



Appeal Decision

Site visit made on 25 July 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 10th August 2017

Appeal Ref: APP/M3645/W/17/3174788

3 and 4 Dowlands Cottages, Dowlands Lane, Smallfield, RH6 9SD

- 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 Lee Duffett against the decision of Tandridge District Council.
 - The application Ref TA/2016/2144, dated 16 November 2016, was refused by notice dated 3 March 2017.
 - The development proposed is '*demolition of 3 and 4 Dowlands Cottages. Construction of two replacement semi-detached dwellings.*'
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main parties agree that the appeal site is located within the Green Belt. As such, the main issues are:
 - Whether the proposed development is inappropriate development in the Green Belt for the purposes of the *National Planning Policy Framework* and the adopted Development Plan, and;
 - The effect of the proposed development on the living conditions of neighbouring occupiers, with specific regard to overlooking and privacy, and;
 - If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances needed to justify it.

Reasons

Whether inappropriate development

3. The *National Planning Policy Framework* (the Framework) sets out national policy on Green Belts, and is an important material consideration. The Government attaches great importance to Green Belts. Paragraph 87 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In local policy terms, the Green Belt policies of the Framework are broadly reflected in Policies DP10 and DP13 of the *Tandridge Local Plan: Part 2 – Detailed Policies 2014* (TLP).

4. Paragraphs 89 and 90 of the Framework indicate limited exceptions to inappropriate development. In consideration of those listed in Paragraph 90, the exceptions are of limited relevance in this case and it is not suggested by the parties that the proposal would fall into any of those exceptions. I see no reason not to concur in this instance.
5. My attention has been drawn to bullet point 4 of Paragraph 89 by the main parties, which sets out an exception to inappropriate development includes; *'the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces'*. This is not dissimilar to Policy DP13 of the TLP, which sets out that replacement of a building can be acceptable if it *'is not materially larger than the building it is replacing'*.
6. In this case, the proposal seeks the replacement of a single storey shallow pitched building, comprising two dwellings, with two semi-detached chalet bungalow styled dwellings¹. To the rear of No 3 there is an attached garage and to the rear of No 4 a conservatory. The Council's figures indicate that the replacement building would be approximately 30% larger in volume (being about 153m³ larger). The appellant agreed in their grounds of appeal that the proposal would result in an average increase of 31.51%, as detailed at Paragraph 3.19. As acknowledged by the appellant, the existing building height is about 4 metres to the ridge whereas the proposed building would be roughly 6 metres in height. The roofslopes would also contain box dormers in order to provide living accommodation within the roofspace proposed.
7. Neither the Council's adopted Policies nor the Framework sets out any specific definition of what 'materially larger' means in practice; whether volumetric terms, in height, or bulk, or footprint, for example. It is for the decision-maker to reason as to why a replacement building is or is not materially larger. This is supported in the judgement of the High Court I have been referred to by the appellant in relation to a site in Tandridge known as 'Castleneau' (appeal refs 2220087 and 2226829), which I have taken into account.
8. In particular, I note that the proposal in this case would have a slightly smaller footprint than the existing building. However, it would have a significantly greater volume, increasing by roughly a third, and also have a noticeable increase in height of around two metres. The increase in overall height would be further emphasised by the use of box dormers which would increase the visibility of the roofslope within the wider area.
9. In this respect, I find that the considerable increase in volume and height proposed in this case would result in a replacement building which would be materially larger than the existing building. As such, it would not benefit from the exceptions set out in Paragraph 89 of the Framework, as reflected in Policy DP13 of the TLP. Accordingly, the proposal constitutes inappropriate development within the Green Belt.
10. Furthermore, the essential characteristics of the Green Belt are their openness and permanence, as set out at Paragraph 79 of the Framework, so any reduction in these characteristics would also be harmful. In terms of openness, whilst it is true that a reduction in the footprint may have less of an impact on the horizontal aspect of openness, this is but one factor in considering openness. In this case, the proposed building would have a greater height

¹ For clarity, I have used the term 'building' to refer to both Nos 3 and 4 Dowlands Cottages

than the existing building. It would therefore have an adverse on openness as expressed vertically.

11. I therefore find that the proposal would result in a greater impact on the openness of the Green Belt. The Green Belt serves five key purposes set out at Paragraph 80 of the Framework, which includes '*to assist in safeguarding the countryside from encroachment*'. The proposed scheme would fail to achieve this purpose of the Green Belt, for the reasons set out above.
12. In light of the fact it does not fall into one of the exceptions listed in Paragraph 89 or 90 of the Framework or any provided within the adopted development plan for the District, the development proposed would be inappropriate development, as defined by both. As such, the proposed development would be contrary to Policies DP10 and DP13 of the TLP and those of the Framework, which, amongst other aims cited previously, seek to maintain the national and local planning purposes of the Green Belt.

Living conditions

13. With regards to overlooking and loss of privacy, the Council is concerned that the proposal would allow the overlooking of the garden at the dwelling called Rough Beech, to the south of the site and also to the garden of No 2 Dowlands Cottage to the east. In terms of the windows and rooflights facing Rough Beech and its gardens, given that these would serve bathrooms and/or stairwells they could be conditioned to be obscured glazed. This would provide reasonable mitigation in terms of overlooking.
14. In terms of the full height window in the eastern gable end serving the larger bedroom at first floor, this is likely to result in some overlooking of the garden of 2 Dowlands Cottage. However, there would be a separating gap of about 31 metres and the gardens at all four cottages are already fairly open, with views possible from a number of existing ground floor windows. Given the existing situation, and the degree of separation, I do not find that the proposal would result in unacceptable overlooking or privacy for occupiers of 2 Dowlands Cottage.
15. I therefore conclude that the proposed development would not result in a materially harmful impact on the living conditions of neighbouring occupiers, with specific regard to overlooking and privacy. It would therefore accord with Policy DP7 of the TLP and Policies CSP1 and CSP18 of the Tandridge District Core Strategy DPD 2008, which amongst other aims seek to ensure that developments do not significantly harm the amenities of neighbouring occupiers.

Other considerations

16. In terms of a fall-back position, I note that the Council has issued Certificates of Lawfulness (LDC)² in relation to 3 and 4 Dowlands Cottages. These indicate that the erection of extensions at each property would be permitted development. The appellant considers that this amounts to a material consideration of considerable weight and points to caselaw to support this stance. I agree that these LDC are material considerations in this instance. However, the level of weight they should be afforded is a matter for the decision-maker.

² Ref TA/2016/1277 and TA/2016/1278

17. The appellant acknowledges themselves that the '*extensions would have a less desirable impact on the appearance of the cottages*'³. Moreover, I have not been provided with any detailed evidence that such extension would become a reality beyond the LDC stage. For example, there are no estimates from builders which might indicate that the appellant is seeking to implement their permitted development rights. In the absence of such evidence, and the appellant's own recognition that the LDC scheme would be less desirable in terms of appearance, (which logic would suggest would be a disincentive to anyone seeking good design as the appellant's case suggests), I afford this factor minimal weight.
18. The appellant suggests that the proposed building would not have the appearance of being two storey. However, with four dormers in the roof slope, a Juliet style balcony in the east and west gables, and the ability to see the building in profile across nearby fields the building would appear akin to a two storey building. This contrasts sharply with the current building, with no dormers and a shallower pitched roof, and which therefore has a lesser impact on the character and appearance of the wider area. Nevertheless, I agree with the appellant that there is nothing offensive about the proposed design in itself; which would reflect the style and form of many dwellings across the country. This factor, in terms of the design of the building, is afforded modest weight.

Overall Conclusion

19. Paragraph 88 of the Framework requires decision-makers to ensure that substantial weight is given to any harm to the Green Belt. In this case the proposal is inappropriate development and would reduce the openness of the Green Belt. Other considerations weighing in favour of the development must clearly outweigh this harm. Principal among these are the potential fall-back position and the generally acceptable design proposed. Whilst I acknowledge these, and all other considerations put forward by the appellant, Paragraph 88 makes clear that all development in the Green Belt is subject to stringent national planning policy tests, which I have applied.
20. In light of this, I conclude that those considerations put forward which weigh in favour of the proposal fail to clearly outweigh the substantial harm by reason of inappropriateness and the other harm I have identified. The very special circumstances needed to justify the proposal do not therefore arise, and the proposal conflicts with Policies DP10 and DP13 of the TLP, and the Policies of the Framework, the aims of which I have aforesaid.
21. Whilst I have found in favour of the appellant on the second main issue, this does not alter or overcome the harm I have found in respect of the first and third main issues.
22. Accordingly, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR

³ Paragraph 3.25 Grounds of Appeal