



Appeal Decision

Site visit made on 30 October 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: 7th November 2017.

Appeal Ref: APP/H2265/W/17/3179675

The Quarry, Cuttens, Shipbourne Road, Tonbridge TN11 9NL

- 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 and Mrs Dower against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/16/03361/FL, dated 9 November 2016, was refused by notice dated 13 January 2017.
 - The development proposed is the replacement and re-siting of a redundant brick drying barn to form a new single storey dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council advises that, subsequent to its determination of the application, it can no longer demonstrate a five-year supply of deliverable land for housing. Chiefly as a result of this, the Council does not seek to pursue its second reason for refusal in this appeal. I have therefore considered the appeal on the basis of the first reason for refusal.
3. The Council also advises that it has recently granted planning permissions for the conversion of the brick drying barn to a single dwelling house¹, and for the replacement of the brick drying barn to form a single residential dwelling². These permissions relate to the building subject to this appeal and its conversion or replacement essentially in situ. The appeal proposal is for the removal of the existing drying barn and the construction of a replacement building to form a single residential dwelling elsewhere within the wider Cuttens site, in an area referred to as the quarry. Planning permission has also been granted for the replacement of a second nearby brick drying barn to form a single residential dwelling. I also saw three existing dwellings at the Cuttens site, identified as The Barn, The Lodge and The Stable.

Main Issues

4. The main issues are:
 - i. Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;

¹ Ref TM/17/00235/FL

² Ref TM/17/01198/FL

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

5. The appeal site is situated in the Metropolitan Green Belt where Policy CP3 of the adopted Tonbridge and Malling Borough Council Core Strategy 2007 (the CS) sets out that national Green Belt policy will apply. 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, and the fifth exception, 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.
6. The existing brick drying barn is a long and narrow, low-profile building with open sides. It is set back from the access road, Horns Lodge Lane, and among a cluster of buildings including houses with associated outbuildings and a second brick drying barn, which form part of the wider Cuttens site. It is proposed to remove the existing drying barn and erect a replacement building to form a dwelling in a former quarry area of the site which is now presented as garden. The quarry area has an existing gated access from the lane and a gravelled drive and turning area. It is principally lawned, with various trees, and includes an existing detached garage, garden shed and summerhouse. The garage is proposed to remain.
7. The new 2-bedroom dwelling would be single-storey and largely set into an earth bank at the rear with a green roof. The barn, which appears to be situated in the residential curtilage of The Lodge, was generally empty at the time of my visit, except for some limited apparently ancillary storage including wheelie bins and garden equipment. There is no existing residential dwelling in the quarry area, which is presented as a garden, and it is clear that the proposed dwelling would not be of the same use as the redundant barn building to be replaced. Therefore the fourth exception also does not apply.
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, 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 appellants consider the site to be previously developed land (PDL), and the Council accepts this, in part, given the presence of the existing buildings there. However, the Council questions whether the whole site qualifies as PDL given that the quarry use has long been restored. There are limited details before me in this regard. However, in the context of this appeal and having regard to the Framework's definition and recent case law³, I am of the view that the area in which the new dwelling is proposed, which I do not

³ Dartford BC v SSCLG [2017] EWCA Civ 141

consider to be a 'built-up area', most likely constitutes PDL. Consequently, an assessment of the effect of the proposal on the openness of the Green Belt and the purposes of including land within it is necessary.

Openness and Green Belt purposes

9. A fundamental aim of Green Belt policy, as set out in Paragraph 79 of the Framework, is to keep land permanently open. In considering whether proposals would have a greater impact on the openness of the Green Belt, both the spatial and visual impact must be considered.
10. The Council considers that the barn floor area is 86m² while the new dwelling would be 191m² excluding the covered parking area. The appellants consider that the proposed dwelling would not be materially larger, expressing an aggregate increase in volume of around 16% rather than a floor area comparison. The flat roofed nature of the proposal would limit its relative volume, compared to the existing building which has a pitched roof. However, it is apparent from the plans that the overall floorspace of the proposal would be significantly larger than the barn. Furthermore, in my view the percentage volume increase that would result would also be significant in a position, within the Green Belt, that is currently largely free from built form.
11. In this respect I note that the proposed building would be substantially set into the bank, and that it would be generally well-screened from the lane by existing trees and hedges. Thus, while the new dwelling would be partially visible from the lane via the access, from where its domestic character could be discernible, its overall visual impact would be limited. Nevertheless, I consider that the spatial impact of the proposal would be greater than the existing building, to a significant degree, because of its increased overall scale taken in the round. The proposal would therefore have an adverse impact on openness, which would mean that Green Belt openness would not be preserved. I note the appellants' view that the existing barn is more visually dominant in mass and size than the proposal would be. Besides being generally smaller in scale, I saw during my site visit that the barn is set among existing buildings, and that it is highly unassuming visually, being well screened from the lane and largely covered with vegetation. Accordingly, I do not share this view.
12. Paragraph 80 of the Framework sets out the five purposes served by the Green Belt. The development would result in an additional dwelling, intensifying the residential use and introducing a more urban character to the site. While the effects of this would be limited, the proposal would result in a degree of conflict with Green Belt purposes. Specifically because there would be some additional encroachment into the countryside within the Green Belt, arising from the creation of an additional dwelling in this location. I note the appellants' view that the location is not countryside. However, the site lies outside the settlement confines of Tonbridge and therefore constitutes countryside.
13. In light of the above, I consider that the proposed development would result in moderate harm overall to the openness and purposes of the Green Belt and would not accord with any of the exceptions set out in Paragraph 89. It is therefore inappropriate development in the Green Belt.

Other considerations

14. I have considered the two recent planning permissions relating to the in-situ replacement and the conversion of the appeal barn, which the appellants consider to constitute genuine fallback positions. There is no significant evidence before me to suggest that either of these permissions would not be capable of implementation or that there is no likelihood of implementation. However, in both cases, the Council essentially determined that the approved schemes, taken as a whole, would preserve openness and would not constitute inappropriate development in Green Belt terms. In this respect the fallback permissions differ significantly from the scheme before me, which I have found to constitute inappropriate development and to impact upon openness. The fallback permissions would therefore have less impact on Green Belt openness than the proposal and so attract very limited weight in this appeal.
15. Moreover, the proposed position of the appeal dwelling is remote in the site relative to the position of the existing barn. While I note that the appeal proposal is sought as an alternative to the permitted schemes, it is clear that it would be physically possible to carry out the appeal scheme and a permitted scheme. The result would be two new dwellings at the site in place of the existing barn, and consequently greater overall harm to the openness and purposes of the Green Belt. I have not been provided with a completed S106 obligation that would prevent two dwellings being implemented, if I were to allow the appeal. In the absence of such an obligation I have no means before me of preventing both going ahead, since this is not a matter that can be properly addressed by a condition imposed on a subsequent permission. The weight to the fallback permissions in this appeal is therefore further limited.
16. The proposal would make use of available land and result in the provision of an additional dwelling, in an area which the parties agree is not isolated. This would bring about modest social and economic benefits. Further limited benefits would arise from the proposed biodiversity and environmental enhancements to the wider site, including enhanced space around the existing buildings from the removal of the barn, and from the greater potential sustainability credentials of the proposal in comparison to a conversion of the existing barn.
17. The appellants assert that the proposed building could be constructed with the benefit of permitted development rights, such as for ancillary accommodation, and that this constitutes a further fallback position. However, there is no significant evidence before me to substantiate a permitted development fallback position, or to indicate that such development would be reasonably likely to take place. I am therefore not persuaded that this carries any significant weight in favour of the appeal.
18. I note the appellants' view that planning permission⁴ was granted for the replacement and partial re-siting of the nearby drying barn without very special circumstances being advanced. The Council's report shows that it considered that scheme not to be inappropriate development in the Green Belt and, as such, very special circumstances would not be necessary. This limits the comparability of that case to the case before me, and the weight I can give it in this appeal. In any case, I have determined the appeal on its own merits.

⁴ Ref TM/15/03363/FL

19. The appellants also consider that the unique characteristics of the site are such that they could not be easily replicated elsewhere. I have had regard to the specific context of the site and its history in my considerations. However, it is not uncommon for a site to have a unique set of characteristics hence it is necessary for every appeal to be determined on its own merits, as I have done in this case.
20. I note that the Council has not raised any concerns in relation to matters such as highway safety, design, and residential amenity, and I have no reason to take a different view. However, the lack of harm in relation to these matters is a neutral factor weighing neither for nor against the proposal.
21. Having regard to the Council's current lack of a five-year housing land supply I have had regard to Paragraph 14 of the Framework. Footnote 9 therewith specifies that land designated as Green Belt is among the examples of specific policies which indicate that development should be restricted. I have identified that the proposal would conflict with the Green Belt aims of the Framework and, therefore, it would also conflict with Policy CP3 of the development plan. Accordingly, the 'tilted balance' does not apply in this case.

Conclusions

22. I conclude that the proposal would be inappropriate development that would result in significant harm to the Green Belt, contrary to the Green Belt aims of the Framework and Policy CP3 of the CS, the relevant requirements of which are set out above. The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight is to be given to any 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.
23. I give a little weight to the contribution that the proposal would make to housing provision and to the other benefits that would arise including the environmental and sustainability credentials of the scheme. Biodiversity enhancements could be put forward as a benefit for many developments. The substantial weight to be given to the harm identified to the Green Belt is therefore not clearly outweighed, either individually or cumulatively, by other considerations in this case. Consequently, the very special circumstances necessary to justify the development have not been demonstrated.
24. For these reasons, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR