proposal. I have considered the appeal on the evidence and merits of the scheme before me.

33. The appellant has submitted a copy of a Planning Contravention Notice, dated 24 February 2017, served by the Council in relation to the appeal site, together with two draft statutory declarations and associated site plans which the appellant intends to submit to the Council with a new application seeking to establish the lawful use of the site. In response, the Council has advised that it has not received a revised Lawful Development Certificate application and therefore the veracity of the additional evidence has not been tested. Moreover, the statutory declarations are stated to be in draft form and are not signed and dated. As a result, and while I have had regard to the content, this additional information only carries limited weight in my determination of the case before me, and this does not outweigh my findings in relation to the main issues above. Furthermore, even if I were persuaded that the site constitutes PDL, my concerns in relation to the effect of the proposal on the openness and purposes of the Green Belt, and on the character and appearance of the area, would not be altered.

Conclusions

34. The Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition there would be adverse impacts on openness, the Green Belt purpose of safeguarding the countryside from encroachment, and character and appearance. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. I give a little weight to the contribution that the proposal would make to housing provision and to support local services, which is not sufficient to outweigh the substantial weight given to the harm to the Green Belt. Biodiversity enhancements could be put forward as a benefit for many developments. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt.

35. For these reasons, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR