
Appeal Decision

Site visit made on 4 July 2017

by Alex Hutson MATP CMLI MArborA

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

Decision date: 19 July 2017

Appeal Ref: APP/T2215/W/17/3172236

Wilmount Place, Green Street, Green Road, Dartford DA1 1QF

- 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 Mrs Justina Ali against the decision of Dartford Borough Council.
 - The application Ref DA/01806/FUL, dated 11 November 2016, was refused by notice dated 9 February 2017.
 - The development proposed is erection of 4 bed chalet bungalow.
-

Decision

1. The appeal is dismissed.

Main issues

2. The main issues are:
 - Whether or not the proposal is inappropriate development in the Green Belt;
 - The effect of the proposal on the openness of the Green Belt;
 - Whether the appeal site would be an acceptable windfall site;
 - The effect of the proposal on the living conditions of the occupiers of Wilmount Place, with particular regard to outlook; and
 - If the proposal is inappropriate development, whether or not there are other considerations which, together, clearly outweigh the harm to the Green Belt, and any other harm, and which amount to very special circumstances which would be necessary to justify the proposal.

Reasons

Inappropriate development

3. The appeal site comprises Wilmount Place, a two storey dwelling, set within grounds of a generous size. It is accessed via a private road from the B260 which also serves a number of other dwellings. These include Maye Place and Tudor Court which lie to the north of the appeal site. The Orbital One industrial estate bounds the eastern edge of the appeal site and an area of woodland bounds it to the south and west. An area of open and undeveloped grassland within the eastern part of the appeal site is separated from Wilmount Place by a brick wall and a gate. However, it lies within the curtilage of this dwelling and therefore forms part of its residential garden land. The proposal seeks to erect a 4 bedroom chalet bungalow with associated parking onto this area of residential garden land.

4. Wilmount Place and its curtilage lie within the Green Belt as defined in the Dartford Borough Local Plan 2005 (Local Plan). Paragraph 89 of the National Planning Policy Framework (the Framework) sets out that the construction of new buildings within the Green Belt should be regarded as inappropriate. However, it sets out that there are exceptions to this, including the limited infilling or the partial or complete redevelopment of previously developed land, 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.
5. The Glossary at Annex 2 of the Framework, defines the term previously developed land as "land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure". It goes on to say that this excludes, amongst other things, "land in built-up areas such as private residential gardens". Case law¹ has held that residential gardens which are not in 'built-up areas' are not excluded from the Framework's definition of previously developed land.
6. The Framework does not define the term 'built-up area'. The Council considers that the appeal site lies within a built-up area on the basis of its close proximity to the industrial estate and other dwellings. The appellant refers to the appeal site as "an urban located site" and as "not an urban site". The appellant's view on this matter is therefore unclear.
7. If I was to adopt the Council's approach, having regard to the Framework's definition of previously developed land, the appeal site would not fall within this category. On this basis, the proposal would not comply with the listed exceptions as set out in Paragraph 89 of the Framework. On the other hand, if I was to consider that the appeal site lies outside of the built-up area, and would therefore represent previously developed land, I would need to consider whether the proposal would have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
8. On the basis that it would be sited between an existing dwelling and the industrial estate, I do not consider that it would conflict with the purposes of the Green Belt as defined in Paragraph 80 of the Framework, including to check unrestricted urban sprawl. Nonetheless, the proposal would introduce a new dwelling and hardstanding for the parking of vehicles onto an area of the residential garden of Wilmount Place which is currently open and undeveloped. This would inevitably reduce the openness of the Green Belt. This is notwithstanding that it would be well designed, would reflect the density of other plots locally and would not be easily visible from any public vantage points.
9. Consequently, whichever approach I adopt, the proposal would not comply with the listed exceptions as set out in Paragraph 89 of the Framework. The proposal would therefore 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. It would also be contrary to saved Policy S4 of the Local Plan; and Policy CS13 of the Dartford Core Strategy 2011 (Core Strategy) which, together, seek to

¹ Dartford BC v SSCLG [2017] EWCA Civ 141

protect the Green Belt and to resist inappropriate development within it. Paragraph 88 of the Framework states that in considering a planning application, substantial weight should be given to any harm to the Green Belt.

10. I have had regard to the planning permissions² referred to by the appellant. Nevertheless, these involved either the conversion of an existing building in the Green Belt or the construction of a building outside of the Green Belt and are therefore not helpfully comparable to the proposal I am to consider. Thus, these examples do not alter my opinion in respect of this main issue.

Openness

11. Paragraph 79 of the Framework indicates that openness is an essential characteristic of the Green Belt. As set out above, the proposal would inevitably have a detrimental effect on the openness of the Green Belt given that it would introduce a dwelling and associated hardstanding for the parking of vehicles where no built form currently exists. This would be contrary to the aims of Paragraph 79 of the Framework.

Windfall site

12. Policy CS1 of the Core Strategy sets out that to maximise regeneration benefits, promote sustainable patterns of development and protect less appropriate areas from development, development will be focused within three priority areas. These are Dartford Town Centre and Northern Gateway, Ebbsfleet to Stone and the Thames Waterfront. It is my understanding that the appeal site does not lie within any of these priority areas. Policy CS10 of the Core Strategy supports this approach but allows for development on windfall sites which meet a number of considerations, including the sustainability of the site for housing development.
13. The Council's adopted Housing Windfall Supplementary Planning Document 2014 (SPD) sets out the criteria to consider when assessing the sustainability of a site. Previously developed sites and sites which have a good level of access to community facilities and public transport are included within the criteria. The SPD attaches the highest weight to previously developed sites.
14. I observed that there is a school and a sports club within a reasonable walking distance of the appeal site. There are also some petrol stations with associated shops which could be reasonably reached on foot. As such, I do not consider the appeal site to be excessively remote from these community facilities. However, whilst the appellant suggests that there are bus stops nearby, it is unclear where these are or what level of service they provide. On this basis, I cannot be certain that there would be a reasonable alternative to the use of a private motor vehicle for any future occupiers to access a wider range of services and facilities in the area. Consequently, the proposal would appear to conflict with the guidance set out within the SPD in this regard.
15. As such, the proposal would be contrary to Policies CS1 and CS10 of the Core Strategy which seek to protect less appropriate areas from development and to promote sustainable patterns of development. Moreover, whether or not the appeal site could be considered as previously developed land, the Framework sets out that windfall sites should not include residential gardens. Thus, the appeal site would not be an acceptable windfall site.

² Ref 16/00429/COU at Wilmount Place; and Ref 15/01542/OUT at Tudor Court

Living conditions

16. A rear first floor bedroom within Wilmount Place has a window which would face the proposed dwelling at a distance of approximately 11.5m. The proposed dwelling would therefore be apparent in views from it. However, such a degree of separation would not, in my view, result in any significant sense of enclosure to this window and the proposed dwelling would not appear overbearing or oppressive in views from it. Moreover, the bedroom also has a rear facing window which looks out over the rear garden. This window would not be affected by the proposal. Thus, I do not consider that the proposal would result in any material harm to the outlook of any occupiers of this dwelling. It would not, therefore, have any material effect on their living conditions or the enjoyment of their home.
17. On this basis, the proposal would comply with saved Policy B1 of the Local Plan; and draft Policies DP5 and DP7 of the emerging Dartford Development Policies Plan. These policies require, amongst other things, development to not materially detract from the amenity of adjoining properties and neighbouring uses.
18. The Council also cites conflict with saved Policy H14 of the Local Plan. However this policy relates to extensions and loft conversions and is therefore not relevant to this appeal.

Other considerations

19. I recognise that the proposal would make a contribution to high quality housing supply within the Borough. However, in the wider scheme of things, such a contribution would be limited. Moreover, the appellant appears to accept that the Council can demonstrate a five year supply of housing land. I have no substantive reasons to consider otherwise. Furthermore, even if this was not the case, the Planning Practice Guidance sets out that unmet housing need is unlikely to outweigh harm to the Green Belt. As such, I afford this matter limited weight.

Planning balance and conclusion

20. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have identified that the proposal would be inappropriate development in the Green Belt as defined by the Framework. In addition, it would cause material harm to the openness of the Green Belt and would not occupy an acceptable windfall site.
21. As explained above, I only afford limited weight to the other consideration cited in support of the proposal and conclude that it would not outweigh the harm that would arise to the Green Belt. Nor would it outweigh the unacceptability of the appeal site as a windfall site. Accordingly, no very special circumstances exist that would justify inappropriate development being allowed. Therefore, for the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

Alex Hutson INSPECTOR