
Appeal Decision

Site visit made on 9 May 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 23rd May 2017

Appeal Ref: APP/R3650/W/16/3165867

Tangley Close, Wonersh Common, Wonersh, GU5 0PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr N Cole-Hawkins against the decision of Waverley Borough Council.
 - The application Ref WA/2016/1291, dated 26 April 2016, was refused by notice dated 23 September 2016.
 - The development proposed is the erection of 5 detached dwellings with associated garages following demolition of existing dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. As the site is located within the Green Belt, the main issues are:
 - (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies including the effect on the openness of the Green Belt;
 - (b) The effect upon character and appearance of the area;
 - (c) The effect of the proposals upon housing mix;
 - (d) Whether or not a planning obligation is required to make the proposal acceptable with particular regard to affordable housing.
 - (e) If the proposal is inappropriate development, whether any harm by reason of inappropriateness, and so any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Procedural Matters

3. The application is in outline, including access and layout, and all other matters reserved.
 4. The development plan for the area consists of the saved policies of the Waverley Borough Local Plan 2002 (LP). The Council are currently unable to demonstrate a 5 year housing land supply, and in accordance with paragraph 49 of the National Planning Policy Framework (the Framework) relevant policies for the supply of housing should not be considered up-to-date. I have therefore had regard to paragraph 14 which states that where the development
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plan is absent, silent or relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole or where specific policies in the Framework indicate development should be restricted. I have also had regard to the recent Supreme Court judgement¹ in this respect.

5. My attention has also been drawn to the emerging Local Plan which was submitted for examination in December 2016. However, as far as I am aware this remains unexamined and un-adopted and as such the weight I can attach to this is limited.

Reasons

Inappropriate Development and Openness

6. The Green Belt serves 5 purposes including to assist in safeguarding the countryside from encroachment. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.
7. Saved Policy C1 of the LP states that outside the rural settlements identified in Policy RD1, there is a presumption against inappropriate development within the Green Belt, unless there are very special circumstances. Development which would materially detract from the openness of the Green Belt will be resisted.
8. Paragraph 89 of the Framework sets out a number of exceptions whereby development would not be deemed as inappropriate, including limited infilling of previously developed sites (brownfield land) which would not have a great impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
9. The glossary of the Framework defines previously developed land as land which or was occupied by a permanent structure, including the curtilage of the developed land. Recently the courts have held that residential gardens which are not in 'built-up areas' are not excluded from the general definition of previously developed land.² I consider that the development would be on previously developed land and as such, in accordance with paragraph 89 of the Framework, the effect of the development on Green Belt openness and purposes, will therefore determine whether or not the development is inappropriate.
10. Paragraph 79 of the Framework indicates that openness is an essential characteristic of the Green Belt. Saved LP Policy C1 states that any development which would materially detract from the openness of the Green Belt will not be permitted. In general, openness in a Green Belt context is a physical absence of buildings and structures, rather than an element of an area's character.
11. The site comprises of a 2-storey dwelling and separate single garage. I also noted at my site visit that there were other ancillary structures within the grounds, including a disused swimming pool and chicken/duck pens. This

¹ Suffolk Coastal District Council V Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council 10 May 2017

² Dartford BC v SSCLG [2017] EWCA Civ 141

dwelling and other structures would be demolished and, as evidenced by the submitted layout plan, the development would comprise of 5 large dwellings with detached double garages along a private access which would provide a link between the existing drive to adjoining land. While detailed landscaping proposals would form a reserved matter, there would also be hardstanding to each property to accommodate further off-street parking.

12. The construction of 5 dwellings plus garaging on the appeal site would result in a much greater level of built development than the existing arrangement. The layout and footprint of the dwellings, their bulk and the accompanying domestic accoutrements including the garages, vehicular accesses and hardstanding would inevitably lead to a loss of openness. Therefore, I find harm by reason of the reduction in openness and encroachment into the countryside.
13. The appellant has also sought to justify the proposal in respect of a separate exemption under paragraph 89 of the Framework which also allows for limited infilling in villages. The supporting text to saved LP Policy C1 also identifies infilling in identified rural settlements in accordance with saved Policy RD1 as acceptable. Consistent with the approach taken in the Normandy appeal³, it is necessary for me to consider whether the proposal would be in Womersley and if so, whether this would constitute limited infilling.
14. The appeal site is located to the north of Womersley in an area which is characterised by large detached dwellings set in large plots. Dwellings here are historic and their architecture reflects the local vernacular style. The appeal site is accessed from the B2128 via a private drive which serves Tangley Close, as well as Little Tangley Lodge and Little Tangley Flats.
15. The wider area comprises of an extensive tree belt to the south, which separates higher density linear development along Blackheath Lane, as well as the culs-de-sac at Blackheath Grove and Phillips Hatch and high density development within the centre of the village. To the north of the appeal site there are further low density dwellings which are of varied scale, form and positioning within their plots. I thus consider that the general pattern of development to be spacious and informal.
16. The appeal site is located in a historic area with shared characteristics, and while this is in proximity to Womersley, I consider that its character and form is contiguous with the general countryside, rather than more formal and built character of the village. I therefore consider this area would be distinct from the village core as experienced today and could not constitute infill development.
17. The development would not therefore represent limited infilling in villages and thus it follows that the proposal constitutes inappropriate development within a Green Belt. The Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be attributed to any harm to the Green Belt.
18. Overall, I conclude that the development would be inappropriate, and would not meet the exemptions set out under paragraph 89. The development would

³ APP/Y3615/A/14/2214238

also conflict with LP Policy C1. In accordance with paragraph 88 of the Framework, I give substantial weight to that harm.

Character and Appearance

19. LP Policies D1 and D4 require that development is of a high quality design which integrates well with the site and complements its surroundings. Development will not be permitted where there would be harm to the visual character and distinctiveness of a locality, particularly in respect of the design and scale of the development and its relationship to its surroundings.
20. The appeal site is also located in an Area of Great Landscape Value (AGLV) as designated by saved Policy C3 of the LP which states that strong protection will be given to ensure the conservation and enhancement of the landscape character. The supporting text notes that the AGLV designation washes over the rural settlements reflecting the fact the villages are an intrinsic part of the landscape and that development within them needs to be carefully controlled.
21. As I have identified, the area has a distinctive rural character, with low density historic residential development, and is separate from the main built up area of Womersley. While the development would be located within the existing residential curtilage of Tangle Close, the proposal for 5 dwellings would represent a higher density development that would introduce a more formal and suburban form. This would be significantly at odds with this character and thus I consider that the development would erode the character and open nature of the area, and would be highly incongruous in this respect. Specific details in respect of materials and architectural design, which would be dealt with as part of any reserved matters application, would not overcome this harm.
22. This effect would also be inconsistent with the aims of the AGLV in terms of the urbanising impact of the development upon the rural character of the site. I accept that the AGLV is a local designation and is not afforded the same degree of weight such as Areas of Outstanding Natural Beauty in the Framework. Nonetheless, it is a core planning principle to contribute to conserving and enhancing the natural environment as well as taking account of the different roles and character of different areas, as set out in Paragraph 17 of the Framework.
23. On this matter, I therefore conclude that the development would cause harm to the character and appearance of the area and the AGLV. The development would therefore conflict with LP Policies C3, D1 and D4. The development would also be in conflict with paragraph 58 of the Framework which requires that development responds to local character, reflecting the identity of local surroundings, as well as paragraph 17.

Housing Mix

24. Based upon the conclusions of the Inspector in the Charles Hill appeal⁴ the appellant considers that in providing 4 and 5 bed dwellings, the development would meet an identified need, as set out in within the Strategic Housing Market Assessment (SHMA). Saved LP Policy H4 sets out a formulaic approach to mix, requiring that not less than 80% of dwellings shall be 3-bed or less and

⁴ APP/R3650/A/14/2223115

that no more than 20% of proposed dwellings shall exceed 165 square metres in total gross floor area.

25. In his decision, my colleague considered that Policy H4 was out of date and does not incorporate the flexibility of paragraph 50 of the Framework which requires the delivery of a wide choice of homes and planning for a mix of housing based on current and future trends and the range of housing that is required in particular locations. Given the age of the policy and its numerical approach, I also consider that it is not up to date and that only limited weight should be afforded to it.
26. The appellant submits that the proposal responds to the most recent SHMA. In their Officer Report, the Council set out a table in respect of the indicative requirements for different dwelling sizes, stating that 20% market homes of 4 beds and above are needed. My attention is also drawn to a separate appeal decision⁵ whereby the Inspector found conflict with the Framework in this respect.
27. No copy of the SHMA has been provided, and I am mindful that this is untested and that this in itself would not comprise policy. However, the development proposal comprises wholly of large dwellings and on this basis there can be no doubt that the development would not provide for any mix of dwellings as required by paragraph 50 of the Framework.
28. It has been put to me that to make provision for smaller units would result in a form of development out of keeping with the prevailing grain and pattern of development in the area. However, based on my conclusions on character and appearance, above, this would not form a reasonable justification for the proposals before me.
29. On this matter I therefore conclude that the development would result in harm to the overall housing mix of the area, contrary to national policy and LP Policy H4.

