



Appeal Decision

Site visit made on 2 July 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd August 2019

Appeal Ref: APP/J1535/W/19/3221561

Hill Farm Cottage, Millers Green Road, Willingale, Ongar CM5 0PZ

- 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 Holloway against the decision of Epping Forest District Council.
 - The application Ref EPF/2744/18, dated 11 October 2018, was refused by notice dated 10 January 2019.
 - The development proposed is described as 'the retention of existing gates and pillars'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. From my site visit it is clear that the gates and pillars that are the subject of this appeal have been constructed in line with what is shown on the submitted plans. I have therefore determined the appeal on the basis that retrospective permission is sought.
3. Although within land owned by the appellant, the gates appear to be positioned marginally outside of the submitted 'red-edged' Site Location Plan. However, during the course of this appeal, an additional Block Plan has been submitted to clarify the location of the gates. I have determined the appeal on this basis.
4. It would appear that the appellants consider that the proposal may have become lawful given that it has been in place for a number of years. I note that a Certificate of Lawful Development¹ has been refused for the retention of the development. In any event, whether or not the proposal has become lawful through the passage of time is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 (the Act).

Main Issues

5. The main issues are:
 - whether or not the proposal is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;

¹ EPF/1852/18

- the effect of the proposal on the openness of the Green Belt, including its effect upon the character and appearance of the area;
- the effect of the proposal on the setting of Hill Farm Cottage, a Grade II listed building; and
- if the development is inappropriate, whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so would this amount to the very special circumstances necessary to justify the proposal.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

6. The gates that are the subject of this appeal are positioned at the entrance to a paddock and stable on the eastern side of a narrow rural lane (Millers Green Road). They face a residential property known as Hill Farm Cottage and, from the evidence before me, it appears that they replaced a five bar post and rail gate which was approximately 1.2m in height.
7. The Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate, unless for one of a limited number of specified exceptions. The term 'building' refers to any structure or erection and it therefore includes the existing gates and pillars. Policy GB2A of the Epping Forest District Local Plan and Alterations (LPA) pre-dates the Framework but its general approach is broadly consistent with it. However, the Framework includes several specific exceptions that are not referenced in this local policy. One of which is at paragraph 145 (d) of the Framework which states that the replacement of a building may not be inappropriate, provided that it is in the same use and not materially larger than the one it replaces.
8. It is clear that the existing gates have not resulted in any material change of use at the site. An assessment is therefore required as to whether or not they would be materially larger than the gates that they replaced. Neither the LPA nor the Framework provide any detailed guidance on how 'materially larger' should be assessed. In my view the term should be given its ordinary meaning and is a matter of planning judgement for the decision maker. All relevant circumstances should be considered, which could include, amongst other things, the scale, height and bulk of the proposal.
9. The new gates may have been in situ for some time. However, with a maximum height of approximately 1.5m, they appear to be notably taller than the previous gates. Furthermore, constructed of solid oak and attached to 1.6m brick piers, the new gates are bulkier and more substantial in form. Consequently, I consider that they are materially larger than the gates that they replaced. The exception outlined in (d) of Paragraph 145 of the Framework is therefore not met.
10. Furthermore, paragraph 145 of the Framework offers other exceptions for buildings which are not inappropriate within the Green Belt, such as buildings for agriculture. I note that the appellants contend that the horses at the adjacent equestrian facility are used to graze the land. Whilst this could fall within the definition of 'agriculture', I have no substantive evidence before me to show that there is indeed an agricultural operation at the paddock. In addition, there appears to be a children's play area in the field beyond the

gates. Under these circumstances, with particular regard to the close proximity of a residential property, I also cannot be certain that the gates are used solely in connection with such an agricultural operation. I am therefore not persuaded that they represent a building for agriculture and meet this identified exception of the Framework.

11. For the reasons given, I conclude that the proposal represents inappropriate development within the Green Belt. It therefore conflicts with Policy GB2A of the LPA which is the adopted policy that is relevant to this main issue. Amongst other things, this policy only allows development in the Green Belt that is not inappropriate. It also conflicts with Policy DM4 of the Epping Forest District Local Plan Submission Version 2017 (LPSV) which seeks to achieve similar objectives. However, although the LPSV appears to be at an advanced stage of preparation and was submitted for examination in 2018, I do not know whether there are any unresolved objections to Policy DM4. Under these circumstances, I afford the conflict with this emerging policy moderate weight. However, overall, the inappropriate nature of the development is a matter to which I attach substantial weight as required by paragraph 144 of the Framework.

Openness, Character and Appearance

12. The Framework states that the most important characteristics of Green Belts are their openness and their permanence. Openness has both spatial and visual aspects. In the context of the adjacent residential property and equestrian facilities, the openness of this area has already been affected to a degree. Nevertheless, surrounding this built form are large, predominately undeveloped, fields which can be appreciated from Millers Green Road. This gives the area a distinctly rural and open feel.
13. Positioned in the middle of a low level hedgerow, the design of the previous gates was simple and allowed views through to the open countryside beyond. I therefore find that, in an area where there are no substantial means of enclosure, they were relatively unobtrusive and contributed positively to the openness of the site and this part of the Green Belt.
14. I appreciate that the new gates are constructed of high quality, natural, materials and that the appellant planted 3m of established hornbeam hedge to soften their impact. Nonetheless, their height and bulk gives them an unduly prominent appearance. Not only does this contrast unfavourably with the adjacent hedgerow, but the substantial and solid form of the gates no longer allows for views through to the countryside beyond them. Consequently, I consider that the gates are an overly large and conspicuous suburban feature that erodes the open, rural, character of the area. Although set back from the carriageway, the gates harmful impact is readily apparent from the public domain.
15. My attention has also been drawn to examples of other gates within the wider area, some of which appear to be larger than those that are the subject of this appeal. However, I have not been provided with the full details of these developments and therefore cannot make meaningful comparisons with the appeal scheme. They therefore do not alter my findings on this main issue.
16. For the reasons given, I conclude that the proposal gives rise to a modest loss of openness to the Green Belt and harms the character and appearance of the area. It therefore conflicts with the Framework and Policies GB7A and CP2 of

the LPA and Policy DBE4 of the Epping Forest District Local Plan (LP) which are relevant to this main issue. When read together, these seek to ensure that proposals do not harm the openness of the Green Belt and its rural character.

Effects on the setting of a nearby listed building

17. Hill Farm Cottage is a Grade II listed building which has been recently restored and faces the new gates on the western side of a Millers Green Road. I therefore have a duty to have special regard to preserving its setting. Additionally, Policy HC12 of the LP states that proposals will not be permitted if they adversely affect the setting of a listed building. However, this policy is not consistent with the Framework, which requires any less than substantial harm to a heritage asset to be weighed against the public benefits of the proposal.
18. The significance of Hill Farm Cottage appears to be derived from the appreciation of its historic architectural and structural features which date as far back as the late 14th Century. Its setting arises from the surroundings in which it is experienced, which in this case is tranquil and rural.
19. I note that the nearby paddock may not have been considered to be within the setting of Hill Farm Cottage through the consideration of previous planning applications. Nonetheless, although the original access to the cottage has now been relocated, its historic and rural nature can clearly be experienced from the location of the new gates. Taking this into account, and given the close proximity of the gates to Hill Farm Cottage, I therefore find that they are within the setting of this adjacent heritage asset.
20. I have already found that the size and bulk of the new gates, together with their solid and suburban appearance, results in a material and detrimental change to the rural character to the front of the cottage. This has caused a minor degree of harm to the significance of the house in relation to its rural setting. In terms of the Framework, this harm would be less than substantial. Nevertheless, it is a matter to which I am required to give considerable weight and importance.
21. I recognise that the new gates would increase security to deter rural crime. Although this may be in line with the thrust of the Council's emerging policies, I am not persuaded that they are the only means of providing security at the site. Furthermore, there is no evidence before me to show that security for the appellants young children and horses at the paddock could not be provided with a scheme that would be less harmful to the setting of the listed building. Overall, it has not been demonstrated that there are sufficient public benefits to outweigh the less than substantial harm to the setting of Hill Farm Cottage that I have identified.
22. For the reasons given, I conclude that the proposal results in a minor degree of harm to the setting of Hill Farm Cottage. It therefore conflicts with Policy HC12 of the LP. However, this conflict carries only limited weight given the inconsistency between this policy and the Framework. I have also been referred to Policies DM7 and DM9 of the LPSV. Amongst other things, these seek to ensure that proposals relate positively to their context and conserve the historic environment in a manner appropriate to its significance. There is therefore conflict with these policies. However, although they appear to be broadly consistent with the approach of the Framework, I again do not know if

there are any unresolved objections to them. Consequently, I afford the conflict with these emerging policies moderate weight.

23. Nevertheless, the proposal is also contrary to the advice of the Framework, which states that great weight should be given to the conservation of heritage assets and seeks to conserve them in a manner appropriate to their significance.

Planning balance and conclusion

24. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on to advise that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
25. The other considerations put forward do not clearly outweigh the substantial weight that I give to the harm to the Green Belt, by reason of inappropriateness and harm to openness, and the harm to the setting of the nearby listed building and the character of the area. Consequently, the very special circumstances necessary to justify the development do not exist.
26. For the reasons given above, the proposal would conflict with the development plan and the Framework, when taken as a whole. Having considered all other relevant matters raised, I conclude that in this particular case the appeal should be dismissed.

M Heron

INSPECTOR