Planning Obligation

30. Paragraph 204 of the Framework and Regulations 122 and 123 of the Community Infrastructure Levy (Amendment) Regulations 2015 (the CIL Regs) states that obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
31. In order to meet requirements of LP Policy H5, a Written Ministerial Statement⁶ and the Framework, the proposal generates the need for affordable housing. Instead of providing this on-site, the appellant has offered a commuted sum equivalent to 30-40%, citing that affordable housing cannot be accommodated due to character and appearance, concern around whether 2 units would be practicably manageable for a Registered Provider to maintain. Again my attention has also been drawn to the conclusions of the Charles Hill appeal decision in this regard.

⁵ APP/R3650/W/16/3150906

⁶ Secretary of State's Written Ministerial Statement (WMS) of the 28 November 2014

32. With some reluctance, the Council have accepted that off-site provision would be acceptable. I find that the provision of such housing is necessary to make the development acceptable in planning terms, is directly related to the proposal and is reasonably related in scale and kind to it. The provision sought therefore complies with paragraph 204 of the Framework and Regulation 122 of the CIL Regs. However, no such obligation has been executed and the proposed development does not provide an appropriate means to secure affordable housing.
33. I accept that both the Council and appellant agree that an obligation is necessary and that a legal agreement is being progressed. Nevertheless, the Procedural Guide – Planning appeals – England 2015⁷ clearly states that an executed and certified copy of the obligation should be received no later than 7 weeks from the appeal start date and I am not obliged to delay my decision to wait for a completed obligation.
34. In the absence of an obligation, the question which arises is whether this matter could be dealt with by condition. However, the Planning Practice Guidance (PPG) advises that a positively worded condition should not be used to require payment of money or other contributions. It also advises that a negatively worded condition limiting the development that can take place until an obligation has been agreed is unlikely to be appropriate other than in exceptional circumstances such as in the case of more complex and strategically important development, where there is clear evidence that the delivery of the development would be put at risk⁸. Such circumstances do not exist in this case.
35. I therefore conclude that this matter cannot be dealt with by condition. The proposal would therefore be contrary to LP Policy H5 as well as paragraph 50 of the Framework which also indicates that where the need for affordable housing is identified it should be provided.

Other considerations

36. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be attached to this harm when considering any appeal concerning such development. Very special circumstances to justify such development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
37. As well as finding that the development would constitute inappropriate development, I have also established additional harm from the proposed development, in terms of character and appearance, housing mix and due to the lack of an affordable housing obligation.
38. The site is in a suitable location whereby there would be good accessibility to local services and facilities by sustainable transport modes. The dwellings would contribute to housing supply in an area where there is a shortage, although in light of the Council's shortfall and in respect of the relatively small housing numbers proposed, such benefits would be modest. These considerations therefore attract moderate weight. However, when taken

⁷ Procedural Guide – Planning appeals – England 2016 : Deadline for receipt of planning obligations – section N.2

⁸ Planning Practice Guidance ID 21a-010-20140306

together, these considerations do not clearly outweigh the harm I have identified.

39. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt and as such the proposal would be contrary to Policy C1 of the LP and the Framework.

Other Matters

40. The appellant also contends that the emerging plan identifies villages in the Green Belt, including Wonersh, and that the Council are not properly considering sites as being suitable for housing. It is stated that the appeal site is more suitable than other sites identified. However, the determination of an individual s78 appeal is considerably different to the examination of an emerging Local Plan and in this context it is not for me to pass judgement on the suitability or otherwise of alternative sites or the Council's spatial strategy as part of the emerging plan. I have therefore considered the appeal proposal on its own merits on the basis of the information before me.

Conclusion

41. Paragraph 14 of the Framework indicates that permission should be granted unless adverse impacts of doing so would significantly or demonstrably outweigh the benefits or specific policies in the Framework indicate development should be restricted. The site is in the Green Belt, and footnote 9 makes clear that policies concerning the Green Belt are policies indicating that development should be restricted.
42. Given the conflict with those policies of the Framework identified above, the proposals cannot therefore be considered sustainable development for which the Framework presumes in favour. The Supreme Court Judgement also has no bearing on my conclusions.
43. For the reasons given above, taking into account all other matters raised, I conclude that the appeal should be dismissed.

C Searson
INSPECTOR